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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 60 and 65

[Document No. AMS–LS–13–0004]

RIN 0581–AD29

Mandatory Country of Origin Labeling of Beef, Pork, Lamb, Chicken, Goat Meat, Wild and Farm-Raised Fish and Shellfish, Perishable Agricultural Commodities, Peanuts, Pecans, Ginseng, and Macadamia Nuts

AGENCY: Agricultural Marketing Service (AMS), U.S. Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This final rule amends the Country of Origin Labeling (COOL) regulations to change the labeling provisions for muscle cut covered commodities to provide consumers with more specific information and amends the definition for ''retailer'' to include any person subject to be licensed as a retailer under the Perishable Agricultural Commodities Act (PACA). The COOL regulations are issued pursuant to the Agricultural Marketing Act of 1946. The Agency is issuing this rule to make changes to the labeling provisions for muscle cut covered commodities to provide consumers with more specific information and other modifications to enhance the overall operation of the program.

DATES: This final rule is effective May 23, 2013. The requirements of this rule do not apply to covered muscle cut commodities produced or packaged before May 23, 2013.

FOR FURTHER INFORMATION CONTACT: Erin Morris, Deputy Associate Administrator, AMS, USDA, by telephone on 202/690–4024, or via email at: *erin.morris@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Farm Security and Rural Investment Act of 2002 (2002 Farm Bill) (Pub. L. 107–171), the 2002 Supplemental Appropriations Act (2002 Appropriations) (Pub. L. 107–206), and the Food, Conservation and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110–234) amended the Agricultural Marketing Act of 1946 (Act) (7 U.S.C. 1621 *et seq.*) to require retailers to notify their customers of the country of origin of covered commodities. Covered commodities include muscle cuts of beef (including veal), lamb, chicken, goat, and pork; ground beef, ground lamb, ground chicken, ground goat, and ground pork; wild and farm-raised fish and shellfish; perishable agricultural commodities; macadamia nuts; pecans; ginseng; and peanuts. AMS published a final rule for all covered commodities on January 15, 2009 (74 FR 2658), which took effect on March 16, 2009. On March 12, 2013, AMS published a proposed rule to amend the country of origin labeling provisions for muscle cut covered commodities (78 FR 15645).

Executive Summary

Purpose of the Regulatory Action

In June 2012, in a WTO case brought by Mexico and Canada, the WTO Appellate Body (AB) affirmed a previous WTO Panel's finding that the COOL requirements for muscle cut meat commodities were inconsistent with U.S. obligations under the WTO Agreement on Technical Barriers to Trade (TBT Agreement). In particular, the AB affirmed the Panel's determination that the COOL requirements were inconsistent with the TBT Agreement's national treatment obligation to accord imported products treatment no less favorable than that accorded to domestic products. The WTO Dispute Settlement Body (DSB) adopted its recommendations and rulings on July 23, 2012. The United States has until May 23, 2013, to comply with the WTO ruling.

As a result of this action, the Agency reviewed the overall regulatory program and is issuing this rule, under the authority of the Agricultural Marketing Act (7 U.S.C. 1621 *et seq.*), to make changes to the labeling provisions for muscle cut covered commodities and certain other modifications to the program. The Agency expects that these changes will improve the overall operation of the program and also bring the current mandatory COOL requirements into compliance with U.S. international trade obligations.

Summary of the Major Provisions of the Regulatory Action in Question

Under this final rule, origin designations for muscle cut covered commodities derived from animals slaughtered in the United States are required to specify the production steps of birth, raising, and slaughter of the animal from which the meat is derived that took place in each country listed on the origin designation. In addition, this rule eliminates the allowance for commingling of muscle cut covered commodities of different origins. These changes will provide consumers with more specific information about the origin of muscle cut covered commodities.

Costs and Benefits

The costs of implementing these requirements will be incurred by intermediaries (primarily packers and processors of muscle cut covered commodities) and retailers subject to requirements of mandatory COOL. The Agency considers that the total cost of the rule is driven by the cost to firms of changing the labels and the cost some firms will incur to adjust to the loss of the flexibility afforded by commingling.

The estimated number of firms that will need to augment labels for muscle cut covered commodities is 2,808 livestock processing and slaughtering firms, 38 chicken processing firms, and 4,335 retailers. This totals 7,181 firms that will need to augment the mandatory COOL information presented on labels for muscle cut covered commodities.

Based on 2009 data, the Food Safety and Inspection Service (FSIS) estimated there were approximately 121,350 raw meat and poultry unique labels submitted by official establishments (i.e., establishments regulated by FSIS) and approved by the Agency (76 FR 44862). Assuming the upper bound estimate of 121,350 unique labels, the Agency estimates the midpoint cost of the final rule for this label change is $32.8 million with a range of $17.0 million to $47.3 million.

With regard to the elimination of commingling flexibility, which affects the beef and pork segments, the information submitted by commenters

confirms the Agency's understanding that the commingling flexibility is used by some packers, but that it is not possible to specify the extent to which packers are making use of the flexibility. Accordingly, the Agency made various assumptions and used several sources of data to estimate the range of commingling activity that might be occurring in the industry and the related range of costs that might be incurred from the elimination of commingling.

The Agency estimates a potential range of commingling of U.S. and foreign-origin livestock by U.S. packers of five percent to 20 percent. The Agency considers that the data analyzed support the possibility that the extent to which packers are commingling is closer to the lower end than the higher end of the range. Midrange estimates of commingling are 12.5 percent for fed cattle and hogs.

Estimated costs for the loss of commingling flexibility at the packer/processor level are $7.16 per head for cattle and $1.79 per head for hogs that are currently commingled. Estimated costs at the retail level are $0.050 per pound for beef and $0.045 per pound for pork muscle cuts derived from commingled livestock. For the beef segment, total costs for the loss of commingling flexibility to intermediaries and retailers are estimated to be $21.1 million, $52.8 million, and $84.5 million at the lower, midpoint, and upper levels. Similarly for the pork segment, total costs for the loss of commingling flexibility to intermediaries and retailers are estimated to be $15.0 million, $37.7 million, and $60.3 million at the lower, midpoint, and upper levels.

Combining costs for label changes with costs from the elimination of commingling flexibility yields estimated total adjustment costs of $123.3 million at the midpoint and ranging from $53.1 million at the low end to $192.1 million at the high end. Given that the Agency believes that the current extent of commingling likely falls closer to the lower end than the higher end of the estimates, the estimated implementation costs narrow to a range of $53.1 to $137.8 million.

The Agency believes that the incremental economic benefits from the labeling of production steps will be comparatively small relative to those that were discussed in the 2009 final rule.

A complete discussion of the costs and benefits can be found under the Executive Order 12866 section.

Summary of Changes to the COOL Regulations

Definitions

In the regulatory text for fish and shellfish (7 CFR part 60) and for all other covered commodities (7 CFR part 65), the definition for ''retailer'' is amended to include any person subject to be licensed as a retailer under the Perishable Agricultural Commodities Act (PACA) of 1930 (7 U.S.C. 499a(b)). This change more closely aligns with the language contained in the PACA regulation and clarifies that all retailers that meet the PACA definition of a retailer, whether or not they actually have a PACA license, are also covered by COOL.

Country of Origin Notification

Labeling Provisions for Muscle Cut Covered Commodities

Under this final rule, all origin designations for muscle cut covered commodities slaughtered in the United States must specify the production steps of birth, raising, and slaughter of the animal from which the meat is derived that took place in each country listed on the origin designation. The requirement to include this information applies equally to all muscle cut covered commodities derived from animals slaughtered in the United States. This requirement will provide consumers with more specific information on which to base their purchasing decisions without imposing additional recordkeeping requirements on industry. The Agency considers these changes, which are discussed in detail below, consistent with the provisions of the statute.

Labeling Covered Commodities of United States Origin

Under this final rule, the United States country of origin designation for muscle cut covered commodities is required to include location information for each of the three production steps (i.e., ''Born, Raised, and Slaughtered in the United States''). The current COOL regulations permit the term ''harvested'' to be used in lieu of ''slaughtered.'' This final rule retains that flexibility.

In the case of chicken muscle cut covered commodities, the current COOL regulations define the term ''born'' as hatched from the egg. Therefore, under this final rule, the origin designations for chicken muscle cut covered commodities may use the term ''hatched'' in lieu of ''born.''

Labeling Muscle Cut Covered Commodities of Multiple Countries of Origin (From Animals Slaughtered in the United States)

Muscle cut covered commodities derived from multiple countries (from animals slaughtered in the United States) are those muscle cut covered commodities derived from animals that were born in another country (and thereby raised for a period of time in that country) and then, following importation, were further raised and slaughtered in the United States. Under this final rule, the origin designation for these muscle cut covered commodities must include location information for each of the three production steps (i.e., born, raised, and slaughtered). As stated above, there is some flexibility in the terminology that must be used with respect to referencing the production steps.

As discussed in the preamble of the January 15, 2009, final rule and in the March 12, 2013, proposed rule, if animals are born and raised in another country and subsequently further raised in the United States, only the raising that occurs in the United States needs to be declared on the label, as it is understood that an animal born in another country will have been raised at least a portion of its life in that other country. Because the country of birth is already required to be listed in the origin designation, and to reduce the number of required characters on the label, the Agency is not requiring the country of birth to be listed again as a country in which the animal was also raised. Accordingly, under this final rule, the production step related to any raising occurring outside the United States may be omitted from the origin designation of these commodities (e.g., ''Born in Country X, Raised and Slaughtered in the United States'' in lieu of ''Born and Raised in Country X, Raised and Slaughtered in the United States'').

However, in the relatively rare situation where an animal was born and raised in the United States, raised in another country (or countries), and then raised and slaughtered in the United States, the label must indicate all countries which the production step related to raising occurred. In this rare case, the label could read ''Born and Raised in the United States, Raised in Country X, Slaughtered in the United States.''

Finally, the origin designation for muscle cut covered commodities derived from animals imported for immediate slaughter as defined in § 65.180 is required to include

information as to the location of the three production steps. However, the country of raising for animals imported for immediate slaughter as defined in § 65.180 shall be designated as the country from which they were imported (e.g., ''Born and Raised in Country X, Slaughtered in the United States'').

Commingling

This final rule eliminates the allowance for commingling of muscle cut covered commodities of different origins. As discussed in the March 12, 2013, proposed rule, all origin designations are required to include specific information as to the place of birth, raising, and slaughter of the animal from which the meat is derived. Removing the commingling allowance lets consumers benefit from more specific labels.

Labeling Imported Muscle Cut Covered Commodities

As stated in the March 12, 2013, proposed rule, under the current COOL regulations, imported muscle cut covered commodities retain their origin as declared to the U.S. Customs and Border Protection at the time the products entered the United States (i.e., Product of Country X) through retail sale.

Under this final rule, these labeling requirements for imported muscle cut covered commodities remain unchanged. As is permitted under the current COOL regulations, the Agency will continue to allow the origin designation to include more specific information related to the three production steps, provided records to substantiate the claims are maintained and the claim is consistent with other applicable Federal legal requirements.

Labeling

The current COOL regulations allow for a variety of ways that the origin information can be provided, such as placards, signs, labels, stickers, etc. Many retail establishments have chosen to use signage above the relevant sections of the meat case to provide the required origin information in lieu of or in addition to providing the information on labels on each package of meat. Under this final rule, the Agency will continue to allow the COOL notification requirements to be met by using signs or placards. For example, for meat derived from cattle born in Canada and raised and slaughtered in the United States, the signage could read ''Beef is from animals born in Canada, Raised and Slaughtered in the United States.''

In terms of using labels and stickers to provide the origin information, the Agency recognizes that there is limited space to include the specific location information for each production step. Therefore, under this final rule, abbreviations for the production steps are permitted as long as the information can be clearly understood by consumers. For example, consumers would likely understand ''brn'' as meaning ''born''; ''htchd'' as meaning ''hatched''; ''raisd'' as meaning ''raised''; ''slghtrd'' as meaning ''slaughtered'' or ''hrvstd'' as meaning ''harvested''. In addition, the current COOL regulations allow for some use of country abbreviations, as permitted by Customs and Border Protection, such as ''U.S.'' and ''USA'' for the ''United States'' and ''U.K.'' for ''The United Kingdom of Great Britain and Northern Island.'' This final rule retains that flexibility. To help educate consumers about the new requirements, the Agency will redesign its consumer brochures and use tools such as social media, etc.

Effective Date and Period of Education and Outreach

The effective date of this regulation is May 23, 2013, and the rule is mandatory as of that date. As the Agency explains below, it would be impracticable and contrary to the public interest to delay the effective date of the rule beyond May 23, 2013.

However, AMS understands that it may not be feasible for all of the affected entities to achieve 100% compliance immediately and that some entities will need time to make the necessary changes to achieve full compliance with the amended provisions for 100% of muscle cut covered commodities. Therefore, during the six month period following the effective date of the regulation, AMS will conduct an industry education and outreach program concerning the provisions and requirements of this rule. AMS has determined that this allocation of resources will ensure that the industry effectively and rationally implements this final rule.

In addition, it is reasonable to allow time for the existing stock of muscle cut covered commodities labeled in accordance with the 2009 COOL regulations that are already in the chain of commerce to clear the system. Therefore, the requirements of this rule do not apply to muscle cut covered commodities produced or packaged before May 23, 2013. The Agency believes that providing an education and outreach period and allowing existing stock to clear the chain of commerce is necessary to prevent retailer and supplier confusion and will help alleviate some of the economic burden on regulated entities.

Finally, the Agency recognizes that for some period of time following the period of education and outreach, existing label and package inventories may provide less specific origin information (e.g., Product of Country X and the U.S.). As long as retail establishments provide the more specific information via other means (e.g., signage), the Agency will consider the origin notification requirements to have been met until these existing label and package inventories have been completely used.

Comments and Responses

On March 12, 2013, the Agency published a proposed rule with a 30-day comment period. AMS received 936 timely comments from consumers, retailers, producers, wholesalers, foreign governments, distributors, trade associations, and other interested parties. The majority of commenters registered their support or opposition to the rule without providing specific substantive guidance or information to modify the rule text.

AMS received 453 comments, including four petitions signed by more than 40,000 individuals, which indicated that the proposed rule makes labels more informative for consumers. AMS also received 476 comments opposing the rule from numerous producer, packer, and international trading partner entities, as well as individual ranchers, packing companies and Foreign Government officials. The comments expressed opposition to the proposed rule due to concerns about the costs of implementation and the lack of quantifiable benefits to consumers. For the ease of the reader, the comments have been summarized by issue.

Executive Orders 13563 and 12866

Summary of Comments: Numerous commenters stated their belief that the proposed rule should be withdrawn in light of Executive Order (E.O.) 13563—Improving Regulation and Regulatory Review. The commenters contended that they believe the costs of the rule outweigh the benefits and, therefore, the standard of the E.O. is not being met. Another commenter contended that the proposed rule does not comply with E.O. 12866 based on the commenter's belief that there is no explanation of the need for the rule; that the cost/benefit analysis lacks meaning; and that there is no explanation of how regulation is consistent with the statute.

Agency Response: The Agency believes that the proposed rule and this final rule comply with both E.O. 13563

and E.O. 12866. The Act provides authority for the Secretary to promulgate regulations necessary to implement the COOL program. In addition, as explained previously, in order to implement mandatory country of origin labeling for certain meat products as required by statute, the Agency has made changes to the labeling provisions for muscle cut covered commodities. These changes provide consumers with more specific information and enhance the overall operation of the program. The Agency also expects that these changes will bring the mandatory COOL requirements into compliance with U.S. international trade obligations.

The proposed rule contained an executive summary of the rule, which included a statement of need. The Agency has conducted a cost benefit analysis, as required, and has modified the analysis based on the comments received. As noted in a subsequent response below, the Agency believes that this final rule is consistent with the statute.

Miscellaneous

Summary of Comments: Several commenters stated their belief that the proposed rule violates the First Amendment because it impermissibly compels commercial speech. The commenters argued that AMS has not stated an interest sufficient to require labeling of specific production steps as recommended in the proposed rule.

Agency Response: The Agency disagrees. The Act directs that a COOL program be implemented that provides consumers with country of origin information on specified commodities, including muscle cuts of meat. It also provides authority for the Secretary to promulgate regulations necessary to implement the COOL program. The Agency believes that the Act provides the authority to amend the COOL regulations to require the labeling of specific production steps in order to inform consumers about the origin of muscle cuts of meat at retail.

Summary of Comments: One commenter expressed concern that packers will need to maintain two label inventories—one for domestic use and one for export.

Agency Response: The COOL regulations apply to only those products sold at covered domestic retail establishments. Because various countries presently have different labeling and other requirements for accepting products exported from the United States, packers already utilize different labels for products destined for export (as well as for products destined for food service) than for products destined for the domestic retail market.

World Trade Organization

Summary of Comments: Several commenters expressed a wide range of views regarding the WTO dispute. Some commenters contended that the proposed rule will not bring the United States into compliance with its international trade obligations while other commenters contended that the proposed rule will satisfy U.S. trade obligations.

Agency Response: The Agency considers that this rule brings the United States into compliance with its international trade obligations. In the COOL dispute, the WTO affirmed that WTO Members have the right to adopt country of origin labeling requirements, in that providing such information to consumers about the products they buy is a legitimate government objective. However, the WTO had concerns with specific aspects of the current COOL requirements. In particular, the WTO considered that the current COOL requirements imposed record keeping costs that appeared disproportionate to the information conveyed by the labels. This final rule addresses those concerns of the WTO.

Statutory Authority

Summary of Commenters: Some commenters stated their belief that the proposed rule is not authorized by the statute. One commenter stated that the statute does not explicitly or implicitly allow USDA to require retailers to provide point of processing information; that the statute provides that labels must identify the origin of category C covered commodities as the country from which it was imported and the United States; and that, applying the whole statute rule, categories A and B must be labeled in the same manner as categories C and D.

Agency Response: The Agency believes this rule is consistent with the statute and that the Act provides authority for the Secretary to promulgate regulations necessary to implement the COOL program. The statute contemplates four different labeling categories for meat, based on where the animal was born, raised, and/or slaughtered. This final rule preserves these four different labeling categories for meat and is consistent with the labeling criteria set forth in the statutory scheme.

Effective Date and Period of Education and Outreach

Summary of Comments: Several commenters stated that the effective date of the rule should be delayed until it is known whether the WTO considers the final rule to be compliant with U.S international trade obligations. Other commenters recommended that the effective date should be the latter of 180 days after the WTO ruling or the publication of the final rule. Another commenter recommended that the effective date should be 18 months to 2 years after publication of the final rule. With regard to enforcement, another commenter stated their opinion that the industry needs 12–18 months to comply with the final rule due to livestock commitments. Another commenter suggested that companies need 12 months to work through existing inventory of labels.

Agency Response: The effective date of this regulation is May 23, 2013, and the rule is mandatory as of that date. As the Agency explains below, it would be impracticable and contrary to the public interest to delay the effective date of the rule beyond May 23, 2013.

However, and as discussed previously, the Agency determined that an industry education and outreach program concerning the provisions and requirements of this rule is appropriate. The Agency believes that a six month period, as was provided for in the August 1, 2008, interim final rule (73 FR 45106) and the 2009 final COOL rule, is sufficient time for retailers and suppliers to become educated on and fully transition over to the new requirements of the final rule.

Both during this six month period and beyond, the Agency will continue to educate retailers and suppliers on the Agency's compliance and enforcement procedures so that the regulated industries have clear expectations as to how the Agency will enforce this rule. With regard to working through existing packaging inventories, this final rule does not require covered commodities to be individually labeled with COOL information. As discussed previously, retailers can use placards and other signage to convey origin information. In addition, as also previously discussed, it is reasonable to allow time for the existing stock of muscle cut covered commodities labeled in accordance with the 2009 COOL regulations that are already in the chain of commerce to clear the system. Therefore, the requirements of this rule do not apply to muscle cut covered commodities produced or packaged before May 23, 2013.

Labeling

Summary of Comments: Several commenters stated their belief that retailers and suppliers should not have

to list production step information for U.S. origin products. Other commenters stated their belief that requiring production step information is too onerous and that consumers do not desire this information. Another commenter stated that the rule will cause product labels to mislead consumers and referenced the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*). The commenter further stated that consumers will be confused by imported meat products bearing an ''inspected & passed'' sticker. Another commenter recommended that chicken should be labeled ''hatched'' instead of ''born.'' This commenter as well as other commenters stated their opposition to having to use the term ''slaughtered.'' The commenters suggested alternatives to the term ''slaughtered'' that consumers may find more acceptable including ''harvested'' or ''processed.''

Agency Response: Numerous comments received on this and previous COOL rulemaking actions indicate that there clearly is interest by certain U.S. consumers in the country of origin of food they purchase, including the production step information that retailers must provide pursuant to this final rule. The Agency also considers that providing this more specific information regarding the country in which each production step occurred is consistent with the COOL statute. The Agency further considers that the rule will bring the United States into compliance with its international trade obligations.

In addition, current country of origin labeling for imported meat products follows pre-existing regulations, including those of the U.S. Customs and Border Protection, regarding the origin of imported products. Further, the ''inspected and passed'' sticker is applied under the FMIA by FSIS inspectors and does not relate to the COOL program. The Agency is not aware that the requirements set forth in the 2009 final rule are causing any confusion among consumers related to meat products sold with the ''inspected and passed'' label. In any event, as noted above, this final rule does not change existing COOL labeling requirements for imported meat products nor does it alter the ''inspected and passed'' sticker. As such, there is no reason to believe that this rule will cause confusion related to the ''inspected and passed'' sticker among consumers.

With regard to chicken products, the current COOL regulations define the term ''born'' with respect to chicken as ''hatched.'' Accordingly, it is permissible to utilize the term ''hatched'' in origin designations for chicken products under this final rule. The Agency has included additional language in this preamble to clarify this point. With respect to the suggested alternatives that may be more acceptable to consumers, the 2009 COOL regulations permit the use of the term ''harvested'' in lieu of ''slaughtered.'' As discussed previously, this flexibility will continue to be allowed under this final rule.

Definition of Retailer

Summary of Comments: One commenter provided extensive comments on both the definition of a retailer in the current COOL regulations and the definition of a retailer in the proposed rule. The commenter stated their belief that AMS should not use the definition that is contained in PACA regulations and further stated that AMS should develop its own definition. The commenter provided specific recommendations, including using a definition similar to the one used by the Supplemental Nutrition Assistance Program (SNAP), which is administered by USDA's Food and Nutrition Service. Another commenter stated their support for the proposed rule's definition change and indicated that the change will make the definition less ambiguous.

Agency Response: The COOL statute defines the term ''retailer'' as having the meaning given the term in section 1(b) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(b)). Therefore, the Agency does not have the authority to develop an alternative definition based on SNAP as it is not consistent with the COOL statute. As stated in the March 12, 2013, proposed rule, the Agency believes that the revised definition of a retailer more closely mirrors the definition in the PACA and agrees that this definition is less ambiguous. Accordingly, the Agency has not adopted the alternative recommendations.

Recordkeeping

Summary of Comments: Several commenters stated that they were unclear as to whether current producer affidavits systems will satisfy the regulatory requirements of the proposed rule.

Agency Response: The proposed rule did not alter the recordkeeping requirements of suppliers or retailers. Therefore, the use of affidavits for conveying origin information is still permitted under this final rule.

Raised

Summary of Comments: Several commenters suggested that the Agency redefine the term ''raised'' to refer to the period of time encompassing a majority of an animal's life. The commenters further stated that compared to the retail value of beef, time spent in another country, i.e., country of birth, could be considered *de minimus.* Another commenter stated that retailers should be required to list all countries of raising. Lastly, one commenter asked for clarification of the phrase ''minimal raising,'' which was used in the proposed rule.

Agency Response: The COOL regulations define the term ''raised'' as ''the period of time from birth until slaughter or in the case of animals imported for immediate slaughter as defined in section 65.180, the period of time from birth until date of entry into the United States.'' The proposed rule did not recommend a change to this definition; therefore, the suggestion to modify the definition of the term ''raised'' is outside the scope of this rulemaking. With regard to the request to clarify the phrase ''minimal raising,'' that phrase does not appear in the COOL regulations, and the Agency believes that the language in the existing regulatory text provides readers with a clear definition of the term ''raising.'' Regarding the suggestion to require that all countries of raising be listed on the label, the Agency believes this final rule provides more specific information to consumers with regard to the place of raising in sufficient detail. However, the Agency has added language to this preamble to further explain the regulatory text in § 65.300(e).

Miscellaneous

Summary of Comments: Several commenters stated that the proposed rule runs counter to the shared U.S.-Canada vision of the Regulatory Cooperation Council (RCC) initiative.

Agency Response: As explained previously, in order to implement mandatory country of origin labeling for certain meat products as required by statute in a manner consistent with U.S. WTO obligations, the Agency has made these changes to the labeling provisions for muscle cut covered commodities, which provide consumers with more specific information and enhance the overall operation of the program. The United States values its relationships with its trading partners and is committed to looking for ways to improve regulatory transparency and coordination with Canada as described in the RCC Joint Action Plan.

Summary of Comments: Several commenters stated their opinion that there is no regulatory solution that will bring the United States into compliance

with its international trade obligations. The commenters further stated that the United States should seek a legislative change.

Agency Response: As discussed above, the Agency considers that this final rule constitutes compliance with the WTO DSB's recommendations and rulings.

Summary of Comments: One commenter suggested that the Agency should expand the civil rights review statement to ensure that it is as broad as possible. The commenter specifically requested that the Agency remove the phrase ''. . . on minorities, women, or persons with disabilities'' from the statement.

Agency Response: USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex (including gender identity and expression), marital status, familial status, parental status, religion, sexual orientation, political beliefs, genetic information, reprisal, or because all or part of an individual's income is derived from any public assistance program. The Agency has modified the civil rights review statement as the commenter suggested by removing the phrase in question and using ''protected groups'' in its place.

Alternatives

Summary of Comments: A number of commenters suggested alternatives to the proposed rule, including: COOL should be voluntary; country of origin should be where an animal is processed; and COOL should be based on substantial transformation (recognizing need for statutory change). Another commenter suggested that the enforcement of COOL should be reduced and gave several specific examples.

Agency Response: The alternative labeling programs suggested by the commenters are not authorized by the COOL statute, which provides for a mandatory COOL program and four distinct categories of origin designations for muscle cut covered commodities. Accordingly, these suggestions are not adopted. With regard to the suggestions to reduce the enforcement of the COOL program, this is not within the scope of this rulemaking. The Agency notes, however, that it plans to review its current enforcement procedures to determine if changes should be made.

Summary of Comments: A number of commenters provided recommendations that are outside the scope of the proposed rule, including: Food establishments should be covered because 48% of spending on food occurs at restaurants; the definition of processed should be narrowed such that more products are covered; turkey should be a covered commodity; the definition of ground beef should be narrowed; COOL is not food safety related and the Agency should clarify that mislabeling will not result in a recall; the Agency should disallow the 60-day inventory allowance for ground meat; the Agency should remove the burden on producers of requiring affidavits.

Agency Response: Because these recommendations are outside the scope of this rulemaking, they will not be considered.

Costs and Benefits

Proposal Adds Significant Costs

Summary of Comments: Several commenters stated their belief that the recordkeeping and verification processes necessitated by the proposed rule will be more onerous, disruptive, and expensive than the current regulations. The commenters further contended that the costs of new labels and printers and other equipment, together with increased needs to segregate livestock and the need to make new investments in trucks, processing lines and coolers will add cost to all segments of the production chain.

Other commenters agreed with the Agency's estimates contained in the proposed rule and noted that the incremental cost associated with the proposed labeling changes is only a slight increase over the initial COOL compliance cost estimates contained in the final rule implementing the program. One commenter noted that the proposed rule does not require the collection of additional information and that the primary added costs are associated with changing the labels. Another commenter pointed out that there will be no additional recordkeeping requirements as a result of the proposed rule and that additional labeling costs are concentrated almost entirely at the retail level.

Agency Response: As discussed further in the Regulatory Impact Analysis (RIA), the Agency agrees that there will be additional costs associated with this final rule, although only those muscle cut covered commodities subject to COOL requirements will be affected by the changes in this final rule. Those costs will be incurred by processors and retailers as they adjust to the loss of commingling flexibility and to the new labeling requirements in this final rule. It is necessary, however, to ensure label information accurately reflects the origin of muscle cut covered commodities in accordance with the intent of the statute while complying with U.S. WTO obligations.

That said, the Agency does not agree that additional recordkeeping or verification processes will be required to transfer information from one level of the production and marketing channel to the next. There are no recordkeeping requirements beyond those currently in place, and the Agency believes that the information necessary to transmit production step information is already maintained by suppliers in order to comply with the current COOL regulations. As with the current mandatory COOL program, this final rule contains no requirements for firms to report to USDA. Compliance audits will continue to be conducted at firms' places of business.

In addition, the Agency has sought to minimize the cost to industry at each step of the marketing process. For example, the Agency has clarified that retailers may continue to utilize existing label and package inventories, as long as retail establishments convey the more specific information concerning the location where the production steps occurred via other means (e.g., signage). This will reduce the costs of switching over to the new labels. The Agency further recognizes that there is limited space to include the specific location information for each production step. Therefore, to reduce the potential need for new printers and other equipment, under this final rule, abbreviations for the production steps are permitted as long as the information can be clearly understood by consumers. The Agency also notes many retail establishments have chosen to use signage above the relevant sections of the meat case to provide the required origin information in lieu of or in addition to providing the information on labels on each package of meat.

The Agency further considers it reasonable to allow time for the existing stock of muscle cut covered commodities labeled in accordance with the 2009 COOL regulations that are already in the chain of commerce to clear the system. Therefore, the requirements of this rule do not apply to muscle cut covered commodities produced or packaged before May 23, 2013.

Finally, while the requirements of this rule are mandatory as of the effective date, because AMS understands that it may not be feasible for all of the affected entities to achieve 100% compliance immediately and that some entities will need time to make the necessary changes to achieve full compliance with the amended provisions for 100% of

muscle cut covered commodities, AMS will conduct an industry education and outreach program concerning the provisions and requirements of this rule during the six month period following the effective date of the regulation, as was provided for in the 2008 interim rule and the 2009 final rule. AMS has determined that this allocation of enforcement resources will ensure that the industry effectively and rationally implements this final rule. With regard to costs related to the elimination of commingling flexibility, the Agency has responded to these issues in a subsequent response below.

Processors' Cost of Segregation

Summary of Comments: Numerous commenters provided statements on the costs of segregating livestock they believe will be necessitated by the proposed rule. These commenters explained how, in their opinion, the labeling changes will require additional livestock and meat segregation and record keeping that will increase costs to the industry that must be absorbed by livestock producers, feedlots, shippers, meat packers, processors, retailers and consumers.

One commenter stated that the segregation of cattle and beef carcasses within the packing plant requires unique operational procedures. The commenter further contended that current packing plants were neither designed for nor constructed in a manner to allow for efficiency in the segregation of cattle and beef.

Several commenters stated their belief that the costs of segregating livestock would adversely affect their businesses due to the need to increase hiring and worker hours as well as make large capital investments to accommodate the demands of segregation. In addition, the commenters stated that they would experience an increase in maintenance costs for contracted information technology services to track the additional information required by the proposed rule in company databases.

Another commenter presented an analysis showing how eliminating commingling would significantly impact slaughter and processing facilities now using commingling flexibility, as well as the rest of the downstream supply chain. The commenter contended that increased annual operating costs for the fed cattle and hog processing industries would range from $97.9 to $132.6 million due to the elimination of commingling. The commenter opined that the prohibition on commingling could have an even greater adverse impact on smaller packers, providing one example of a very small cattle slaughter company (fewer than 100 employees) that currently commingles production. According to the commenter's estimate, elimination of commingling would impose an additional $275,000 in costs annually on this company, which is approximately the company's annual profit.

Another commenter stated that there would be significant costs resulting from the need to reconfigure processing plants to segregate product by origin for those plants currently commingling. The commenter stated that estimates of capital costs for beef slaughter and processing operations ranged from $20 to $50 million and from $12 million to $25 million for hog slaughter and processing operations for those plants currently commingling.

Other commenters stated that the proposed rule will add only modest costs to the industry. The commenters pointed out that, as noted in the 2009 COOL regulations, segregating animals by origin can be accomplished through processes that are essentially the same as those that firms already use to sort animals by weight, grade, and other factors. In addition, the commenters stated that strengthening the origin labels in this manner can be achieved without imposing significant additional recordkeeping or verification requirements, as producers are already required to track the origin of animals from which meat is derived.

Agency Response: As previously discussed, no additional recordkeeping is required by this final rule, and no new processes need be developed to transfer information from one level of the supply chain to the next. The information necessary to transmit production step information should already be maintained by suppliers in order to satisfy the 2009 COOL regulations.

With respect to additional operational costs anticipated from the elimination of the commingling flexibility, the Agency has modified its analysis to account for these estimated costs. As noted by commenters, the elimination of this flexibility may require adjustments to plant operations, line processing, product handling, storage, transportation, and distribution for those companies that commingle. As discussed in the RIA, commenters to the proposed rule submitted anecdotal information indicating that commingling flexibility is used by some packers. However, the information provided was insufficient to enable the Agency to determine the extent to which industry is making use of commingling flexibility. As discussed in the RIA, the Agency estimates that the current use of the flexibility likely falls within a range of five to 20 percent of the production of beef and pork muscle cut covered commodities, although it is likely that the extent to which packers are commingling is closer to the lower end than the higher end of the range.

As also discussed in the RIA, the Agency estimates that adjustment costs due to elimination of commingling will range between $19.0 million and $76.3 million in the processing sector and between $17.1 million and $68.5 million in the retail sector (see table 3). The Agency believes these estimates, however, are likely to overstate actual adjustment costs over time. The Agency anticipates that intermediaries will develop ways to minimize down time and processing line changes and that, ultimately, a mix of solutions will be implemented by industry participants to effectively meet the requirements of the final rule. Over the long run, the Agency believes that initial adjustment costs are not likely to persist and that firms will continue to seek methods for efficient production and marketing of the affected products.

Processors' Ability To Source Animals

Summary of Comments: Several commenters discussed the sourcing of animals and the impact the proposed changes will have on these practices. The commenters contended that animals from other countries are used to supplement domestic sources, often on a seasonal basis, and that the proposed rule's new requirements may add sufficient burden that this form of sourcing is no longer economically viable.

One commenter stated concern that his business will suffer because current customers will no longer purchase his company's meat products, which are sometimes sourced from Canadian cattle, because the customers will now have to change all of their labeling. Two commenters stated that the proposed rule gives an unfair advantage to those producers who do not rely on Canadian pigs. A commenter suggested this would create incentives for U.S. processors to use U.S. livestock over imported livestock. Another commenter contended the proposed rule's new requirements would cause the processing industry in Canada to expand at the expense of jobs in the United States.

Agency Response: All labels for muscle cut covered commodities produced in the United States must bear information related to the location of birth, raising, and slaughter. Therefore, all affected retailers and packers will

have to change their labeling practices to conform to this final rule, regardless of the origin of the animal from which their muscle cut covered commodities are derived. Accordingly, while the industry will incur costs for augmenting the label, those particular costs will be borne by all industry participants, regardless of their sourcing decisions.

With regard to commingling, the Agency recognizes that those packers that are commingling will incur additional costs in complying with this rule. However, removing the commingling allowance lets consumers benefit from more specific and detailed labels. Moreover, given that the current COOL requirements already compel retailers to differentiate muscle cut commodities based on origin, the Agency does not believe there is a sufficient basis to definitively conclude that this rule, which continues to require retailers to make that same differentiation based on origin (albeit with more specific labels), will affect purchasing decisions of industry participants or give an unfair advantage to any particular participants.

Retailers' and Wholesalers' Costs

Summary of Comments: Some commenters discussed the additional cost related to retraining associates at their stores, replacing scales, and upgrading distribution systems to allow for the tracking of COOL related information for invoices and manifests.

Several commenters stated that the proposed rule will require retailers to double the number of words on the retail label. For example, a product currently labeled ''Product of the US'' would have to be labeled ''Born, Raised and Slaughtered in the US.'' Those commenters also contended that the more likely result will be that retailers will make an economic decision to purchase only meat from animals born, raised and slaughtered in the U.S. to reduce their risk of inadvertently not complying with this rule. An additional commenter made the point that one of the reasons the current scale systems have less space remaining is due to the implementation of mandatory meat nutrition labeling.

One commenter stated their opinion that certain retailers repack muscle cuts and that the revised labeling requirements would impose an additional layer of complexity and cost from redoing labels, maintaining more complex records and recordkeeping systems, buying new equipment and software, and employee training.

Another commenter that supplies independent stores indicated that the commenter's present software will not allow it to comply with the new rule, and that its stores will need new equipment or must use a second label.

Another commenter stated that the COOL law currently imposes enormous burdens on the supermarket industry and specifically the wholesale industry. The commenter believed that should the proposed rule be adopted, packers will need to document the country or countries with ''all of the production steps'' on the master case and bill of lading and will need to validate proper COOL labeling prior to selling product to their customers. The commenter contended that this will create another step in their receiving process at the warehouse.

An industry association stated that the proposed rule makes substantial changes to COOL requirements that will result in market and supply dislocations and will adversely affect jobs, business operations, and international trade. The commenter stated that a large volume of product is still subject to costly labeling in retail stores and reported that costs would vary, depending on whether retailers could accommodate the additional language required by the proposed rule on current label sizes and existing printers. The commenter also noted the cost of liquidating old labels.

Another commenter stated that because imported products will now have to be separated under the proposal, the cost of U.S. products sold to supermarkets will go up, and imported product will be sold through foodservice channels like restaurants where it will not have to be labeled and likely will be sold at a cheaper price.

Agency Response: The Agency recognizes that additional costs will be borne by industry participants. Estimates of those costs include adjustment costs to processors and retailers due to losing the flexibility to commingle muscle cut covered commodities for purposes of COOL. In addition, the estimated costs include adjustments due to the need to change the labels currently in place. As discussed in further detail in a prior response, the Agency has, to its best ability, sought to minimize the cost to industry at each step of the marketing process, including allowing abbreviations to be used on the new labels.

The Agency further notes that the existing COOL regulations already require retailers to maintain records and other documentary evidence upon which they have relied to establish a covered commodity's country or countries of origin. Similarly, any person directly or indirectly engaged in the business of supplying a covered commodity to a retailer, including wholesalers, must make available information to the buyer about the country(ies) of origin of the covered commodity. Thus, to comply with existing COOL regulations, wholesalers must already have distribution systems to allow for the tracking of COOL-related information for invoices and manifests and receiving procedures to verify the origin information received from packers and processors. This final rule does not alter those requirements, and, accordingly, no new records are required of retailers or wholesalers. As such, the Agency does not agree that a retailer using a mixed origin label would be more likely to find itself inadvertently out of compliance with this rule than it would when using a mixed origin label under the 2009 COOL regulations.

Producer Impacts

Summary of Comments: Many commenters expressed concern that U.S. cattle producers are facing burdens that adversely impact profitability and the viability of their operations. Concerns include the continuing drought conditions across much of the country's cattle producing areas. These commenters observed that drought-induced liquidation of cattle has driven the national beef herd down to the lowest cattle numbers in 60 years. As a result, the commenters asserted that the beef industry must continue to use other feeder cattle procurement possibilities.

One commenter asserted that without these added imported animals in the U.S. herds, the United States would face a large shortage because of the shrinking supply in the United States. The commenter stated that it ships Canadian-sourced cattle an extra 300 miles to a plant that processes Canadian cattle, even though the company is located only 45 miles away from a plant owned by the same processing company that does not process Canadian cattle. The commenter also suggested that the beef produced from imported Mexican feeder cattle should be treated as U.S. beef, since the value of the imported animal is relatively minimal compared to the retail value of the beef from the finished animal once it undergoes substantial transformation into fed beef in the United States.

One commenter expressed concerns about the effects of any trade retaliation that might be implemented by either Mexico or Canada. The commenter was also concerned that retailers may decide to reduce or eliminate sales of pork rather than implement systems necessary to comply with the proposed labeling requirements.

One commenter stated that its members support the rule change and are already very well versed with providing affidavits at point of sale and other documentation to verify the origin of their livestock as needed in order to assure supplier and retailer compliance with COOL. The organization does not have concerns that this rule will cause members any additional hardships.

Another commenter stated that the only industry actor that cannot pass along the costs of doing business in the meat sector is the livestock producer. The commenter stated that compared to the impact that drought has had on feed costs for beef producers, the cost of labeling for food retailers is negligible and that the revised labeling requirements will provide necessary information to consumers.

Agency Response: USDA recognizes the hardship imposed on the U.S. livestock industry due to the recent drought and has addressed this issue to the greatest extent possible through authorized means. The drought has also reduced the size of the Mexican cattle herd and made fewer animals available for export to the United States.

The Agency recognizes that additional costs will be borne by industry participants as they comply with the requirements of this final rule. However, the Agency believes it is necessary to ensure label information more accurately reflects the origin of muscle cut covered commodities in accordance with the intent of the statute while complying with U.S. WTO obligations. As the Agency has noted, the requirement to include this information will apply equally to all muscle cut covered commodities derived from animals slaughtered in the United States, regardless of where the animal was born or raised. The Agency does not believe that these requirements will prevent the U.S. industry from continuing to purchase animals from Canada or Mexico.

With regard to costs borne by the U.S. industry, and as discussed in a prior response, the Agency has sought to minimize the cost to industry at each step of the marketing process. This final rule does not lessen any existing flexibility in how required country of origin information is currently conveyed along the supply chain. The Agency's goal is to enable firms to implement the requirements of this final rule with the least possible disruption to cost-efficient production methods.

Rural Economy/Miscellaneous

Summary of Comments: Some commenters expressed concern about the state of the economy, particularly the rural economy, and the impact the rule might have regarding loss of jobs. For example, one commenter stated that with around 2,000 employees in a typical meat processing plant, it is important not to jeopardize these jobs. Another commenter expressed concern about the elimination of thousands of jobs in rural America at a time when jobs are badly needed.

Agency Response: USDA supports strong rural economies. Through various programs, including USDA's Rural Development, the USDA provides assistance to rural communities. USDA also supports the creation of jobs in this industry, including through the opening of foreign markets for U.S. agricultural exports, including beef and pork. For example, in January, USDA and the United States Trade Representative announced that the United States and Japan have agreed on new terms and conditions that pave the way for expanded exports of U.S. beef and beef products to Japan. Under these new terms, which are now in effect, Japan now permits the importation of beef from cattle less than 30 months of age, compared to the previous limit of 20 months, among other steps. It is estimated that these important changes will result in hundreds of millions of dollars in exports of U.S. beef to Japan in the coming years.

That said, the Agency recognizes that additional costs will be borne by industry participants as a result of this final rule. However, the Agency believes it is necessary to ensure label information more accurately reflects the origin of muscle cut covered commodities in accordance with the intent of the statute while complying with U.S. WTO obligations. At the same time, as discussed in a prior response, the Agency has sought to minimize the cost to industry at each step of the marketing process. As previously stated, the Agency's goal is to enable firms to implement the requirements of this final rule with the least possible disruption to cost-efficient production methods. This final rule does not lessen existing flexibility in how required country of origin information is currently conveyed along the supply chain.

Benefits

Summary of Comments: Some commenters expressed their support for the proposed rule on the grounds that the proposed labeling requirements provide consumers with information they need to make informed choices about the source of food and how it was raised. The commenters stated that there is increased consumer demand to know where and how food is produced.

Some commenters stated that consumer confidence benefits can accrue just as a result of having the information available, even if the consumers do not read the labels' information. In the opinion of some commenters, mandatory labels address concerns of market failure and fraudulent labeling and help investigators trace-back foodborne illness outbreaks. A commenter referenced a 2005 survey that found that nearly two-thirds of consumers (60 percent) preferred country of origin labeling to be administered by a government policy rather than by companies marketing the meat.

Some commenters stated their belief that consumers can differentiate various attributes of competing products and will increase demand, and price, for those attributes they view favorably, including the perceived higher quality of meat derived from animals born, raised and slaughtered in one country rather than another country.

Other commenters provided additional rationale and references to studies indicating consumers benefit from food origin information. The commenters noted there have been numerous polls and studies demonstrating that consumers value origin information regarding the food that they buy, including meat, including a national poll in 2007 that found that 94 percent of those surveyed believed that consumers have a right to know the country of origin of the foods that they purchase, and 85 percent of consumers say knowing where their food comes from is important.

Commenters also referenced a study showing that consumers are willing to pay more for a more precise, country-specific label than for a less precise, mixed-origin label. The commenters noted that mixed-origin labels may be affixed to exclusively U.S. origin product due to the commingling flexibilities in the current program and that eliminating the commingling flexibility and ensuring that single-origin product is accurately labeled will therefore benefit consumers who value being able to purchase products with more precise label information.

Other commenters noted that the Agency did not offer an estimate of any additional benefits from the proposed rule, noting only that the Agency had ''been unable to quantify incremental economic benefits from the proposed labeling of production steps . . . .'' These commenters shared a belief that the Agency's analysis is consistent with recent work on COOL, which has generally failed to document any demand-side benefits from the program.

Numerous commenters stated that there is little evidence that consumers benefit from country of origin labeling and referred to a recent study by Kansas State University and Oklahoma State University [1] which found no demand increase following the implementation of the mandatory COOL program in spite of previous research suggesting consumers would pay more for products carrying origin information. The study concluded that consumers do not value meat products carrying Product of United States labels over those with Product of North America labels and that economic gains would occur by utilizing the latter, less expensive, labeling requirement.

One commenter stated their belief that there is no evidence that consumers base their buying decisions on the source information currently available through the COOL program. The commenter stated that the market has demonstrated and fulfilled the existing limited demand for such information through the success of local production systems, farmers markets, source-verified programs and ''USA'' branded programs. The commenter believed that there is a strong argument that the promulgation of this rule will actually erode these market-driven, premium source-verified programs because it will erode the differentiation they currently own in the marketplace.

One commenter asserted that the Agency has failed to quantify the benefits arising from the promulgation of the proposed rule and that the costs of the proposed rule clearly outweigh any benefits. The commenter cited a study of shrimp purchases [2] which found no difference between consumer purchases before the implementation of COOL and those after it went into effect, quoting from a USDA publication [3] that ''the implications of the research suggest that price is a more important determinant of buyer behavior than COOL, a finding consistent with various consumer surveys.''

Agency Response: As discussed more fully in the RIA, the many comments the Agency has received noting the proposed rule's benefits to consumers reinforce the Agency's original conclusion that implementing the proposed label changes will in fact benefit consumers. These comments demonstrate that there is interest by certain U.S. consumers in information disclosing the countries of birth, raising, and slaughter on muscle cut product labels. Specifying the production step occurring in each country listed on meat labels and eliminating the commingling flexibility as required by this final rule will benefit consumers by providing them with more specific information on which to base their purchasing decisions. The Agency does not agree that this rule will negatively impact the value of premium source-verified programs. The 2009 COOL regulations already differentiate covered muscle cut commodities based on origin. This final rule ensures that the labels will provide the consumers more specific information. Premium source-verified programs are thereby unaffected by this rule.

The Agency acknowledges that an empirical finding of a change in demand due to COOL would support the conclusion that consumers act on the information provided through COOL. Conversely, however, the Agency does not concur that an empirical finding of no change in demand implies that consumers do not value the information or that there are no benefits from providing the information; it may instead imply that the economic benefits are positive but too small to be measurable in a general-population study. The purpose of COOL is to provide consumers with information upon which they can make informed shopping choices. The availability of COOL information does not imply that there will necessarily be any change in aggregate consumer demand or in demand for products of one origin versus others.

Comments received on the proposed rule do not alter the Agency's conclusion that the expected benefits from implementing mandatory COOL requirements remain difficult to quantify and that the incremental economic benefits of this final rule will be comparatively small relative to those afforded by the current COOL requirements.

Regulatory Flexibility Analysis

Summary of Comments: The effects of the proposed rule on small meat plants were described by several commenters including trade associations and individual plant operators. As noted previously, one commenter stated that the prohibition on commingling could have an even greater adverse impact on smaller packers, providing one example of a very small cattle slaughter company (fewer than 100 employees) that currently commingles production. According to the commenter's estimate, elimination of commingling would impose an additional $275,000 in costs annually on this company, which is approximately the company's annual profit.

A commenter stated that many small and very small establishments will need to expand their infrastructure and hire more employees to maintain segregation of carcasses on the slaughter floor and of product in the coolers. One commenter summarized that small meat processing firms estimated their costs to implement the revisions will range from $5,000 on the low end to tens of thousands of dollars on the high end. Several small-scale, local and regional packing plants commented individually and collectively that they do not have the flexibility to segregate and label three different sources of cattle, create different product categories for each (potentially adding 600 times the number of product codes), and segregate the customers as well. The commenters stated that there will be a significant advantage to the larger packing companies that can isolate different categories of consolidation of the industry. The commenters claimed that the vast majority of plants, particularly the small to medium size plants, that purchase cattle from different origins apply the commingling practice. Commenters stated that smaller plants will be forced out of business because of their inability to utilize all sources of the cattle supply, leading to more consolidation and packer concentration with significant negative impacts on suppliers and customers.

One beef packer commented that 2009 COOL regulations forced its customers to accept two SKUs of every item the company sold to them, one labeled Product of USA and the other labeled Product of USA, Mexico. The commenter stated that several of the smaller independent grocery customers indicated that they simply could not handle that many SKUs in their distribution warehouses and in their invoicing and record keeping systems. These retailers told the commenter to choose one or the other or they would have to find other suppliers. The commenter stated that the proposed rule requires even more segregation and even more duplication of labels and SKUs, noting that this may be possible for a large packer and a large retailer but it is extremely difficult and restrictive for a small operator.

Agency Response: As previously discussed, no additional recordkeeping is required by this final rule. Processes currently in place to transfer

[1] Tonsor, Lusk et al. Mandatory Country of Origin Labeling: Consumer Demand Impact, November 2012 *http://www.agmanager.info/livestock/policy/Tonsor_KSU_FactSheet_MCOOL_11-13-12.pdf.*

[2] ''Do Consumers Respond to Country-of-Origin Labeling?'' by Fred Kuchler, Barry Krissoff, and David Harvey, in *Journal of Consumer Policy,* 2010, Vol. 33, pp. 323–337.

[3] *http://www.ers.usda.gov/amber-waves/2012-june/consumers-appear-indifferent.aspx.*

information from one level of the supply chain to the next should be sufficient to accommodate the additional requirements of this rule. With respect to additional operational costs anticipated from the elimination of the commingling flexibility, the Agency has modified its analysis to account for these estimated costs. Over the long run, the Agency believes that initial adjustment costs are not likely to persist and that firms will continue to seek methods for efficient production and marketing of the affected products.

The Agency notes that comments referencing changes and adjustments to production and marketing practices already in place to comply with the 2009 COOL requirements should not be ascribed to the amendments set forth in this final rule.

With regard to commingling, the Agency recognizes that those packers that may currently be commingling will incur additional costs in complying with this rule. However, removing the commingling allowance lets consumers benefit from more specific and detailed labels. That said, there is no clear indication that adjustment will be more difficult for smaller versus larger packers. As noted in the comments and responses to the economic impact analysis, packers already have systems in place for handling and sorting livestock and resultant muscle cuts according to various criteria such as grade, weight, and other factors. Adjustment to the final rule should be able to be accomplished in a similar manner.

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 final rule has been designated as an ''economically significant regulatory action'' under section 3(f) of Executive Order 12866, and, therefore, has been reviewed by the Office of Management and Budget (OMB).

Regulations must be designed in the most cost-effective manner possible to obtain the regulatory objective while imposing the least burden on society. This final rule amends the COOL regulations (1) by changing the labeling provisions for muscle cut covered commodities to provide consumers with more specific information and (2) by amending the definition for ''retailer'' to include any person subject to be licensed as a retailer under PACA to enhance the overall operation of the program and to bring the COOL requirements into compliance with the United States' WTO obligations.

Statement of Need

Justification for this final rule remains unchanged from the 2009 final rule. This rule, as with the 2009 final rule, is the result of statutory obligations to implement the COOL provisions of the 2002 and 2008 Farm Bills. There are no alternatives to federal regulatory intervention for implementing this statutory directive.

The COOL provisions of those laws changed federal labeling requirements for muscle cuts of beef, pork, lamb, goat, and chicken; ground beef, ground pork, ground lamb, ground goat, and ground chicken; wild and farm-raised fish and shellfish; perishable agricultural commodities; ginseng; peanuts; macadamia nuts; and pecans (hereafter, covered commodities). As described in the 2009 final rule, the conclusion remains that there does not appear to be a compelling market failure argument regarding the provision of country of origin information.

Comments received on the 2009 final rule and previous requests for comments elicited no evidence of significant barriers to the provision of this information other than private costs to firms and low expected returns. Thus, from the point of view of society, such evidence suggests that market mechanisms could ensure that the optimal level of country of origin information would be provided to the degree valued by consumers.

Analysis of Benefits and Costs

As set forth in the initial analysis of benefits and costs, the baseline for this analysis is the present state of the beef, chicken, goat, lamb and pork industries, which have been subject to the requirements of mandatory COOL (7 CFR parts 60 and 65) since the effective date of the final rule on March 16, 2009.

Benefits: Comments on the initial regulatory impact analysis for the proposed rule (78 FR 15647) as well as on previous COOL rulemaking actions, reinforce the Agency's conclusion that the final rule's amendments to the COOL labeling requirements will benefit consumers. Numerous comments supported the proposed rule and confirmed that certain U.S. consumers value the designation of the countries of birth, raising, and slaughter on meat product labels. These attributes of meat products are credence attributes, meaning that otherwise consumers would not be able to obtain information on or verify by inspection of the product at the point of purchase. Economic theory shows that unregulated markets may undersupply information on such credence attributes. Specifying the production step occurring in each country listed on meat labels as provided in this rule will provide additional benefits by providing more specific information on which consumers can base their purchasing decisions. Furthermore, information on the production steps in each country may embody latent (hidden or unobservable) attributes, which may be important to individual consumers and result in additional but hard to measure benefit increases. The Agency, however, has not been able to quantify this benefit, as singling out the value of those additional latent attributes and the resultant consumer benefit increases would require complicated modeling techniques that none of the available studies utilized.

The final rule also eliminates the allowance for commingling of muscle cut covered commodities of different origins. As discussed above, the rule requires all origin designations to include specific information as to the place of birth, raising, and slaughter of the animal from which the meat is derived and no longer allows a single mixed origin label to be used on muscle cuts derived from animals of different origins commingled during a single production day. Removing the commingling allowance will benefit consumers by resulting in more specific labels.

The Agency observes that the comments it has received on the proposed rule reinforce the Agency's conclusion that the expected benefits from implementing the final rule's amendments to the existing COOL labeling requirements are difficult to quantify, as no commenters provided quantified assessments of the benefits. Moreover, the comments received do not alter the Agency's conclusion that the incremental economic benefits from the labeling of production steps will be positive, but likely will be comparatively small relative to those already afforded by the 2009 COOL final rule.

Costs: A number of commenters directly addressed or provided information related to the Agency's estimated costs of the proposed rule. Most of these commenters asserted that

the Agency underestimated implementation costs, mainly by omitting costs associated with activities that commenters said would be required to comply with the proposed amendments to the current COOL regulations. The revised cost estimates below take into account these comments.

The Agency believes that there are two primary cost drivers that will be incurred as firms adjust to the amendments to the 2009 COOL regulations. First, muscle cut covered commodity COOL information will need to be augmented to provide the additional specific origin information required by this rule. Second, those firms currently using the flexibility afforded by commingling livestock of more than one origin on a single production day will need to adjust to the new requirement to provide origin information on the birth, raising, and slaughter of the muscle cut covered commodities derived from livestock of each origin. Moreover, the new requirements preclude the use of commingling flexibility.

With respect to commingling, the initial analysis of costs sought ''comment and data regarding the extent to which the flexibility afforded by commingling on a production day is used to designate the country of origin under the current COOL program and the potential costs, such as labor and capital costs, which may result from the loss of such flexibility'' (78 FR 15648). Such flexibility is relevant to the beef and pork industries in the United States. Both feeder and slaughter cattle and hogs are imported from Canada, while mainly feeder cattle are imported from Mexico.

As noted by several commenters, commingling may allow some packers with reliable access to U.S. and foreign-origin livestock to produce products with a single country of origin label, such as ''Product of the U.S. and Canada'' or ''Product of the U.S. and Mexico.'' Several commenters stated that packers can currently take advantage of the commingling flexibility to label all of their production with the same COOL label information every day, even if the animals processed each day are of different origins, so long as the packers can ensure that they process animals of the declared mix of origins every production day. The commenters stated that, in those cases, there may be no need for segregation, sorting, additional labels, and other processes that would otherwise be required to provide COOL information.

In the case of lamb, chicken, and goat meat, imports of live animals for feeding and slaughter in the United States are inconsequential for purposes of this regulatory impact analysis, due to being of negligible quantities.[4] Thus, the following discussion addresses the potential impacts of the loss of commingling flexibility on the beef and pork sectors only.

Commenters to the notice of proposed rulemaking submitted anecdotal information that confirmed that commingling flexibility is used by some packers. However, the information submitted was not sufficient to allow the Agency to determine the extent to which industry is making use of commingling flexibility. Therefore, to develop a range of estimates of the extent to which the beef and pork subsectors may potentially use commingling flexibility under the current COOL regulations (Table 1), the Agency made various assumptions and used several sources of data to examine the cost implications of ending the commingling activity that might be occurring in the industry.

TABLE 1—RANGE OF ESTIMATED POTENTIAL CURRENT USE OF COMMINGLING FLEXIBILITY

Segment	Lower (percent)	Midpoint (percent)	Upper (percent)
Beef	5	12.5	20
Pork	5	12.5	20

The lower-bound estimate is derived from the position of certain U.S. industry actors as well as the complainants in the WTO dispute that the proportion of beef and pork that carries the U.S.-origin label is close to 90 percent.[5] Given that imported livestock represent about eight percent of fed steer and heifer slaughter and just over five percent of barrow and gilt slaughter in recent years, and assuming that some portion of these animals are segregated and labeled accordingly, the Agency adopts five percent as a plausible lower-bound estimate of the portion of total production that may be commingled.[6] For the upper bound of commingling, 20 percent is adopted for both beef and pork and is derived from mandatory COOL retail record reviews that were conducted in 2012. Although the sampling plan for retail compliance reviews is not constructed so as to allow generalization to the entire amount of beef and pork muscle cut covered commodities according to different label types, there are randomization procedures used to select the stores and items for record reviews. Thus, for purposes of establishing an upper bound on the current extent to which commingling flexibility may currently be used, the proportions of different label types found in the sample of retail record reviews provides a source of empirical evidence of the proportions that may be found in the population of retailers subject to the COOL requirements. Of 1,472 retail record reviews for beef and 1,652 for pork, 80 percent were of single-country origin and by definition, could not be the result of commingling. The remaining 20 percent of items reviewed had either two or more countries of origin or were unlabeled. At the most, then, 20 percent of the production could potentially be commingled, which implies the technically possible but highly unlikely assumption that every item with more than one country of origin plus all items without country of origin information are the result of commingling.

Given that the assumption underlying the higher end estimate is highly unlikely, the extent to which the industry is commingling likely falls closer to the lower end than the higher end of the estimated range of commingling.

[4] In 2012, over 8.4 billion broilers were produced in the United States (USDA, NASS. Poultry—Production and Value, 2012 Summary. April 2013.). However, only 4.2 million chickens other than breeding stock were imported into the United States (USDA FAS. GATS Global Agricultural Trade System Online. *http://www.fas.usda.gov/gats/Default.aspx*), constituting just 0.05 percent of U.S. broiler production. The FAS data also show that only 2,569 sheep and 316 goats were imported into the United States in 2012.)

[5] *See* Panel Reports, *United States—Certain Country of Origin Labelling (COOL) Requirements,* WT/DS384/R/WT/DS386/R, adopted 23 July 2012, paras. 7.361, 7.370.

[6] This lower bound estimate is consistent with estimates of U.S. industry in 2009 as well as the complaining parties in the WTO dispute. *See US—COOL (Panel),* para. 7.365.

The second step in estimating the impact of the elimination of commingling flexibility is to determine the cost of the change. A number of commenters provided information regarding the costs associated with the loss of the flexibility afforded by the current allowance of commingling multiple countries of origin on a production day. As noted by commenters, the loss of commingling flexibility means that muscle cut covered commodities of different production step origins will need to be separately labeled with their specific production step information to make the information available to retailers. Commenters pointed out a number of costs that would be incurred to accommodate this requirement. For instance, packers indicated that there would be decreased processing plant efficiency due to an increased number of changes from processing carcasses of one origin to another. For each change, commenters indicated that there is downtime of processing plant labor and capital that runs from $750 to $900 per minute in large beef and pork processing facilities. Commenters also indicated that there would be additional stock keeping units (SKUs) to distinguish differently labeled products, and that the additional SKUs would require reconfiguration of slaughter and processing facilities to segregate animals in pens and products in coolers. Retailers likewise indicated that there would be additional costs associated with an increase in the potential number of origins due to the loss of commingling flexibility at the processor level and the requirement to provide information on the country of birth, raising, and slaughter.

As noted by several commenters, the mandatory COOL proposed rule published in October 2003, did not provide for commingling of muscle cut covered commodities (68 FR 61944). Thus, the regulatory impact analysis (hereafter, 2003 RIA (68 FR 61952)) accounted for the fact that animals and products would need to be segregated to enable labeling of muscle cut covered commodities by country of origin. Among other changes from the 2003 proposed rule, the mandatory COOL final rule published in January 2009, provided that muscle cut covered commodities could be commingled in a single production day.[7] Thus, the regulatory impact analysis (hereafter, 2009 RIA (74 FR 2682)) accounted for the expectation that some degree of commingling according to these two provisions would occur, with the resultant costs estimated to be lower than would be the case without the flexibility of commingling.

Despite receiving anecdotal evidence from commenters on costs of specific activities associated with adjustment to the loss of commingling flexibility, the information was not suitable for compiling into industry-wide total cost estimates. However, with appropriate adjustments, comparing estimated costs from the 2003 RIA (no commingling) to the estimated costs from the 2009 RIA (commingling allowed) provides a basis for estimating the portion of the adjustment costs of this final rule that arise from the disallowance of commingling. The 2003 RIA presented lower-range and upper-range estimates of implementation costs for affected producer, intermediary, and retailer segments. The upper-range estimates were derived from available studies, comments on guidelines for interim voluntary COOL (67 FR 63367), and institutional knowledge of the industries subject to the proposed rule. The 2003 proposed rule did not allow for commingling of covered beef, pork, and lamb muscle cut covered commodities.

The 2009 RIA presented estimates of implementation costs for the requirements of the COOL final rule. In deriving cost estimates for the 2009 RIA, the underlying assumptions were adjusted to reflect changes in the requirements from the proposed rule to the final rule. Most importantly for purposes of deriving cost estimates for muscle cut covered commodities, the 2009 RIA assumed that commingling on a production day would be permitted. Thus, per-unit incremental implementation costs were lowered from the upper-range estimates presented in the 2003 RIA. As a result, differences between the 2003 RIA estimates and the 2009 RIA estimates mainly represent expected marginal cost impacts of the loss of commingling flexibility (Table 2).

TABLE 2—ESTIMATED IMPLEMENTATION COSTS PER AFFECTED INDUSTRY SEGMENT ADJUSTED TO 2012 DOLLARS

Segment	Beef			Pork		
	2003 RIA	2009 RIA	Difference	2003 RIA	2009 RIA	Difference
Intermediary ($/head)	20.00	12.84	7.16	5.00	3.21	1.79
Retailer ($/pound)	0.125	0.075	0.050	0.088	0.043	0.045

In the 2003 RIA, upper-range implementation costs for intermediaries (primarily packers and processors) in the beef segment were estimated at $0.02 per pound of carcass weight. Assuming an 800 pound average carcass weight for steers and heifers, the cost per pound estimate translates into $16.00 per head, or $20 per head after adjusting to 2012 dollars using a Consumer Price Index (CPI) inflation factor of 1.25 (see Table 2). In the 2009 RIA, the implementation cost for beef segment intermediaries was estimated at $0.015 per pound or $12.00 per head, which was considered a best estimate. Adjusting to 2012 dollars using a CPI inflation factor of 1.07 results in an estimate of $12.84 per head. Consequently, in 2012 dollars, the difference between the 2003 RIA estimate and the 2009 RIA estimate for beef segment intermediaries is $7.16 per head, which represents potential adjustment costs due to the loss of commingling flexibilities. Similar calculations apply at the retail level for the beef segment, where the upper-range of costs were estimated at $0.10 per pound in the 2003 RIA and a best estimate of $0.07 per pound in the 2009 RIA. The resulting difference in retailer costs for the beef segment is $0.050 per

[7] As discussed in the 2009 final rule, USDA considers that commingling typically takes place in two different scenarios. First, muscle cut covered commodities derived from animals born, raised, and slaughtered in the United States that are commingled during a production day with muscle cut covered commodities derived from animals that were raised and slaughtered in the United States, and were not derived from animals imported for immediate slaughter, could be designated as, for example, Product of the United States, Country X, and (as applicable) Country Y. Second, muscle cut covered commodities derived from animals that are born in Country X or Country Y, raised and slaughtered in the United States, that are commingled during a production day with muscle cut covered commodities that are derived from animals that are imported into the United States for immediate slaughter, could be designated as Product of the United States, Country X, and (as applicable) Country Y.

pound in 2012 dollars, which represents adjustment costs to affected retailers that no longer can market commingled meat cuts.

The same procedures that were applied to the beef segment were applied to the pork segment to arrive at estimated marginal impacts of the loss of commingling flexibility, also shown in Table 2. The relevant figures are $0.02 per pound for pork segment intermediaries in the 2003 RIA, which converts to $4.00 per head assuming an average 200 pound carcass weight for barrows and gilts. In the 2009 RIA, the intermediary estimate was $0.015 per pound or $3.00 per head. Adjusted to 2012 dollars, the difference between the 2003 RIA and 2009 RIA cost estimates for intermediaries in the pork segment is $1.79 per head. At the retail level in the pork segment, costs were estimated at $0.07 per pound in the 2003 RIA and $0.04 per pound in the 2009 RIA. The difference translates to $0.045 per pound adjusted to 2012 dollars.

The final step in estimating the potential costs of the loss of commingling flexibility is to apply the estimated costs per unit to the relevant measure of production. At the intermediary level for the beef segment, the starting point begins with estimated slaughter of 33.0 million head of cattle in 2012.[8] Given that steers and heifers made up 78.4 percent of total Federally inspected cattle slaughter,[9] total commercial slaughter of steers and heifers is estimated at 25.8 million head. Only steer and heifer slaughter is examined, as the amended labeling requirements only apply to muscle cuts (e.g., steaks and roasts). While a small amount of muscle cuts of cows are marketed at retail, most beef derived from cows (and bulls) is used for grinding or other further processed items. Muscle cuts from cows typically are marketed through hotel, restaurant, or institutional channels or are further processed such that COOL requirements no longer apply.

The total number of head of steers and heifers is then multiplied by the lower, midpoint, and upper ranges of potentially affected animals (or five, 12.5, and 20 percent from above) to arrive at the range of potential adjustment costs shown in Table 3. Specifically, the estimated number of commingled steers and heifers is 1.3 million head at the lower bound, 3.2 million head at the midpoint, and 5.2 million head at the upper bound. Note that within each scenario, different mixes of U.S.-origin cattle versus foreign-origin cattle are possible and the actual mix is undetermined.

TABLE 3—ESTIMATED AFFECTED QUANTITIES AND COSTS OF THE LOSS OF COMMINGLING FLEXIBILITY BY INDUSTRY SEGMENT

[In millions]

	Lower bound		Midpoint		Upper bound	
	Beef	Pork	Beef	Pork	Beef	Pork
Intermediary						
Head	1.3	5.5	3.2	13.7	5.2	22.0
Segment Cost	$9.2	$9.8	$23.1	$24.6	$37.0	$39.3
Retailer						
Pounds	237.6	116.5	594.0	291.3	950.4	570.2
Segment Cost	$11.9	$5.2	$29.7	$13.1	$47.5	$21.0
Total Cost	$21.1	$15.0	$52.8	$37.7	$84.5	$60.3

Multiplying the number of head in Table 3 by the estimated cost per head of $7.16 shown in Table 2 yields beef segment intermediary costs of $9.2 million, $23.1 million, and $37.0 million at the lower, midpoint, and upper levels. These are industry-wide total costs that are expected to be borne primarily by beef packers and processors that currently commingle domestic and foreign-origin cattle under a single COOL declaration. Those costs represent activities such as segregation, sorting, breaks or changes in processing lines from one COOL category to another, additional labels, and other activities above and beyond those required for compliance with current COOL regulations.

Costs of the loss of commingling flexibility for pork segment intermediaries are calculated in a similar manner to that used for the beef segment. In 2012, U.S. commercial hog slaughter was 113.0 million head. Of Federally inspected slaughter, 97.0 percent was barrows and gilts, resulting in an estimated commercial slaughter of 109.8 million barrows and gilts. Meat derived from sows and boars is used for further processed products and is not marketed as muscle cuts that would be subject to COOL requirements. Table 3 shows the estimated number of commingled barrows and gilts to be 5.5, 13.7, and 22.0 million head at the lower, midpoint, and upper levels. After multiplying by the per-head cost estimate of $1.79, expected costs due to the loss of commingling flexibility for pork muscle cut covered commodities at the intermediary level are estimated to be $9.8 million at the lower bound, $24.6 million at the midpoint, and $39.3 million at the upper bound.

The anticipated cost at the retail level due to the loss of commingling flexibility can be computed in a manner similar to that applied at the intermediary level. Adjustment costs for retailers currently marketing commingled beef and pork muscle cut covered commodities stem from activities that may be associated with switching from handling a stream of commingled products carrying the same COOL information to dealing with products that may carry two or more distinct origin labels due to the disallowance of commingling flexibility and the requirement for more specific information on the place of birth, raising, and slaughter. As at the intermediary level, retailers may incur additional costs for segregation, breaks or changes in retail scale weighing and printing from one COOL category to another, additional labels, and other activities above and beyond those required for compliance with current COOL regulations.

Estimating the quantity of beef and pork products that may be commingled at the retail level differs from the process applied at the intermediary

[8] USDA National Agricultural Statistics Service. Livestock Slaughter. January 2013. *http://usda01.library.cornell.edu/usda/nass/LiveSlau//2010s/2013/LiveSlau-01-24-2013.pdf.*

[9] *Ibid.*

level. At the intermediary (packer/processor) level, conveying COOL information begins with entire animals and subsequently carcasses. Thus, the marginal costs of the loss of commingling flexibility are estimated on a per-head basis. In the case of retailers, however, only those muscle cut covered commodities subject to COOL requirements may potentially be affected by the loss of commingling flexibility. For both beef and pork, estimated retail quantities begin with the estimated quantities shown in Table 2 of the 2009 RIA. The retail quantities from the 2009 RIA—8.2 million pounds of beef and 2.3 million pounds of pork—reflect the volume of product estimated to be subject to COOL requirements at retailers subject to the regulations. Further, the retail quantities are adjusted to account for processed products that are exempt from COOL requirements, such as marinated beef tenderloin or cooked ham. The retail quantities are then further adjusted to estimate the quantity of muscle cut covered commodities. For beef, 58 percent of the retail weight is estimated to be sold as cuts,[10] and then the factors of five, 12.5, and 20 percent are applied to arrive at the lower, midpoint, and upper estimates shown in Table 3. For pork, no further adjustment is applied to the retail weight, but the factors of five, 12.5, and 20 percent are applied to arrive at the lower, midpoint, and upper estimates.

The retail quantity estimates for beef and pork are multiplied by the respective per-pound cost estimates of $0.050 and $0.045 to calculate the anticipated cost to retailers for the loss of commingling flexibility. Summing the intermediary and retailer costs yields the total cost estimates shown in the bottom row of Table 3. The total estimated costs for the loss of commingling flexibility range from $15.0 million at the lower end for pork to $84.5 million at the upper end for beef.

Total costs for adjustment to this rule are estimated as the sum of costs for label changes and costs associated with the elimination of the provision that allows for commingling. While some comments suggested that costs of changing labels would be higher than estimated in the regulatory impact analysis for the proposed rule, others suggested that costs of changing labels would be within the range estimated in the proposed rule.

As discussed previously, the 2009 COOL regulations allow for a variety of ways that origin information can be provided, such as placards, signs, labels, stickers, etc. Many retail establishments have chosen to use signage above the relevant sections of the meat case to provide the required origin information in lieu of or in addition to providing the information on labels on each package of meat. Under this final rule, the Agency will continue to allow the COOL notification requirements to be met, including the requirement to provide the location where the production steps occurred, by using signs or placards. For example, for meat derived from cattle born in Canada and raised and slaughtered in the United States, the signage could read ''Beef is from animals born in Canada, Raised and Slaughtered in the United States.'' Further, the Agency recognizes that for some period of time following the period of education and outreach, existing label and package inventories will include less specific origin information (e.g., Product of Country X and the U.S.) As long as retail establishments provide the more specific information via other means (e.g., signage), the Agency will consider the origin notification requirements to have been met. This ability to use in-store signage is expected to reduce transition costs from the current COOL requirements to the more specific information required by this rule.

With respect to changing current COOL label information, in the initial regulatory impact analysis, cost estimates provided in a March 2011, Food and Drug Administration (FDA) report [11] were used to estimate the cost of adding the production step information to currently required COOL labels for muscle cut covered commodities.

Under the FDA model, one-time costs for a coordinated label change are assumed to involve only administrative labor costs and recordkeeping. However, as discussed in the regulatory impact analysis for the proposed rule, no additional recordkeeping costs are anticipated from this rule. Assuming an upper bound estimate of 121,350 unique labels, the Agency estimated the midpoint cost at $32.8 million with a range of $17.0 to $47.3 million in the proposed rule.

Table 4 shows the total estimated adjustment costs for the amendments to the labeling requirements for muscle cut covered commodities. The estimates are presented as a matrix spanning the range of estimated costs of modifying existing labels cross-tabulated with the range of estimated costs resulting from the loss of the flexibility to commingle more than one specific birth, raising, and slaughter origin. The total adjustment costs calculated by adding the labeling costs at the lower, midpoint, and upper range ($17.0, $32.8, and $47.3 million, respectively) to the commingling costs at the lower, midpoint, and upper range ($36.1, $90.5, and $144.8 million, respectively).

TABLE 4—ESTIMATES OF ADJUSTMENT COSTS

[Million dollars]

Label cost		Loss of commingling flexibility		
		Lower 36.1	Midpoint 90.5	Upper 144.8
Lower	17.0	53.1	107.5	161.8
Midpoint	32.8	68.9	123.3	177.6
Upper	47.3	83.4	137.8	192.1

Total costs are estimated to range from $53.1 million at the low end to $192.1 million at the high end.

Comparatively, implementation costs for intermediaries and retailers for beef, pork, lamb, goat, and chicken covered commodities for the current COOL requirements were estimated to total $1,334.0 million in the 2009 RIA, or

[10] *http://www.beefusa.org/CMDocs/BeefUSA/Resources/Statistics/averageannualpercapitaconsumptionbeefcutsandgroundbeef559.pdf.*

[11] Model to Estimate Costs of Using Labeling as a Risk Reduction Strategy for Consumer Products Regulated by the Food and Drug Administration, FDA, March 2011 (Contract No. GS–10F–0097L, Task Order 5).

$1,427.4 million in 2012 dollars. Adjustment costs for the amendments to the current labeling requirements for these commodities are thus estimated at 3.7 to 13.5 percent of the initial COOL adjustment costs for intermediaries and retailers.

The likely range of adjustment costs can be narrowed to some extent from the wide range shown Table 4. In terms of commingling flexibility, the true, but unknown, percentages of beef and pork muscle cut covered commodities that are currently produced and marketed through retailers subject to COOL requirements are unlikely to be at the upper range of estimates. The upper range estimates imply that one in five beef and pork muscle cut items are commingled. While technically possible, that is unlikely, because it requires the assumption that every item in the COOL record review in 2012 having more than one country of origin plus all items without country of origin information would have been the result of commingling. This assumption is unrealistic and not consistent with numerous comments received on the proposed rule as well as comments of industry on the effect that the 2009 final rule has had on the industry.[12] Considering only the lower to midpoint estimates for commingling narrows the estimated adjustment costs to a range of $53.1 to $137.8 million.

Furthermore, over time those costs are expected to fall as packing facilities develop procurement arrangements that are tailored to the loss of commingling. Similarly, retailers' additional labeling costs and adjustment costs for separately providing information on different origin products will diminish over time. Thus, initial adjustment costs are expected to fall over time.

The greater the extent to which individual packers, processors, and retailers use commingling flexibility, the higher is the expected cost of adjustment due to the loss of that flexibility. Packers and processors located nearer to sources of imported cattle and hogs may be commingling to a greater extent than others.

Regulatory Flexibility Analysis

This rule has been reviewed under the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.). The purpose of the RFA is to consider the economic impact of a rule on small businesses and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the marketplace. The Agency believes that this rule will have a relatively small economic impact on a substantial number of small entities. As such, the Agency has prepared the following regulatory flexibility analysis of the rule's likely economic impact on small businesses pursuant to section 603 of the RFA. Section 604 of the RFA requires the Agency to provide a summary of the significant issues raised by public comments in response to the initial regulatory flexibility analysis. The Comments and Responses section includes the comments received on the initial RFA and provides the Agency's responses to the comments.

As mentioned in the summary above, this rulemaking was contemplated after the Agency reviewed the overall regulatory program in light of the WTO's finding that the current COOL requirements are inconsistent with U.S. WTO obligations. The objective of this rulemaking is to amend current mandatory COOL requirements to provide consumers with information on the country in which productions steps occurred for muscle cut covered commodities, thus fulfilling the program's objective of providing consumers with information on origin in a manner consistent with the COOL statute and U.S. international trade obligations. The legal basis for the mandatory COOL regulations is Subtitle D of the Agricultural Marketing Act of 1946 (Act) (7 U.S.C. 1638, et seq.).

Under preexisting Federal laws and regulations, origin designations for muscle cut covered commodities need not specify the production steps of birth, raising, and slaughter of the animals from which the cuts are derived. Thus, the Agency has not identified any Federal rules that would duplicate or overlap with this rule.

We do not anticipate that additional recordkeeping will be required or that new systems will need to be developed to transfer information from one level of the production and marketing channel to the next. However, information available to consumers at retail will need to be augmented to include information on the location in which the three major production steps occurred. Therefore, the companies most likely to be affected are packers and processors that produce muscle cut covered commodities and retailers that sell them.

There are two measures used by the Small Business Administration (SBA) to identify businesses as small: Sales receipts or number of employees.[13] In terms of sales, SBA classifies as small those grocery stores with less than $30 million in annual sales (13 CFR 121.201). Warehouse clubs and superstores with less than $30 million in annual sales are also defined as small. SBA defines as small those manufacturing firms with less than 500 employees and wholesalers with less than 100 employees.

While there are many potential retail outlets for the covered commodities, food stores, warehouse clubs, and superstores are the primary retail outlets for food consumed at home. In fact, food stores, warehouse clubs, and superstores account for 75.6 percent of all food consumed at home.[14] Therefore, the number of these stores provides an indicator of the number of entities potentially affected by this rule. The 2007 Economic Census[15] shows there were 4,335 supermarkets and grocery stores (not including convenience stores), warehouse clubs, and superstore firms operated for the entire year with annual sales exceeding $5,000,000 (Table 5). We assume that stores with overall sales above this threshold would be most likely to be subject to the PACA and therefore subject to mandatory COOL and the proposed amendments. We recognize that there may be retail firms, particularly smaller retail firms, subject to PACA but that do not actually hold a PACA license. Therefore, a lower annual sales threshold may be appropriate for estimating the number of retailers subject to PACA. However, the $5,000,000 threshold provides estimated firm and establishment numbers that are generally consistent with the PACA database listing licensed retailers.

[12] *See US—COOL (Panel),* paras. 7.361–7.365.

[13] Small Business Administration. *http://www.sba.gov/sites/default/files/files/Size_Standards_Table(1).pdfhttp://www.sba.gov/sites/default/files/files/Size_Standards_Table(1).pdf.*

[14] ERS, USDA. Food CPI, Prices and Expenditures: Sales of Food at Home by Type of Outlet. *http://www.ers.usda.gov/Briefing/CPIFoodAndExpenditures/Data/table16.htmhttp://www.ers.usda.gov/Briefing/CPIFoodAndExpenditures/Data/table16.htm.*

[15] U.S. Census Bureau. 2007 Economic Census. Retail Trade Subject Series. Establishment and Firm Size. EC0744SSSZ4 and EC0744SSSZ1. Issued January 2013.

TABLE 5—ESTIMATED NUMBER OF AFFECTED ENTITIES, SHARE OF FIRMS BY SIZE, AND COST OF RULE REVISION

NAICS code	NAICS description	Enterprise size criteria	Number of firms	Number of establishments	Share of firms by size %	Cost of rule revision
311611	Animal (except Poultry) Slaughtering.	<500 Employees	1,504	1,518	97.6	$5,165,754
		500+ Employees	37	115	2.4	27,874,505
		Total	1,541	1,633		33,040,259
311612	Meat Processed from Carcasses.	<500 Employees	1,203	1,232	94.9	6,745,200
		500+ Employees	64	173	5.1	10,902,633
		Total	1,267	1,405		17,647,833
311615	Chicken Processing	<500 Employees	2	N/A	5.3	N/A
		500+ Employees	36	N/A	94.7	N/A
		Total	38	156		153,504
445110	Supermarkets and Other Grocery (except Convenience) Stores, Sales >$5,000,000.	<$50,000,000 Sales	4,106	6,050	95.0	14,536,907
		$50,000,000+ Sales	217	19,846	5.0	47,685,862
		Total	4,323	25,896		62,222,770
452910	Warehouse Clubs and Supercenters.	<$50,000,000 Sales	0	0	0.0	
		$50,000,000+ Sales	12	4,260	100.0	10,235,905
		Total	12	4,260		10,235,905
Grand Total			7,181	33,350		123,300,000

Numbers may not sum due to rounding.
SOURCE: 2007 County Business Patterns and 2007 Economic Census.

The 2007 Economic Census data provide information on the number of food store firms by sales categories. Of the 4,335 food store, warehouse club, and superstore firms with annual sales of at least $5,000,000, an estimated 4,106 firms had annual sales of less than $50,000,000, which is higher than the threshold for the SBA definition of a small firm. The Economic Census data do not provide a breakout at the $30,000,000 SBA threshold, which means that the estimated number of small businesses likely is an overestimate.

We estimate that 33,350 establishments owned by 7,181 firms will be either directly or indirectly affected by this rule (Table 5). Of these establishments/firms, we estimate that 6,849 qualify as small businesses. The midpoint total direct incremental costs are estimated for the rule at approximately $123.3 million with a range of $53.1 million to $192.1 million. The direct incremental costs of the rule are the result of revisions in labeling of muscle cut covered commodities. At the total estimated midpoint cost of $123.3 million, $26.4 million would be estimated to be costs borne by small businesses based on the calculations explained below. As also explained below, implementation costs are not expected to be the same for all establishments.

The average cost for each retail establishment is calculated assuming an average label cost per establishment of approximately $984 plus and an average cost for loss of commingling of approximately $1,419 for a total of $2,403. The average label cost for retailer as well as packer and processor establishments is the total midpoint label cost of $32.8 million divided by the total of 33,350 establishments. The average cost per retail establishment for the loss of commingling is the total midpoint cost of $42.8 million for all retailers divided by 30,156 retail establishments. Assuming the same average implementation cost of approximately $2,403 for all retail establishments, small retailers' portion of these costs would be estimated at approximately $14.5 million. However, small retail establishments are expected to incur substantially lower implementation costs due to lower volumes and varieties of muscle cut covered commodities typically marketed at such operations.

Any manufacturer that supplies retailers or wholesalers with a muscle cut covered commodity will be required to provide revised country of origin information to retailers so that the information can be accurately supplied to consumers. Of the manufacturers potentially affected by the rule, SBA defines those having less than 500 employees as small.

The 2007 Economic Census [16] provides information on manufacturers by employment size. For livestock processing and slaughtering there is a total of 2,808 firms (Table 5). Of these, 2,707 firms have less than 500 employees. This suggests that 96 percent of livestock processing and slaughtering operations would be considered as small firms using the SBA definition. For chicken processing there are a total of 38 firms, only two of which are classified as small. Thus, only five percent of the chicken processors are small businesses.

As with retailers above, the average cost for each packer/processor establishment is calculated assuming an average label cost per establishment of approximately $984 plus and an average cost for loss of commingling. The average label cost for packer and processor establishments is calculated as previously explained for retail establishments. However, the average cost per packer/processor establishment for the loss of commingling is calculated using additional information that relates to the size of establishments. Estimated receipts from the 2007 Economic Census are used as a proxy for the relative throughput of livestock slaughtering and meat processing establishments. For instance, small livestock slaughtering enterprises had 7.7 percent of total receipts of $104.7 billion for animal slaughtering (NAICS code 311611) and meat processing (NAICS code 311612) combined. Large livestock slaughtering enterprises had 58.2 percent of the combined receipts, while shares were 11.6 percent for small meat processors and 22.5 percent for large meat processors. These percentages are then applied to the total midpoint cost of $47.7 million for the loss of commingling for all packers and processors. The resulting values are then divided by the number of establishments to estimate the cost per establishment resulting from the loss of commingling flexibility. For livestock slaughtering, the estimated costs are $2,420 for small establishments and

[16] U.S. Census Bureau. 2007 Economic Census. Historical Data Tabulations by Enterprise Size. 2007 Annual Tabulations: U.S., All Industries. *http://www.census.gov/econ/susb/data/susb2007.html.*

$241,403 for large establishments. For meat processing, the estimated costs are $4,491 for small establishments and $62,038 for large establishments. Adding in the average estimated label cost of $984 yields total estimated costs of $3,403 per small livestock slaughtering establishment and $242,387 per large establishment. Similarly, the total estimated costs are $5,475 per small meat processing establishment and $63,021 per large establishment. Based on these average estimated implementation costs, small packer and processor costs under the rule are estimated at about $11.9 million. However, the cost of the loss of commingling flexibility is expected to be mostly concentrated among those facilities that currently commingle domestic and foreign-origin cattle or hogs. The number of small slaughtering and processing establishments that currently commingle is expected to be considerably fewer than the total number of small establishments.

Alternatives considered: Section 603 of the RFA requires the Agency to describe the steps taken to minimize any significant economic impact on small entities including a discussion of alternatives considered. The law explicitly identifies those retailers required to provide their customers with country of origin information for covered commodities (namely, retailers subject to PACA). Thus, the amendments are consistent with the requirements of the Act in terms of who is subject to the final rule.

The change in the definition of a retailer will not have a substantial effect on the number of retailers subject to COOL requirements. The PACA program continually monitors the retail industry for firms that may meet the threshold for PACA licensing and seeks to enforce compliance with those requirements. Thus, those retailers that are required to hold a PACA license should, in fact, be licensed separate and apart from any COOL program requirements.

The Agency considered other alternatives including taking no action or providing less information than was required under the 2009 COOL regulations. These alternatives would not achieve the purpose of this action.

As with the current mandatory COOL program, this final rule contains no requirements for firms to report to USDA. Compliance audits will be conducted at firms' places of business. There are no recordkeeping requirements beyond those currently in place, and the Agency believes that the information necessary to transmit production step information largely is already in place within the affected industries.

As stated in the RFA of the COOL final rule published in January 2009 (74 FR 2693), the COOL program provides the maximum flexibility practicable to enable small entities to minimize the costs on their operations. While the allowance for commingling has been removed from this final rule, the Agency is providing other labeling flexibilities.

The 2009 COOL regulations allowed for a variety of ways that the origin information can be provided, such as placards, signs, labels, stickers, etc. Many retail establishments have chosen to use signage above the relevant sections of the meat case to provide the required origin information in lieu of or in addition to providing the information on labels on each package of meat. Under this final rule, the Agency will continue to allow the COOL notification requirements to be met, including the requirement to provide the location where the production steps occurred, by using signs or placards. For example, for meat derived from cattle born in Canada and raised and slaughtered in the U.S., the signage could read ''Beef is from animals born in Canada, Raised and Harvested in the U.S.'' Further, the Agency recognizes that for some period of time following the period of education and outreach, existing label and package inventories will include less specific origin information (e.g., Product of Country X and the U.S.) As long as retail establishments provide the more specific information via other means (e.g., signage), the Agency will consider the origin notification requirements to have been met.

In addition, small packers, processors, and retailers are expected to produce and stock a smaller number of unique muscle cut covered commodities compared to large operations. Thus, adjustment costs for small establishments likely will be substantially lower than the estimated midpoint average of approximately $3,700 assuming the same average cost for all establishments regardless of type or size.

Executive Order 13175

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

Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act (PRA) (44 U.S.C 3501–3520) the information collection provisions contained in this collection package are currently approved by OMB under Control Number 0581–0250. On December 4, 2012, AMS published a notice and request for comment seeking OMB approval to renew and revise this information collection. The comment period closed on February 4, 2013. This final rule does not change any of the recordkeeping provisions.

Executive Order 12988

The contents of this rule were reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. States and local jurisdictions are preempted from creating or operating country of origin labeling programs for the commodities specified in the Act and these regulations. With regard to other Federal statutes, all labeling claims made in conjunction with this regulation must be consistent with other applicable Federal requirements. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Civil Rights Review

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

Executive Order 13132

This rule has been reviewed under Executive Order 13132, Federalism. This Order directs agencies to construe, in regulations and otherwise, a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence to conclude that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute. This program is required by the

2002 Farm Bill, as amended by the 2008 Farm Bill.

In the January 15, 2009, final rule, the Federalism analysis stated that to the extent that State country of origin labeling programs encompass commodities that are not governed by the COOL program, the States may continue to operate them. It also contained a preemption for those State country of origin labeling programs that encompass commodities that are governed by the COOL program. This final rule does not change the preemption. With regard to consultation with States, as directed by the Executive Order 13132, AMS previously consulted with the States that have country of origin labeling programs. AMS has cooperative agreements with all 50 States to assist in the enforcement of the COOL program and has communications with the States on a regular basis.

It is found and determined that good cause exists for implementing this final rule May 23, 2013. This rule has been determined to be a major rule for purposes of the Congressional Review Act (5 U.S.C. 801 et seq.); however, the Agency finds that under 5 U.S.C. 808(2) good cause exists to waive the 60-day delay in the effective date for two reasons. First, and as discussed above, on July 23, 2012, the DSB adopted its recommendations and rulings, finding certain COOL requirements to be inconsistent with U.S. WTO obligations. A WTO arbitrator determined that the reasonable period of time for the United States to comply with the DSB recommendations and rulings is ten months, meaning that the United States must comply with the recommendations and rulings by May 23, 2013. If the United States does not bring the rule into effect by this date, the complaining parties in the WTO dispute, Canada and Mexico, may seek to exercise their rights to suspend application to the United States of WTO concessions or other obligations equivalent to the trade benefits they have lost as a result of the inconsistent COOL requirements. If so authorized, Canada and Mexico could take action that adversely affects U.S. interests (e.g., increasing tariffs on U.S. goods). Second, and as also discussed above, changes to the labeling provisions for muscle cut covered commodities, which will provide consumers with more specific information with regard to muscle cut covered commodities, and the other modifications to the regulations will enhance the overall operation of the program. For these same reasons, pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register**. Accordingly, this rule will be effective May 23, 2013.

List of Subjects

7 CFR Part 60

Agricultural commodities, Fish, Food labeling, Reporting and recordkeeping requirements.

7 CFR Part 65

Agricultural commodities, Food labeling, Meat and meat products, Macadamia nuts, Peanuts, Pecans, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 60 and 65 are amended as follows:

PART 60—COUNTRY OF ORIGIN LABELING FOR FISH AND SHELLFISH

■ 1. The authority citation for part 60 continues to read as follows:

Authority: 7 U.S.C. 1621 *et seq.*

■ 2. Section 60.124 is revised to read as follows:

§ 60.124 Retailer.

Retailer means any person subject to be licensed as a retailer under the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(b)).

PART 65—COUNTRY OF ORIGIN LABELING OF BEEF, PORK, LAMB, CHICKEN, GOAT MEAT, PERISHABLE AGRICULTURAL COMMODITIES, MACADAMIA NUTS, PECANS, PEANUTS, AND GINSENG

■ 3. The authority citation for part 65 continues to read as follows:

Authority: 7 U.S.C. 1621 *et seq.*

■ 4. Section 65.240 is revised to read as follows:

§ 65.240 Retailer.

Retailer means any person subject to be licensed as a retailer under the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(b)).

■ 5. Section 65.300 paragraphs (d), (e), and (f) are revised to read as follows:

§ 65.300 Country of origin notification.

* * * * *

(d) *Labeling Covered Commodities of United States Origin.* A covered commodity may bear a declaration that identifies the United States as the sole country of origin at retail only if it meets the definition of United States country of origin as defined in § 65.260. The United States country of origin designation for muscle cut covered commodities shall include all of the production steps (i.e., ''Born, Raised, and Slaughtered in the United States'').

(e) *Labeling Muscle Cut Covered Commodities of Multiple Countries of Origin from Animals Slaughtered in the United States.* If an animal was born and/or raised in Country X and/or (as applicable) Country Y, and slaughtered in the United States, the resulting muscle cut covered commodities shall be labeled to specifically identify the production steps occurring in each country (e.g., ''Born and Raised in Country X, Slaughtered in the United States''). If an animal is raised in the United States as well as another country (or multiple countries), the raising occurring in the other country (or countries) may be omitted from the origin designation except if the animal was imported for immediate slaughter as defined in § 65.180 or where by doing so the muscle cut covered commodity would be designated as having a United States country of origin (e.g., ''Born in Country X, Raised and Slaughtered in the United States'' in lieu of ''Born and Raised in Country X, Raised in Country Y, Raised and Slaughtered in the United States'').

(f) *Labeling Imported Covered Commodities.* (1) Perishable agricultural commodities, peanuts, pecans, ginseng, macadamia nuts and ground meat covered commodities that have been produced in another country shall retain their origin, as declared to U.S. Customs and Border Protection at the time the product entered the United States, through retail sale.

(2) Muscle cut covered commodities derived from an animal that was slaughtered in another country shall retain their origin, as declared to U.S. Customs and Border Protection at the time the product entered the United States, through retail sale (e.g., ''Product of Country X''), including muscle cut covered commodities derived from an animal that was born and/or raised in the United States and slaughtered in another country. In addition, the origin declaration may include more specific location information related to production steps (i.e., born, raised, and slaughtered) provided records to substantiate the claims are maintained and the claim is consistent with other applicable Federal legal requirements.

* * * * *

Dated: May 20, 2013.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2013–12366 Filed 5–23–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1163; Directorate Identifier 2011–NM–246–AD; Amendment 39–17456; AD 2013–10–03]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for all Airbus Model A330–200 and –300 series airplanes; and Model A340–200, –300, –500, and –600 series airplanes. That AD currently requires a one-time detailed inspection of both main landing gear (MLG) bogie beams in the region of the bogie stop pad for detection of deformation and damage, and corrective actions if necessary. This new AD adds Model A330–200 Freighter series airplanes to the applicability. For certain airplanes, this new AD also adds repetitive inspections for damage and corrosion of the sliding piston sub-assembly, with new related investigative and corrective actions. This AD was prompted by reports of corroded bogie stop pads, including some with cracking. We are issuing this AD to detect and correct deformation or damage under the bogie stop pad of both MLG bogie beams, which could result in a damaged bogie beam and consequent detachment of the beam from the airplane or collapse of the MLG and departure of the airplane from the runway.

DATES: This AD becomes effective June 28, 2013.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of June 28, 2013.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of March 4, 2010 (75 FR 4477, January 28, 2010).

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on November 16, 2012 (77 FR 68711), and proposed to supersede AD 2010–02–10, Amendment 39–16181 (75 FR 4477, January 28, 2010). That NPRM proposed to correct an unsafe condition for the specified products. The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community has issued EASA Airworthiness Directive 2011–0211, dated October 31, 2011 (referred to after this as ''the MCAI''), to supersede EASA AD 2008–0223, dated December 15, 2008 (referred to in the existing AD), and correct an unsafe condition for the specified products. The MCAI states:

> During a scheduled maintenance inspection on the MLG [main landing gear], the bogie stop pad was found deformed and cracked. Upon removal of the bogie stop pad for replacement, the bogie beam was also found cracked.
>
> Laboratory investigation indicates that an overload event has occurred and no fatigue propagation of the crack was evident.
>
> A second bogie beam crack has subsequently been found on another aeroplane, located under a bogie stop pad which only had superficial paint damage.
>
> This condition, if not detected and corrected, could result in the aeroplane departing the runway or to the bogie detaching from the aeroplane or gear collapses, which would all constitute unsafe conditions at speeds above 30 knots.
>
> As a precautionary measure, EASA AD 2008–0223 [which corresponds to FAA AD 2010–02–10, Amendment 39–16181 (75 FR 4477, January 28, 2010] required one-time detailed inspections under the bogie stop pad of both MLG bogie beams and, in case deformation or damage is detected, to apply the associated repair.
>
> Numerous bogie stop pad were found corroded and a few cracked as a result of the one-time inspection required by EASA AD 2008–0223 on A330, A340–200 and A340–300 aeroplanes.
>
> For the reasons describe above, this [EASA] AD, which supersedes EASA AD 2008–0223:
>
> —retains the initial inspection requirement of EASA AD 2008–0223 for A330, A340–200 and A340–300 aeroplanes.
>
> —introduces a repetitive detailed visual inspection for A330, A340–200 and A340–300 aeroplanes.
>
> —retains the requirement of EASA AD 2008–0223 for A340–500 and A340–600 aeroplanes, for which further mandatory requirements might follow in future depending on the results of the one-time mandatory inspection in place.

The required actions include repetitive detailed inspections for damage and corrosion of the sliding piston sub-assembly, with new related investigative and corrective actions. Related investigative actions include a test for indications of corrosion and damage to the bogie assembly base material, and a magnetic particle inspection for cracks, corrosion, and damage of the bogie beam. Corrective actions include repairing affected parts. You may obtain further information by examining the MCAI in the AD docket.

Revised Service Information

Since we issued the NPRM (77 FR 68711, November 16, 2012), we have reviewed the following revised service information. No additional work is specified by these revisions.

- Airbus Mandatory Service Bulletin A330–32–3220, Revision 02, dated December 13, 2012 (for Model A330–200 and –300 series airplanes).
- Airbus Mandatory Service Bulletin A330–32–3248, Revision 01, including Appendix 1, dated December 13, 2012 (for Model A330–200, –200 Freighter, and –300 series airplanes).

We have revised paragraphs (i) and (j) of this AD to refer to the revised service information, added a new paragraph (l) to give credit for earlier revisions of this service information, and re-identified subsequent paragraphs accordingly.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received.

Request To Remove or Revise Reporting Requirement

Delta Air Lines, Inc. (Delta) asked that the compliance time for the reporting requirement specified in the NPRM (77 FR 68711, November 16, 2012) be extended from 30 to 180 days. Delta stated that, unless we plan to rescind or revise this AD in the near future based on the findings, paragraph (l)(1) of the NPRM (paragraph (m)(1) of the final rule) should be removed. Delta also recommended that the reporting be mandated only for positive findings—not positive and negative findings—and specifically for those findings that are beyond the repair limits identified in the applicable component maintenance manual. Delta stated that this would allow findings to be batched together for a grouped report and would preclude undue compliance issues related to late reporting.

We do not agree to remove the reporting requirement in paragraph (m) of this AD. The reporting requirement is included in the requirements in the EASA AD, and our AD follows those requirements in order to ensure that the unsafe condition is adequately addressed. Reporting of both positive and negative findings is necessary to determine the scope of the problem. Reporting all findings will allow the manufacturer to conduct statistical analyses and apply the results to calculate more accurate life limits for the affected parts. We have made no change to the AD in this regard.

In addition, we do not agree to extend the compliance time for the reporting requirement to 180 days; however, we will extend it to 90 days to be consistent with the compliance time for the reporting requirement in the EASA AD referred to in this AD. We have changed the compliance time for the reporting requirement in paragraph (m) of this AD accordingly.

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

Based on the service information, we estimate that this AD affects about 67 products of U.S. registry.

The actions that are required by AD 2010–02–10, Amendment 39–16181 (75 FR 4477, January 28, 2010), and retained in this AD take about 2 work-hours per product, at an average labor rate of $85 per work hour. Based on these figures, the estimated cost of the currently required actions is $170 per product.

We estimate that it will take about 16 work-hours per product to comply with the new basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the AD on U.S. operators to be $91,120, or $1,360 per product.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; and

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (77 FR 68711, November 16, 2012), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2010–02–10, Amendment 39–16181 (75 FR 4477, January 28, 2010), and adding the following new AD:

2013–10–03 Airbus: Amendment 39–17456. Docket No. FAA–2012–1163; Directorate Identifier 2011–NM–246–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective June 28, 2013.

(b) Affected ADs

This AD supersedes AD 2010–02–10, Amendment 39–16181 (75 FR 4477, January 28, 2010).

(c) Applicability

This AD applies to all Airbus Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; Model A340–211, –212, –213, –311, –312, –313 airplanes; and Model A340–541 and –642 airplanes; certificated in any category; all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 32: Landing gear.

(e) Reason

This AD was prompted by reports of corroded bogie stop pads, some with cracking. We are issuing this AD to detect and correct deformation or damage under the bogie stop pad of both main landing gear (MLG) bogie beams, which could result in a damaged bogie beam and consequent detachment of the beam from the airplane or collapse of the MLG and departure of the airplane from the runway.

(f) Compliance

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

(g) Retained One-Time Inspection and Corrective Actions, With Revised Service Information

This paragraph restates the requirements of paragraph (f)(1) of AD 2010–02–10, Amendment 39–16181 (75 FR 4477, January 28, 2010), with revised service information. For Model A330–200 and –300 series airplanes, and Model A340–200, –300, –500, and –600 series airplanes, except as required

by paragraph (i) of this AD: At the applicable compliance time specified in paragraph (g)(1), (g)(2), (g)(3), (g)(4), (g)(5), or (g)(6) of this AD, perform one-time detailed inspections of both MLG bogie beams in the region of the bogie stop pad for detection of deformation and damage, and apply the applicable corrective actions, in accordance with the Accomplishment Instructions of the applicable service bulletin specified in paragraph (g)(7) of this AD. Do all applicable corrective actions before further flight.

(1) Airplanes with 22 months or less and 2,500 flight cycles or less from the first flight with the original bogie beam as of March 4, 2010 (the effective date of AD 2010–02–10, Amendment 39–16181 (75 FR 4477, January 28, 2010)): Not earlier than 2,500 flight cycles or 22 months on the original bogie beam, whichever occurs first, but not later than 40 months from first flight.

(2) Airplanes with 22 months or less and 2,500 flight cycles or less from the installation date of a new bogie beam in service as of March 4, 2010 (the effective date of AD 2010–02–10, Amendment 39–16181 (75 FR 4477, January 28, 2010)): Not earlier than 2,500 flight cycles or 22 months from the installation date of the new bogie beam, whichever occurs first, but not later than 40 months from the installation date of a new bogie beam in service.

(3) Airplanes with 22 months or less and 2,500 flight cycles or less from the installation date of an overhauled bogie beam in service as of March 4, 2010 (the effective date of AD 2010–02–10, Amendment 39–16181 (75 FR 4477, January 28, 2010)): Not earlier than 2,500 flight cycles or 22 months from the installation date of the overhauled bogie beam in service, whichever occurs first, but not later than 40 months from the installation date of the overhauled bogie beam in service.

(4) Airplanes with more than 22 months or more than 2,500 flight cycles from the first flight with the original bogie beam, as of March 4, 2010 (the effective date of AD 2010–02–10, Amendment 39–16181 (75 FR 4477, January 28, 2010)): Within 18 months after March 4, 2010 (the effective date of AD 2010–02–10).

(5) Airplanes with more than 22 months or more than 2,500 flight cycles from the installation date of a new bogie beam in service, as of March 4, 2010 (the effective date of AD 2010–02–10, Amendment 39–16181 (75 FR 4477, January 28, 2010)): Within 18 months after March 4, 2010 (the effective date of AD 2010–02–10).

(6) Airplanes with more than 22 months or more than 2,500 flight cycles from the installation date of an overhauled bogie beam in service, as of March 4, 2010 (the effective date of AD 2010–02–10, Amendment 39–16181 (75 FR 4477, January 28, 2010)): Within 18 months after March 4, 2010 (the effective date of AD 2010–02–10).

(7) Use the applicable service information to accomplish the actions required by paragraph (g) of this AD.

(i) For Model A330–200 and –300 series airplanes: Airbus Mandatory Service Bulletin A330–32–3220, dated October 10, 2008; Revision 01, dated October 5, 2011; or Revision 02, dated December 13, 2012.

(ii) For Model A340–200 and –300 series airplanes: Airbus Mandatory Service Bulletin A340–32–4264, dated October 10, 2008.

(iii) For Model A340–500 and –600 series airplanes: Airbus Mandatory Service Bulletin A340–32–5087, dated October 10, 2008.

(h) Retained Reporting Requirement

This paragraph restates the requirements of paragraph (f)(2) of AD 2010–02–10, Amendment 39–16181 (75 FR 4477, January 28, 2010). Report the results of the inspection required by paragraph (g) of this AD, including no findings, to Airbus, Customer Services Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex France; Attn: SEDCC1 Technical Data and Documentation Services; fax (+33) 5 61 93 28 06; email *sb.reporting@airbus.com*; at the applicable time specified in paragraph (h)(1) or (h)(2) of this AD.

(1) If the inspection is done on or after March 4, 2010 (the effective date of AD 2010–02–10, Amendment 39–16181 (75 FR 4477, January 28, 2010)): Submit the report within 30 days after doing the inspection.

(2) If the inspection was done prior to March 4, 2010 (the effective date of AD 2010–02–10, Amendment 39–16181 (75 FR 4477, January 28, 2010)): Submit the report within 30 days after March 4, 2010 (the effective date of AD 2010–02–10).

(i) New Inspections of Beams That Have Not Been Inspected As of the Effective Date of This AD

For bogie beams on which the inspection required by paragraph (g) of this AD has not been accomplished as of the effective date of this AD: At the later of the times specified in paragraphs (i)(1) and (i)(2) of this AD, perform one-time detailed inspections of both MLG bogie beams in the region of the bogie stop pad for detection of deformation and damage, and apply the applicable corrective actions, in accordance with the Accomplishment Instructions of the applicable service information specified in paragraph (i)(3) of this AD. Do all applicable corrective actions before further flight.

(1) At the applicable time specified in paragraph (i)(1)(i) or (i)(1)(ii) of this AD.

(i) For bogie beams that have not been overhauled: Not earlier than 2,500 flight cycles or 22 months, whichever occurs first, on a bogie beam since its first flight on an airplane since new, but not later than 40 months since its first flight on an airplane since new.

(ii) For bogie beams that have been overhauled: Not earlier than 2,500 flight cycles or 22 months, whichever occurs first, on a bogie beam since its first flight on an airplane after its most recent overhaul, but not later than 40 months since its first flight on an airplane after its most recent overhaul.

(2) Within 90 days after the effective date of this AD.

(3) Use the applicable service information specified in paragraph (i)(3)(i), (i)(3)(ii), or (i)(3)(iii) of this AD, to accomplish the actions required by paragraph (i) of this AD.

(i) For Model A330–200 and –300 series airplanes: Airbus Mandatory Service Bulletin A330–32–3220, Revision 02, dated December 13, 2012.

(ii) For Model A340–200 and –300 series airplanes: Airbus Mandatory Service Bulletin A340–32–4264, dated October 10, 2008.

(iii) For Model A340–500 and –600 series airplanes: Airbus Mandatory Service Bulletin A340–32–5087, dated October 10, 2008.

(j) New Repetitive Inspections

Except for bogie beams that have been inspected as specified in Airbus Mandatory Service Bulletin A340–32–5087: At the later of the times specified in paragraphs (j)(1) and (j)(2) of this AD, do the detailed inspection of both MLG bogie beams in the bogie stop pad area for damage and corrosion, and all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–32–3248, Revision 01, dated December 13, 2012 (for Model A330–200, –200 Freighter, and –300 series airplanes); or Airbus Mandatory Service Bulletin A340–32–4286, dated October 5, 2011 (for Model A340–200 and –300 series airplanes); except as required by paragraph (k) of this AD. Do all applicable related investigative and corrective actions before further flight. Repeat the inspection thereafter at intervals not to exceed 2,500 flight cycles or 24 months, whichever is first.

(1) Within 2,500 flight cycles or 24 months, whichever occurs first, accumulated by a MLG bogie beam since its first flight after the most recent accomplishment of Airbus Mandatory Service Bulletin A330–32–3220 or A340–32–4264, as applicable.

(2) Within 3 months after the effective date of this AD.

(k) Service Information Exception

If any cracking of the bogie beam is detected during any inspection or repair required by paragraph (j) of this AD, or any repair required by paragraph (j) of this AD is beyond the maximum repair allowance specified in the applicable service information required by paragraph (j) of this AD: Before further flight, repair using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent).

(l) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraphs (i) and (j) of this AD, if those actions were performed before the effective date of this AD using Airbus Mandatory Service Bulletin A330–32–3220, dated October 10, 2008, or Airbus Mandatory Service Bulletin A330–32–3220, Revision 01, dated October 5, 2011; or Airbus Mandatory Service Bulletin A330–32–3248, dated October 5, 2011; as applicable; which are not incorporated by reference in this AD.

(m) New Reporting Requirement

Report the results of the initial inspection required by paragraph (j) of this AD, including both positive and negative findings, to Airbus, Customer Services Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex France; Attn: SEDCC1 Technical Data and Documentation Services; fax (+33) 5 61 93 28 06; email *sb.reporting@airbus.com;* at the applicable

time specified in paragraph (m)(1) or (m)(2) of this AD.

(1) If the inspection is done on or after the effective date of this AD: Submit the report within 90 days after doing the inspection.

(2) If the inspection was done prior to the effective date of this AD: Submit the report within 90 days after the effective date of this AD.

(n) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD. AMOCs approved previously in accordance with AD 2010–02–10, Amendment 39–16181 (75 FR 4477, January 28, 2010), are approved as AMOCs for the corresponding provisions of this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing, and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(o) Special Flight Permits

Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), are not allowed if any crack is found during any inspection required by this AD.

(p) Related Information

(1) Refer to mandatory continued airworthiness information (MCAI) EASA Airworthiness Directive 2011–0211, dated October 31, 2011, and the service information specified in paragraphs (p)(1)(i) through (p)(1)(vii) of this AD, for related information.

(i) Airbus Mandatory Service Bulletin A330–32–3220, dated October 10, 2008.

(ii) Airbus Mandatory Service Bulletin A330–32–3220, Revision 01, dated October 5, 2011.

(iii) Airbus Mandatory Service Bulletin A330–32–3220, Revision 02, dated December 13, 2012.

(iv) Airbus Mandatory Service Bulletin A330–32–3248, Revision 01, including Appendix 01, dated December 13, 2012.

(v) Airbus Mandatory Service Bulletin A340–32–4264, dated October 10, 2008.

(vi) Airbus Mandatory Service Bulletin A340–32–4286, dated October 5, 2011.

(vii) Airbus Mandatory Service Bulletin A340–32–5087, dated October 10, 2008.

(2) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(q) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on June 28, 2013.

(i) Airbus Mandatory Service Bulletin A330–32–3220, Revision 01, dated October 5, 2011.

(ii) Airbus Mandatory Service Bulletin A330–32–3220, Revision 02, dated December 13, 2012.

(iii) Airbus Mandatory Service Bulletin A330–32–3248, Revision 01, including Appendix 01, dated December 13, 2012.

(iv) Airbus Mandatory Service Bulletin A340–32–4286, dated October 5, 2011.

(4) The following service information was approved for IBR on March 4, 2010 (75 FR 4477, January 28, 2010).

(i) Airbus Mandatory Service Bulletin A330–32–3220, dated October 10, 2008.

(ii) Airbus Mandatory Service Bulletin A340–32–4264, dated October 10, 2008.

(iii) Airbus Mandatory Service Bulletin A340–32–5087, dated October 10, 2008.

(5) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.*

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

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

Issued in Renton, Washington, on May 13, 2013.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–11903 Filed 5–23–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0855; Directorate Identifier 2011–NM–136–AD; Amendment 39–17452; AD 2013–09–10]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. That AD currently requires repetitive inspections to detect cracking of the lower corners of the door frame and cross beam of the forward cargo door, and corrective actions if necessary. That AD also requires eventual modification of the outboard radius of the lower corners of the door frame and reinforcement of the cross beam of the forward cargo door, which terminates the existing repetitive inspections. This new AD revises the compliance times for the preventive modification; adds certain inspections for cracks in the number 5 cross beam of the forward cargo door; and adds inspections of the number 4 cross beam if cracks are found in the number 5 cross beam, and corrective actions if necessary. For certain airplanes, this

new AD also adds a one-time inspection for airplanes previously modified or repaired, and a one-time inspection of the reinforcement angle for excessive shimming or fastener pull-up, and corrective actions if necessary. This AD was prompted by additional reports of fatigue cracking in the radius of the lower frames and in the lower number 5 cross beam of the forward cargo door. We are issuing this AD to prevent fatigue cracking of the lower corners of the door frame and number 5 cross beam of the forward cargo door, which could result in rapid depressurization of the airplane.

DATES: This AD is effective June 28, 2013.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of June 28, 2013.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of May 16, 2000 (65 FR 19302, April 11, 2000).

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

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede airworthiness directive (AD) 2000–07–06, Amendment 39–11660 (65 FR 19302, April 11, 2000). That AD applies to the specified products. The NPRM published in the **Federal Register** on August 21, 2012 (77 FR 50407). The NPRM proposed to continue to require repetitive inspections to detect cracking of the lower corners of the door frame and cross beam of the forward cargo door, and corrective actions if necessary. The NPRM also proposed to continue to require eventual modification of the outboard radius of the lower corners of the door frame and reinforcement of the cross beam of the forward cargo door, which would constitute terminating action for the existing repetitive inspections. Additionally, the NPRM proposed to revise the compliance times for the preventive modification; add certain inspections for cracks in the number 5 cross beam of the forward cargo door; and add inspections of the number 4 cross beam if cracks are found in the number 5 cross beam, and corrective actions if necessary. For certain airplanes, the NPRM also proposed to add a one-time inspection for airplanes previously modified or repaired, and a one-time inspection of the reinforcement angle for excessive shimming or fastener pull-up, and corrective actions if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (77 FR 50407, August 21, 2012) and the FAA's response to each comment.

Comment Regarding Winglet Supplemental Type Certificate (STC)

Aviation Partners Boeing stated that installation of winglets per STC ST01219SE (*http://rgl.faa.gov/regulatory_and_guidance_library/rgstc.nsf/0/2C6E3DBDDD36F91C862576A4005D64E2?OpenDocument&Highlight=st01219se*) does not affect the ability to accomplish the service information or the NPRM (77 FR 50407, August 21, 2012).

We have revised paragraph (c) in this final rule, by adding new paragraph (c)(2), to state that installation of STC ST01219SE (*http://rgl.faa.gov/regulatory_and_guidance_library/rgstc.nsf/0/2C6E3DBDDD36F91C862576A4005D64E2?OpenDocument&Highlight=st01219se*) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01219SE is installed, a ''change in product'' AMOC approval request is not necessary to comply with the requirements of 14 CFR 39.17. For all other AMOC requests, however, the operator must request approval for an AMOC in accordance with the procedures specified in paragraph (n) of this AD.

Request To Add New Requirements

Boeing asked that we add a new paragraph (k) to the NPRM (77 FR 50407, August 21, 2012) titled ''New Inspections and Corrective Actions to Ensure Cross Beam Reinforcement,'' and suggested language for that new requirement. Boeing stated that the intent of the NPRM and Boeing Alert Service Bulletin 737–52A1100, Revision 5, dated February 14, 2011, is to ensure that all forward cargo doors have the reinforcing modifications installed on both the beam and the frame at the forward and aft lower corners of the door. Boeing added that the current language in the NPRM and this service information leave open the potential that some doors might not have the reinforcing modification on the aft end of the cross beam, even though the doors were modified as specified in Boeing Service Bulletin 737–52–1100, dated August 25, 1988, or Revision 1, dated July 20, 1989; or in accordance with the requirements of AD 90–06–02, Amendment 39–6489 (55 FR 8372, March 7, 1990).

We do not agree with the commenter's request to add a new requirement to this AD. Boeing Service Bulletin 737–52–1100, dated August 25, 1988; and Revision 1, dated July 20, 1989; includes modifications of the forward corner of the door frame and forward end of the lower cross beam, but no modifications of the aft end of the door. Modifications of the aft corner of the door frame and aft end of the lower cross beam were added in Boeing Service Bulletin 737–52–1100, Revision 2, dated March 31, 1994. Boeing Service Bulletin 737–52–1100, Revision 2, dated March 31, 1994, was required by paragraph (c) of AD 2000–07–06, Amendment 39–11660 (65 FR 19302, April 11, 2000), as terminating action for the repetitive inspections. Paragraph (c) of AD 2000–07–06 is restated in paragraph (i) of this AD, and addresses airplanes on which no modification was accomplished previously.

The intent of paragraph (d) of AD 2000–07–06, Amendment 39–11660 (65 FR 19302, April 11, 2000), which is restated in paragraph (j) of this AD, was to address airplanes on which a

modification was previously accomplished in accordance with Boeing Service Bulletin 737–52–1100, dated August 25, 1988; or Revision 1, dated July 20, 1989; and to ensure that both the forward and aft ends of the lower beam of the door were modified, as well as the forward and aft corners of the door frame. Therefore, Boeing Service Bulletin 737–52–1100, Revision 2, dated March 31, 1994, was required by AD 2000–07–06 for those modifications. However, paragraph (d) of AD 2000–07–06 and paragraph (j) of this AD do not specify modifying the aft end of the lower beam.

We have made no change to the AD in regard to Boeing's request. However, we are considering proposing additional rulemaking in the near future to address this issue.

Explanation of Change to Final Rule

We have changed paragraph (g) of this final rule to specify performing the inspection in accordance with Boeing 737 Nondestructive Test (NDT) Manual, D6–37239, Part 6, Section 51–00–00, Procedure 4 or Procedure 23, Revision 108, dated November 15, 2012, as applicable. The subject procedures were referred to as figures in the NPRM (77 FR 50407, August 21, 2012). Because of a publishing system change in this revision of the NDT manual, the term ''figure'' was changed to ''procedure.'' The technical instructions in the NDT manual were not changed.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the change described previously. We also determined that this change will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD affects 581 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections retained from AD 2000–07–06, Amendment 39–11660 (65 FR 19302, April 11, 2000).	1 work-hour × $85 per hour = $85 per inspection cycle.	$0	$85 per inspection cycle	$49,385 per inspection cycle.
Modification retained from AD 2000–07–06.	18 work-hours × $85 per hour = $1,530.	$1,865	$3,395	$1,972,495.
Inspections, new action	9 work-hours × $85 per hour = $765.	$0	$765	$444,465.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Modification	84 work-hours × $85 per hour = $7,140	$12,395	$19,535

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2000–07–06, Amendment 39–11660 (65 FR 19302, April 11, 2000), and adding the following new AD:

2013–09–10 The Boeing Company: Amendment 39–17452; Docket No. FAA–2012–0855; Directorate Identifier 2011–NM–136–AD.

(a) Effective Date

This AD is effective June 28, 2013.

(b) Affected ADs

This AD supersedes AD 2000–07–06, Amendment 39–11660 (65 FR 19302, April 11, 2000).

(c) Applicability

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

(2) Installation of Supplemental Type Certificate (STC) ST01219SE (*http://rgl.faa.gov/regulatory_and_guidance_library/rgstc.nsf/0/2C6E3DBDDD36F91C862576A4005D64E2?OpenDocument&Highlight=st01219se*) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01219SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 52, Doors.

(e) Unsafe Condition

This AD was prompted by additional reports of fatigue cracking in the radius of the lower frames and in the lower number 5 cross beam of the forward cargo door. We are issuing this AD to prevent fatigue cracking of the lower corners of the door frame and number 5 cross beam of the forward cargo door, which could result in rapid depressurization of the airplane.

(f) Compliance

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

(g) Retained High Frequency Eddy Current (HFEC) Initial/Repetitive Inspections

This paragraph restates the requirements of paragraph (a) of AD 2000–07–06, Amendment 39–11660 (65 FR 19302, April 11, 2000), with revised service information. Within 1 year or 4,500 flight cycles after May 16, 2000 (the effective date of AD 2000–07–06), whichever occurs later, perform an HFEC inspection to detect cracking of the lower corners (forward and aft) of the door frame of the forward cargo door, in accordance with Figure 4 or Figure 23, of Section 51–00–00, of Part 6, of Boeing 737 Nondestructive Test (NDT) Manual, D6–37239, dated August 5, 1997, as applicable; or Procedure 4 or Procedure 23, of Section 51–00–00, of Part 6, of Boeing 737 Nondestructive Test (NDT) Manual, D6–37239, Revision 108, dated November 15, 2012; as applicable.

Note 1 to paragraphs (g), (h), (i), and (j) of this AD: Accomplishment of Boeing Service Bulletin 737–52–1100, Revision 2, dated March 31, 1994, does not supersede the requirements of AD 90–06–02, Amendment 39–6489 (55 FR 8372, March 7, 1990).

(1) If no cracking is detected, repeat the HFEC inspection thereafter at intervals not to exceed 4,500 flight cycles, until the requirements of paragraph (i) of this AD have been accomplished.

(2) If any cracking is detected during any inspection required by paragraph (g) of this AD, prior to further flight, accomplish the requirements of paragraphs (g)(2)(i) and (g)(2)(ii) of this AD, which constitute terminating action for the repetitive inspections required by paragraph (g)(1) of this AD.

(i) Accomplish the requirements of paragraph (g)(2)(i)(A) or (g)(2)(i)(B) of this AD, and install a cross beam repair and reinforcement modification of the cross beam, in accordance with Boeing Service Bulletin 737–52–1100, Revision 2, dated March 31, 1994.

(A) Repair the door frame of the forward cargo door in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), Transport Airplane Directorate, FAA; or in accordance with data meeting the type certification basis of the airplane approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make such findings. For a repair or modification method to be approved by the Manager, Seattle ACO, as required by this paragraph, and paragraphs (g)(2)(ii), (h)(2), (h)(3)(ii), and (i)(2) of this AD, the Manager's approval letter must specifically reference this AD.

(B) Replace the door frame of the forward cargo door with a new door frame, in accordance with Boeing Service Bulletin 737–52–1100, Revision 2, dated March 31, 1994.

(ii) Modify the repaired or replaced door frame of the forward cargo door, in accordance with a method approved by the Manager, Seattle ACO, or in accordance with data meeting the type certification basis of the airplane approved by the Boeing Commercial Airplanes ODA that has been authorized by the Manager, Seattle ACO, to make those findings.

(h) Retained Initial Detailed Inspection and Repetitive Inspections

This paragraph restates the requirements of paragraph (b) of AD 2000–07–06, Amendment 39–11660 (65 FR 19302, April 11, 2000). Within 1 year or 4,500 flight cycles after May 16, 2000 (the effective date of AD 2000–07–06), whichever occurs later, perform a detailed inspection to detect cracking of the cross beam (i.e., upper and lower chord and web sections) of the forward cargo door, in accordance with Boeing Service Bulletin 737–52–1100, Revision 2, dated March 31, 1994. For the purposes of this AD, a detailed inspection is: An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.

(1) If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 4,500 flight cycles until the requirements of paragraph (i) of this AD have been accomplished.

(2) If any cracking is detected on the lower chord section of the cross beam during any inspection required by paragraph (h) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Seattle ACO, or in accordance with data meeting the type certification basis of the airplane approved by the Boeing Commercial Airplanes ODA that has been authorized by the Manager, Seattle ACO, to make those findings.

(3) If any cracking is detected on any area excluding the lower chord section of the cross beam (i.e., upper chord and web section) during any inspection required by paragraph (h) of this AD, prior to further flight, accomplish the requirements of paragraph (h)(3)(i) or (h)(3)(ii) of this AD, as applicable, which constitutes terminating action for the repetitive inspections required by paragraph (h)(1) of this AD.

(i) For airplanes with line numbers 1 through 1231 inclusive: Install a cross beam repair and preventative modification of the outboard radius of the lower corners (forward and aft) of the door frame, in accordance with Boeing Service Bulletin 737–52–1100, Revision 2, dated March 31, 1994.

(ii) For airplanes with line numbers 1232 and subsequent: Install a cross beam repair and preventative modification of the outboard radius of the lower corners (forward and aft) of the door frame, in accordance with a method approved by the Manager, Seattle ACO, or in accordance with data meeting the type certification basis of the airplane approved by the Boeing Commercial Airplanes ODA that has been authorized by the Manager, Seattle ACO, to make those findings.

(i) Retained Terminating Action

This paragraph restates the requirements of paragraph (c) of AD 2000–07–06, Amendment 39–11660 (65 FR 19302, April 11, 2000), with revised service information. Within 4 years or 12,000 flight cycles after May 16, 2000 (the effective date of AD 2000–07–06), whichever occurs later: Install the preventative modification of the outboard radius of the lower corners (forward and aft) of the door frame and the reinforcement modification of the cross beam of the forward cargo door, in accordance with paragraph (i)(1) or (i)(2) of this AD, as applicable. Accomplishment of paragraph (i)(1) or (i)(2) of this AD, as applicable, constitutes terminating action for the repetitive inspections required by paragraphs (g)(1) and (h)(1) of this AD.

(1) For airplanes with line numbers 1 through 1231 inclusive: Accomplish the preventative modification and the reinforcement modification, in accordance with Boeing Service Bulletin 737–52–1100, Revision 2, dated March 31, 1994.

(2) For airplanes with line numbers 1232 and subsequent: Accomplish the preventative modification and the reinforcement modification, in accordance with a method approved by the Manager, Seattle ACO, or in accordance with data meeting the type certification basis of the airplane approved by the Boeing Commercial Airplanes ODA that has been authorized by the Manager, Seattle ACO, to make those findings; or in accordance with Boeing Alert Service Bulletin 737–52A1100, Revision 5, dated February 14, 2011. As of the effective date of this AD, use only Boeing Alert Service Bulletin 737–52A1100, Revision 5, dated February 14, 2011, to accomplish the modifications required by this paragraph.

(j) Retained Action for Airplanes on Which Modifications Were Accomplished Previously

This paragraph restates the requirements of paragraph (d) of AD 2000–07–06, Amendment 39–11660 (65 FR 19302, April 11, 2000). For all airplanes on which modifications of the forward lower corner of the door frame and the cross beam of the forward cargo door were accomplished as specified in Boeing Service Bulletin 737–52–1100, dated August 25, 1988, or Revision 1, dated July 20, 1989; or in accordance with the requirements of AD 90–06–02, Amendment 39–6489 (55 FR 8372, March 7, 1990): Within 4 years or 12,000 flight cycles after May 16, 2000 (the effective date of AD 2000–07–06), whichever occurs later, install the reinforcement modification of the aft corner of the door frame of the forward cargo door, in accordance with Boeing Service Bulletin 737–52–1100, Revision 2, dated March 31, 1994. Accomplishment of such modification constitutes terminating action for the repetitive inspections required by paragraphs (g)(1) and (h)(1) of this AD.

(k) New Inspections and Corrective Actions

Except as provided by paragraphs (m)(1) and (m)(2) of this AD: At the applicable time specified in paragraph 1.E, ''Compliance,'' of Boeing Alert Service Bulletin 737–52A1100, Revision 5, dated February 14, 2011, do the inspections required by paragraphs (k)(1) and (k)(2) of this AD, as applicable. Do all applicable related investigative and corrective actions before further flight, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–52A1100, Revision 5, dated February 14, 2011; except as required by paragraph (m)(3) of this AD. Accomplishment of the inspections required by paragraph (k) of this AD terminates the requirements of the repetitive inspections required by paragraphs (g)(1) and (h)(1) of this AD. If any cracking is found in the number 4 cross beam, before further flight, repair in accordance with Boeing Special Attention Service Bulletin 737–52–1149, dated December 11, 2003.

Note 2 to paragraph (k) of this AD: Boeing Alert Service Bulletin 737–52A1100, Revision 5, dated February 14, 2011, refers to Boeing Special Attention Service Bulletin 737–52–1149, dated December 11, 2003, as an additional source of guidance for the inspection for cracks of the number 4 cross beam.

(1) For airplanes identified in Tables 1 and 2 of paragraph 1.E, ''Compliance,'' of Boeing Alert Service Bulletin 737–52A1100, Revision 5, dated February 14, 2011: Do a one-time HFEC inspection of the applicable location for cracks, in accordance with the Work Instructions, Part I, of Boeing Alert Service Bulletin 737–52A1100, Revision 5, dated February 14, 2011.

(2) For airplanes identified in Table 3 of paragraph 1.E, ''Compliance,'' of Boeing Alert Service Bulletin 737–52A1100, Revision 5, dated February 14, 2011: Do a one-time general visual inspection of the reinforcement angle for excessive shimming or fastener pull-up, in accordance with the Work Instructions, Part III, of Boeing Alert Service Bulletin 737–52A1100, Revision 5, dated February 14, 2011.

(l) No Supplemental Structural Inspections Required by This AD

(1) The supplemental structural inspections specified in Table 4 of paragraph 1.E., ''Compliance,'' and Part 5 of the Accomplishment Instructions, of Boeing Alert Service Bulletin 737–52A1100, Revision 5, dated February 14, 2011, are not required by this AD.

(2) The supplemental structural inspections specified in Table 4 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–52A1100, Revision 5, dated February 14, 2011, may be used in support of compliance with section 121.1109(c)(2) or 129.109(b)(2) of the Federal Aviation Regulations (14 CFR 121.1109(c)(2) or 14 CFR 129.109(b)(2)). The corresponding actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 737–52A1100, Revision 5, dated February 14, 2011, are not required by this AD.

(m) Exceptions to Certain Service Information

(1) Where paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–52A1100, Revision 5, dated February 14, 2011, specifies a compliance time relative to the Revision 5 issue date of that service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) Where Table 1, ''Condition'' column of Paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–52A1100, Revision 5, dated February 14, 2011, specifies ''airplanes without either the repair or modification accomplished in accordance with previous releases of this service bulletin,'' the corresponding condition in this AD is for ''airplanes on which either a repair or modification was not accomplished before the effective date of this AD.''

(3) Where Boeing Alert Service Bulletin 737–52A1100, Revision 5, dated February 14, 2011, specifies to contact Boeing for certain actions: Before further flight, do the repair using a method approved in accordance with the procedures specified in paragraph (n)(1) of this AD.

(n) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle ACO, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO–AMOC-Requests@faa.gov.*

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

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

(4) AMOCs approved previously in accordance with AD 2000–07–06, Amendment 39–11660 (65 FR 19302, April 11, 2000), are approved as AMOCs for the corresponding requirements of this AD.

(o) Related Information

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

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

(p) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on June 28, 2013.

(i) Procedure 4, ''Surface Inspection of Aluminum Parts (Meter Display),'' of Section 51–00–00, of Part 6, ''Eddy Current,'' of Boeing 737 Nondestructive Test (NDT) Manual, D6–37239, Revision 108, dated November 15, 2012. The revision level of this document is identified only in the letter of transmittal; no other page of this document contains this information.

(ii) Procedure 23, ''Aluminum Part Surface Inspection (Impedance Plane Display),'' Section 51–00–00, of Part 6, ''Eddy Current,'' of Boeing 737 Nondestructive Test (NDT) Manual, D6–37239, Revision 108, dated November 15, 2012. The revision level of this document is identified only in the letter of transmittal; no other page of this document contains this information.

(iii) Boeing Alert Service Bulletin 737–52A1100, Revision 5, dated February 14, 2011.

(iv) Boeing Special Attention Service Bulletin 737–52–1149, dated December 11, 2003.

(4) The following service information was approved for IBR on May 16, 2000 (65 FR 19302, April 11, 2000).

(i) Figure 4, of Section 51–00–00, of Part 6, of Boeing 737 Nondestructive Test (NDT) Manual, D6–37239, dated August 5, 1997. The revision level is not specified on the title page or list of effective pages of this document. The title page of this document is not dated. Pages 1 and 2 of the list of effective pages of this document are dated August 5, 1997; page 2A is dated February 5, 1997.

(ii) Figure 23, of Section 51–00–00, of Part 6, of Boeing 737 Nondestructive Test (NDT) Manual, D6–37239, dated August 5, 1997. The revision level is not specified on the title page or list of effective pages of this document. The title page of this document is not dated. Pages 1 and 2 of the list of effective pages of this document are dated August 5, 1997; page 2A is dated February 5, 1997.

(iii) Boeing Service Bulletin 737–52–1100, Revision 2, dated March 31, 1994.

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

(6) You may view this service information at FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on April 26, 2013.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–10797 Filed 5–23–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0445; Directorate Identifier 2012–SW–098–AD; Amendment 39–17458; AD 2013–10–05]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Deutschland GmbH Helicopters

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for Eurocopter Deutschland GmbH (ECD) Model MBB–BK 117 C–2 helicopters. This AD requires revising the operating limitations to prohibit flights under instrument flight rules (IFR) or under night visual flight rules (VFR) when the autotrim is inoperative. The actions of this AD are intended to prevent a workload situation whereby stabilizing the helicopter in flight would be difficult if not impossible, resulting in possible loss of helicopter control.

DATES: This AD becomes effective June 10, 2013.

We must receive comments on this AD by July 23, 2013.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

FOR FURTHER INFORMATION CONTACT: George Schwab, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *george.schwab@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments prior to it becoming effective. However, we invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that resulted from adopting this AD. The most helpful comments reference a specific portion of the AD, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit them only one time. We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking during the comment period. We will consider all the comments we receive and may conduct additional rulemaking based on those comments.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, issued EASA AD No. 2012–0216, dated October 18, 2012, to correct an unsafe condition for ECD Model MBB–BK 117 C–2 helicopters. EASA advises that the autopilot (AP) of a Model MBB–BK 117 C–2 helicopter failed in flight with ''ACTUATOR'' and ''BACKUP SAS'' messages appearing on the caution and advisory display, ''AP'' illuminated in red on the warning unit, and Y (Yaw actuator) and P (pitch actuator) on the primary flight display.

With the AP switched off, cautions ''YAW SAS'' and ''BACKUP SAS'' appeared on the caution and advisory display. When the AP was switched on again, the ''YAW SAS'' caution stopped appearing while ''BACKUP SAS'' still appeared, EASA reports.

According to EASA, an investigation indicates that a short circuit on the yaw Smart Electro-Mechanical Actuator (SEMA) ''ACTIV'' input to ground led to the seizure of all five SEMA units. EASA advises that this condition, if not corrected, ''combined with an inoperative Autotrim in Pitch or Roll, or combined with an inoperative Autotrim in Cyclic and Yaw axis,'' could significantly reduce the pilot's reaction time to stabilize the helicopter, resulting in possible loss of helicopter control. EASA reports that this situation could occur when operating under IFR or night VFR.

FAA's Determination

These helicopters have been approved by the aviation authority of Germany and are approved for operation in the United States. Pursuant to our bilateral agreement with Germany, EASA, its technical representative, has notified us of the unsafe condition described in the EASA AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs.

Related Service Information

Eurocopter has issued Alert Service Bulletin MBB–BK117 C–2–22A–013, dated October 12, 2012 (ASB), which states that the autopilot and caution indication systems failed during flight. Eurocopter's initial analysis revealed that a short circuit occurred within a SEMA, causing the SEMAs' adjustment travel to ''freeze.'' If this failure is combined with a failure of the autotrim system in the pitch, roll, or yaw axis, it could reduce the pilot's reaction time to stabilize the helicopter ''in an unacceptable way.'' The ASB requires revision of sections of the master minimum equipment list (MMEL) with respect to inoperative TRIM-function to restrict dispatch conditions.

AD Requirements

Within 25 hours time-in-service (TIS) or 30 days, whichever comes first, this AD requires you to insert a statement into the operating limitations section of the MBB–BK 117C–2 Rotorcraft Flight Manual under paragraph 2.2, Kinds of Operations, prohibiting operation under IFR or Night VFR with the autotrim inoperative in pitch or roll, or combined inoperative autotrim in cyclic and yaw axis.

Differences Between This AD and the EASA AD

The EASA AD requires revising the operator's minimum equipment list (MEL). We make no requirement regarding the MEL.

Costs of Compliance

We estimate that this AD will affect 109 helicopters of U.S. Registry and that labor costs will average $85 a work hour. Based on these assumptions, we expect the following costs:

Placing the AD in the limitations section of the RFM will require a 0.2 work-hour and no parts for a cost of $17 per helicopter, $1,853 for the U.S. fleet.

FAA's Justification and Determination of the Effective Date

Providing an opportunity for public comments prior to adopting these AD requirements would delay implementing the safety actions needed to correct this known unsafe condition. Therefore, we find that the risk to the flying public justifies waiving notice and comment prior to the adoption of this rule, because the required corrective actions must be accomplished within 25 hours TIS or 30 days. As the ECD Model MBB–BK 117 C–2 helicopter is used in such areas as emergency medical service, newsgathering, and law enforcement, this is a short time period.

Since an unsafe condition exists that requires the immediate adoption of this AD, we determined that notice and opportunity for public comment before issuing this AD are impractical and contrary to the public interest and that good cause exists for making this amendment effective in less than 30 days.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013–10–05 Eurocopter Deutschland GmbH Helicopters: Amendment 39–17458; Docket No. FAA–2013–0445; Directorate Identifier 2012–SW–098–AD.

(a) Applicability

This AD applies to Eurocopter Deutschland GmbH (ECD) Model MBB–BK 117 C–2 helicopters, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as a failure of the autotrim system in pitch or roll, or a combined inoperative autotrim in the cyclic and yaw axis. This condition could

significantly increase the pilot's workload to stabilize the helicopter, especially in low visibility conditions, resulting in loss of helicopter control.

(c) Effective Date

This AD becomes effective June 10, 2013.

(d) Compliance

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

(e) Required Action

Within 25 hours time-in-service or 30 days, whichever comes first, revise the Operating Limitations section of the MBB–BK 117C–2 Rotorcraft Flight Manual (RFM), under paragraph 2.2, Kinds of Operations, by inserting a copy of this AD into the RFM or by making pen and ink changes to add the following statement:

Dispatch under Instrument Flight Rules (IFR) or night Visual Flight Rules (VFR) with the Autotrim inoperative in Pitch or Roll or a combined inoperative Autotrim in Cyclic and Yaw axis is PROHIBITED.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: George Schwab, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *george.schwab@faa.gov.*

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

(g) Additional Information

(1) Eurocopter Alert Service Bulletin MBB–BK117 C–2–22A–013, dated October 12, 2012, which is not incorporated by reference, contains additional information about the subject of this AD. For service information identified in this AD, contact American Eurocopter Corporation, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.eurocopter.com/techpub.* You may review a copy of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(2) The subject of this AD is addressed in the European Aviation Safety Agency AD No. 2012–0216, dated October 18, 2012.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 22, Autopilot Dispatch Restriction.

Issued in Fort Worth, Texas, on May 14, 2013.

Kim Smith,

Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–12307 Filed 5–23–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–1142; Airspace Docket No. 12–ANM–25]

Amendment of Class D and Class E Airspace; Portland-Hillsboro, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Portland-Hillsboro Airport, Portland-Hillsboro, OR, to accommodate aircraft departing and arriving under Instrument Flight Rule (IFR) operations at the airport. Also, the geographic coordinates are updated for the airport. This action, initiated by the biennial review of the Portland-Hillsboro airspace area, improves the safety and management of IFR operations at the airport.

DATES: Effective date, 0901 UTC, August 22, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Richard Roberts, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4517.

SUPPLEMENTARY INFORMATION:

History

On December 21, 2012, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend controlled airspace at Portland-Hillsboro, OR (77 FR 75593). This action was initiated by a biennial review of the airspace. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraphs 5000, 6002 and 6004, respectively, of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E airspace designated as an extension to Class D surface area. The size of the Class E airspace to the northwest has been reduced, the Class E airspace to the south removed, and additional Class E airspace created south southeast of the Portland-Hillsboro Airport. The geographic coordinates of the airport also are updated to coincide with the FAA's aeronautical database. This action enhances the safety and management of IFR operations.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies controlled airspace at Portland-Hillsboro Airport, Portland-Hillsboro, OR.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,''

paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air)

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E. O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012 is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

ANM OR D Portland-Hillsboro, OR [Modified]

Portland-Hillsboro Airport, OR
(Lat. 45°32′26″ N., long. 122°57′01″ W.)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 4.2-mile radius of Portland-Hillsboro Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ANM OR E2 Portland-Hillsboro, OR [Modified]

Portland-Hillsboro Airport, OR
(Lat. 45°32′26″ N., long. 122°57′01″ W.)

That airspace extending upward from the surface within a 4.2-mile radius of Portland-Hillsboro Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6004 Class E airspace areas designated as an extension to Class D surface area.

* * * * *

ANM OR E4 Portland-Hillsboro, OR [Modified]

Portland-Hillsboro Airport, OR
(Lat. 45°32′26″ N., long. 122°57′01″ W.)

That airspace extending upward from the surface within 1 mile each side of the 144° bearing of the airport extending from the 4.2-mile radius to 5.5 miles southeast of the airport and within 1.5 miles each side of the 323° bearing of the airport extending from the 4.2-mile radius of the airport to 7 miles northwest of the airport.

Issued in Seattle, Washington, on May 12, 2013.

Clark Desing,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2013–12314 Filed 5–23–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0051; Airspace Docket No. 13–ANM–2]

Establishment of Class E Airspace; Cherokee, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at the Cherokee VHF Omni-Directional Radio Range/Distance Measuring Equipment (VOR/DME) navigation aid, Cherokee, WY, to facilitate vectoring of Instrument Flight Rules (IFR) aircraft under control of Denver and Salt Lake City Air Route Traffic Control Centers (ARTCCs). This improves the safety and management of IFR operations within the National Airspace System.

DATES: Effective date, 0901 UTC, August 22, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On March 4, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish controlled airspace at Cherokee, WY (78 FR 14032). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6006, of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E en route domestic airspace extending upward from 1,200 feet above the surface, at the Cherokee VOR/DME navigation aid, Cherokee, WY, to accommodate IFR aircraft under control of Denver and Salt Lake City ARTCCs by vectoring aircraft from en route airspace to terminal areas. This action is necessary for the safety and management of IFR operations.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of

airspace. This regulation is within the scope of that authority as it establishes controlled airspace at the Cherokee VOR/DME navigation aid, Cherokee, WY.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air)

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E. O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR part 71.1 of the Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012 is amended as follows:

Paragraph 6006 En route domestic airspace areas.

* * * * *

ANM WY E6 Cherokee, WY [New]

Cherokee VOR/DME, WY
(Lat. 41°45′21″ N., long. 107°34′55″ W.)

That airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 39°59′03″ N., long. 110°43′27″ W.; to lat. 40°21′23″ N., long. 109°42′25″ W.; to lat. 41°10′22″ N., long. 109°42′26″ W.; to lat. 42°15′53″ N., long. 108°06′44″ W.; to lat. 42°52′37″ N., long. 107°47′58″ W.; to lat. 43°01′57″ N., long. 107°06′08″ W.; to lat. 42°23′15″ N., long. 106°50′11″ W.; to lat. 41°49′09″ N., long. 105°41′46″ W.; to lat. 40°33′32″ N., long. 105°37′50″ W.; to lat. 40°36′40″ N., long. 108°02′31″ W.; to lat. 39°26′08″ N., long. 110°01′37″ W.; to lat. 39°37′44″ N., long. 111°07′28″ W., thence to the point of beginning.

Issued in Seattle, Washington, on May 12, 2013.

Clark Desing,

Manager, Operations Support Group. Western Service Center.

[FR Doc. 2013–12313 Filed 5–23–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Part 42

RIN 1400–AD39

[Public Notice 8332]

Visas: Documentation of Immigrants Under the Immigration and Nationality Act, as Amended

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State amends its regulations to eliminate the use of Form OF–224 as a method of recording an alien's entitlement to an immigrant visa classification. Due to the availability of automated systems at all immigrant visa-issuing posts, this entitlement is now recorded automatically, rendering the use of Form OF–224 unnecessary and obsolete.

DATES: This rule is effective May 24, 2013.

FOR FURTHER INFORMATION CONTACT: Taylor W. Beaumont, Legislation and Regulations Division, Legal Affairs, Office of Visa Services, Bureau of Consular Affairs, Department of State, 2401 E Street NW., Room L–603D, Washington, DC 20520–0106, (202) 663–2951, email (*BeaumontTW@state.gov*).

SUPPLEMENTARY INFORMATION: This rule eliminates the use of Form OF–224, Immigrant Visa Control Card, as a method of recording an alien's entitlement to an immigrant visa classification. Section 203(e)(3) of the Immigration and Nationality Act (INA) requires the Department of State to prescribe regulations to maintain waiting lists of applicants for immigrant visas. In accordance with this provision, 22 CFR 42.52 was amended in 1988 to require consular officers to record that an alien is entitled to an immigrant visa classification, either on Form OF–224 or through the automated system in use at selected posts. As all immigrant-visa issuing posts now use an automated system, consular officers no longer use Form OF–224, making that part of the rule obsolete.

Regulatory Findings

A. Administrative Procedure Act

The Department is publishing this rule as a final rule based on its determination that this rulemaking relates to a matter relating to agency management, in that this rulemaking involves non-substantive changes to procedures. The Department does not expect any public comment. Since the rule is exempt from the provisions of 5 U.S.C. 553, it will be effective immediately.

B. Regulatory Flexibility Act/Executive Order 13272: Small Business

Because this final rule is exempt from notice and comment rulemaking under 5 U.S.C. 553, it is exempt from the regulatory flexibility analysis requirements set forth at sections 603 and 604 of the Regulatory Flexibility Act (5 U.S.C. 603 and 604). Nonetheless, consistent with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Department has reviewed this regulation and certifies that this rule will not have a significant economic impact on a substantial number of small entities.

C. The Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, 109 Stat. 48, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of $100 million or more by State, local, or tribal governments, or by the private sector. This rule will not result in any such expenditure, nor will it significantly or uniquely affect small governments.

D. The Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121.

E. Executive Order 12866: Regulatory Planning and Review

The Department has reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866. Consistent with Executive Order 12866, the Department does not consider the rule to be an significant action as defined by the Executive Order.

F. Executive Order 13563: Improving Regulation and Regulatory Review

The Department of State has considered this rule in light of Executive Order 13563 and affirms that this regulation is consistent with the guidance therein.

G. Executive Orders 12372 and 13132: Federalism

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. The rule will not have federalism implications warranting the application of Executive Orders No. 12372 and No. 13132.

H. Executive Order 12988: Civil Justice Reform

The Department has reviewed the rule in light of sections 3(a) and 3(b)(2) of Executive Order No. 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

I. Paperwork Reduction Act

This rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

List of Subjects in 22 CFR Part 42

Immigration, Passports and visas.

Accordingly, for the reasons set forth in the preamble, 22 CFR part 42 is amended as follows:

PART 42—VISAS: DOCUMENTATION OF IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

■ 1. The authority citation for part 42 continues to read as follows:

Authority: 8 U.S.C. 1104 and 1182; Pub. L. 105–277; Pub. L. 108–449; 112 Stat. 2681–795 through 2681–801; The Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (done at the Hague, May 29, 1993), S. Treaty Doc. 105–51 (1998), 1870 U.N.T.S. 167 (reg. No. 31922 (1993)); The Intercountry Adoption Act of 2000, 42 U.S.C. 14901–14954. Pub. L. 106–279.

■ 2. Section 42.52 is amended by revising paragraph (c)(1) to read as follows:

§ 42.52 Post records of visa applications.

* * * * *

(c) * * *

(1) A record that an alien is entitled to an immigrant visa classification shall be made whenever the consular officer is satisfied—or receives evidence—that the alien is within the criteria set forth in paragraph (b) of this section.

* * * * *

Dated: April 11, 2013.

Janice L. Jacobs,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 2013–12453 Filed 5–23–13; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 165

[Docket ID: DOD–2009–OS–0030]

RIN 0790–AI45

Recoupment of Nonrecurring Costs (NCs) on Sales of U.S. Items

AGENCY: Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer, DoD.

ACTION: Final rule.

SUMMARY: This rule updates policy, responsibilities, and procedures for calculating and assessing NC recoupment charges on sales of items developed for or by the Department of Defense to non-U.S. Government customers. All costs related to the sale of the items are fully reimbursable by the non-U.S. Government.

DATES: *Effective Date:* This rule is effective June 24, 2013.

FOR FURTHER INFORMATION CONTACT: Claire Nelson, 703–602–0250.

SUPPLEMENTARY INFORMATION:

Executive Summary

I. Purpose of the Regulatory Action

This rule updates policy, responsibilities, and procedures to conform with sections 2761(e)(1)(B), 2761 (e)(2), and 2767(b) of Title22, United States Code (U.S.C.) (also known as ''sections 21(e)(1)(B), 21(e)(2), and 27(b) of the Arms Export Control Act, as amended'') for calculating and assessing NC recoupment charges on sales of items developed for or by the Department of Defense to non-U.S. Government customers.

II. Summary of the Major Provisions of the Regulatory Action In Question

This rule provides guidance for reviewing NC waiver requests; clarifies when NC calculations are used; clarifies the types of DoD agreements covered; and provides additional waiver authorities.

III. Costs and Benefits

All costs related to the sale of the items are fully reimbursable by the non-U.S. Government customers. The Department of Defense does not incur cost nor receive profit for the items sold. The non-U.S. Government customers benefit from the sale of the items from the Department of Defense. The NC amount collected in 2010 and 2011 was $4.8 and $9.6 million, respectively. On average it is roughly $7.2 million annually.

Public Comments

The Department of Defense published a proposed rule on November 4, 2011 (76 FR 68376–68378). No comments were received on the proposed rule.

The Department has made a few additional changes in the final rule. Reference citations were updated. Definitions were updated or added for clarification. This final rule provides guidance for reviewing NC waiver requests; clarifies when NC calculations are used; clarifies the types of DoD agreements covered; and provides additional waiver authorities.

Regulatory Procedures

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563 ''Improving Regulation and Regulatory Review''

It has been certified that 32 CFR part 165 does not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a section 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 these Executive Orders.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been certified that 32 CFR part 165 does not contain a Federal mandate that may result in expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

It has been certified that 32 CFR part 165 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not if promulgated, have a significant economic impact on a substantial number of small entities.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been certified that 32 CFR part 165 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, ''Federalism''

It has been certified that 32 CFR part 165 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 165

Armed forces, Arms and munitions, Government contracts.

Accordingly 32 CFR Part 165 is revised to read as follows:

PART 165—RECOUPMENT OF NONRECURRING COSTS (NCs) ON SALES OF U.S. ITEMS

Sec.
165.1 Purpose.
165.2 Applicability.
165.3 Definitions.
165.4 Policy.
165.5 Responsibilities.
165.6 Procedures.
165.7 Waivers (including reductions).

Authority: 22 U.S.C. 2761(e)(1)(B); 22 U.S.C. 2761 (e)(2); and 22 U.S.C. 2767(b)

§ 165.1 Purpose.

This part updates policy, responsibilities, and procedures to conform with 22 U.S.C. 2761(e)(1)(B), 2761 (e)(2), and 2767(b) (also known as ''sections 21(e)(1)(B), 21(e)(2), and 27(b) of the Arms Export Control Act, as amended'') for calculating and assessing NC recoupment charges on sales of items developed for or by the Department of Defense to non-U.S. Government customers.

§ 165.2 Applicability.

(a) This part applies to the Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as the ''DoD Components'').

(b) This part does not apply to sales of excess property when accountability has been transferred to property disposal activities and the property is sold in open competition to the highest bidder.

§ 165.3 Definitions.

The following definitions apply to this part.

Blanket waiver. An NC recoupment charge waiver that is not related to a particular sale; for example, waivers for all sales to a country or all sales of a weapon system.

Cooperative projects. Defined in 22 U.S.C. 2767(b).

Cost pool. The total cost to be distributed across the specific number of units, normally the number of units produced plus those planned to be produced. The nonrecurring research, development, test, and evaluation cost pool comprises the costs described in the definition for nonrecurring research, development, test and evaluation costs in this section. The nonrecurring production cost pool comprises costs described in the definition for nonrecurring production costs.

Foreign military sale. A sale by the U.S. Government (U.S.G.) of defense items or defense services to a foreign government or international organization pursuant to 22 U.S.C. Chapter 39.

Major defense equipment. Any item of significant military equipment on the United States Munitions List having a nonrecurring research, development, test, and evaluation cost of more than 50 million dollars or a total production cost of more than 200 million dollars. The determination of whether an item meets the major defense equipment dollar threshold for research, development, test, and evaluation shall be based on DoD obligations recorded to the date the equipment is offered for sale. Production costs shall include costs incurred by the Department of Defense. Production costs for the foreign military sales program and known direct commercial sales production are excluded.

Model. A basic alpha-numeric designation in a weapon system series (e.g., a ship hull series, an equipment or system series, an airframe series, or a vehicle series). For example, the AN/TPQ–36(V)2 and the (AN/TPQ–36(V)10 are different models in the same radar system series.

Nonrecurring production costs. Those one-time costs incurred in support of previous production of the model specified and those costs specifically incurred in support of the total projected production run. Those NCs include DoD expenditures for preproduction engineering; special tooling; special test equipment; production engineering; product improvement; destructive testing; and pilot model production, testing, and evaluation. That includes costs of any engineering change proposals initiated before the date of calculations of the NC recoupment charge. Nonrecurring production costs do not include DoD expenditures for machine tools, capital equipment, or facilities for which contractor rental payments are made or waived in accordance with the Defense Federal Acquisition Regulation Supplement.[1]

Nonrecurring research, development, test and evaluation costs. Those costs funded by a research, development, test, and evaluation appropriation to develop or improve the product or technology under consideration either through contract or in-house DoD effort. This includes costs of any engineering change proposal started before the date of calculation of the NC recoupment charges as well as projections of such costs, to the extent additional effort applicable to the sale model or technology is necessary or planned. It does not include costs funded by either procurement or operation and maintenance appropriations.

Pro rata recovery of NCs. Equal distribution (proration) of a pool of NCs to a specific number of units that benefit from the investment so that a DoD Component shall collect from a customer a fair (pro rata) share of the investment in the product being sold. The production quantity base used to determine the pro rata calculation of major defense equipment includes total production.

Significant change in NCs recoupment charge. (1) A significant change in an NC recoupment charge occurs when:

(i) A new calculation shows a change of 30 percent of the current system NC charge.

(ii) The NC unit charge increases or decreases by 50,000 dollars or more, or

(iii) Where the potential for a 5 million dollar change in recoupment exists.

(2) The total collections may be estimated based on the projected sales quantities. A significant change occurs

[1] Available at *http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.*

when potential collections increase or decrease by 5 million dollars.

Special research, development, test, and evaluation and nonrecurring production costs. Costs incurred under a foreign military sale at the request of, or for the benefit of, a foreign customer to develop a special feature or unique or joint requirement. Those costs must be paid by the customer as they are incurred.

§ 165.4 Policy.

It is DoD policy that:

(a) The NC recoupment charge shall be imposed for sales of major defense equipment only as required by an Act of Congress. The USD(P), through the Defense Security Cooperation Agency, may grant a waiver to recoupment charges in accordance with in accordance with this part and DoD Directive 5105.65.'' [2]

(b) The NC charges shall be based on the amount of the Department of Defense nonrecurring investment in an item.

§ 165.5 Responsibilities.

(a) Under Secretary of Defense (Comptroller)/Chief Financial Officer (USD(C)/CFO)) shall provide necessary financial management guidance to the Department of Defense regarding the recoupment of NC.

(b) The Under Secretary of Defense for Acquisition, Technology, and Logistics shall take appropriate action to ensure the Defense Federal Acquisition Regulation Supplement remains in accordance with this part.

(c) The USD(P) shall:

(1) Monitor the application of this part.

(2) Review and approve NC recoupment charges.

(3) Review and approve NC recoupment charge waiver requests received from foreign countries and international organizations for foreign military sales.

(4) Oversee publication of a listing of items developed for or by the Department of Defense to which NC recoupment charges are applicable.

(5) Use the guidance in § 165.7 of this part to review NC waiver requests.

(d) The Secretaries of the Military Departments and the Directors of the Defense Agencies shall:

(1) Determine the DoD nonrecurring investment in items developed for or by the Department of Defense and perform required pro rata calculations in accordance with this part and financial management guidance from USD(C)/CFO when a military equipment asset type is considered a candidate for sale.

(2) Validate and provide recommended charges to the USD(P). Retain supporting documentation until the item has been eliminated from the NC recoupment charge listing.

(3) Review approved NC recoupment charges on a biennial basis to determine if there has been a change in factors or assumptions used to compute a NC recoupment charge and, if there is a significant change in a NC recoupment charge, recommend the change to USD(P) for review, approval, and publication in DSCA 5105.38–M, ''Security Assistance Management Manual (SAMM).'' [3]

(4) Collect charges on foreign military sales, in accordance with DoD 7000.14–R.[4]

(5) Deposit collections to accounts as prescribed by the USD(C)/CFO.

(6) Request guidance from the USD(P), within 90 days after determining that an issue concerning an NC recoupment charge cannot be resolved.

§ 165.6 Procedures.

(a) The NC recoupment charge to be reimbursed shall be a pro rata recovery of NCs for the applicable major defense equipment (MDE). Recovery of NC recoupment charges shall cease upon the recovery of total DoD nonrecurring investment costs. Such charges shall be based on a cost pool as defined in § 165.3. For an MDE system that includes more than one component, a ''building block'' approach (i.e., the sum of NC recoupment charges for individual components) shall be used to determine the NC recoupment charge for the sale of the entire system.

(b) The NC recoupment charge shall not apply when a waiver has been approved by USD(P), in accordance with § 165.7, or when sales are financed with USG funds made available on a non-repayable basis. Approved revised NC recoupment charges shall not be applied retroactively to accepted foreign military sales agreements.

(c) When MDE is sold at a reduced price due to age or condition, the equipment's NC recoupment charge shall be reduced by the same percentage reduction.

(d) The full amount of costs for ''special'' research, development, test, and evaluation and nonrecurring production costs incurred for the benefit of particular customers shall be paid by those customers. However, when a subsequent purchaser requests the same specialized features that resulted from the added ''special'' research, development, test, and evaluation and nonrecurring production costs, a pro rata share of those costs may be paid by the subsequent purchaser and transferred to the original customer if those special NCs exceed 50 million dollars. The pro rata share may be a unit charge determined by the DoD Component as a result of distribution of the total costs divided by the total production. Unless otherwise authorized by USD(P), special research, development, test, and evaluation and nonrecurring production costs will not be collected after 10 years have passed since the date the original FMS customer accepted the FMS Letter of Offer and Acceptance (LOA) that included the special NC charges. The USG shall not be charged any NC recoupment charges if it adopts the features for its own use or provides equipment with such features under a U.S. grant aid or similar program.

(e) Cooperative DoD agreements, to include co-production, co-development and cooperative development agreements, shall use the policy in this part to determine the allocation basis for recouping the participant investment costs from third-party purchasers. Each respective DoD agreement shall bind all parties to the agreement to comply with the policies in this part regarding third party sales and for the distribution of recouped funds among the parties.

§ 165.7 Waivers (including reductions).

(a) Title 22, U.S.C. 2761(e)(1)(B) requires the recoupment of a proportionate amount of NCs of MDE from foreign military sales customers.

(b) Pursuant to 22 U.S.C. 2761(e)(2)(A), a waiver or reduction in the NC for a specific sale may be made if the sale will significantly advance U.S. Government interests in:

(1) Standardization with the North Atlantic Treaty Organization.

(2) Standardization with Australia, Israel, Japan, New Zealand, or the Republic of Korea in furtherance of mutual defense treaties with one or more of those countries.

(3) Foreign procurement in the United States under a co-production agreement.

(c) In accordance with 22 U.S.C. 2761(e)(2)(B), a waiver may be made if:

(1) Imposition of an NC recoupment charge likely would result in the loss of the sale; or,

(2) The sale is for an MDE also being procured for the Military Services, and will result in DoD unit cost savings that substantially offset the revenue foregone by waiving the recoupment charge because the total quantity of purchased

[2] Available at *http://www.dtic.mil/whs/directives/corres/pdf/510565p.pdf.*

[3] Available at *http://www.dsca.osd.mil/samm/.*

[4] Available at *http://www.defenselink.mil/comptroller/fmr/.*

equipment caused a reduction in the unit cost.

(d) In accordance with 22 U.S.C. 2761(e)(2)(C), any increase in a NC charge previously approved as appropriate may be waived for a particular sale if the increase results from a correction of an estimate of the production quantity base that was used for calculating the charge.

(e) Requests for waivers should originate with the foreign government and shall provide information on the extent of standardization to be derived as a result of the waiver.

(1) Blanket waiver requests should not be submitted and shall not be considered.

(2) A waiver request shall not be considered for a sale that was accepted without an NC recoupment charge waiver, unless the acceptance was conditional on consideration of the waiver request.

(3) Requests for waivers shall be processed expeditiously, and approved or disapproved by USD(P) within 60 days of receipt. A waiver in whole or in part of the recoupment charge or a denial of the request shall be provided in writing.

Dated: May 21, 2013.

Patricia L. Toppings,

OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2013–12411 Filed 5–23–13; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165

[Docket Number USCG–2012–1036]

RIN 1625–AA00; 1625–AA08

Safety Zones and Special Local Regulations; Recurring Marine Events in Captain of the Port Long Island Sound Zone

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is adding, deleting, and modifying safety zones and special local regulations and adding language to clarify time frames and notification requirements for annual marine events in the Sector Long Island Sound Captain of the Port (COTP) Zone. When these regulated areas are activated and subject to enforcement, this rule will restrict vessels from portions of water areas during these recurring events. The safety zones and special local regulations will facilitate public notification of events and provide protective measures for the maritime public and event participants from the hazards associated with these recurring events.

DATES: This rule is effective June 24, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2012–1036. 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 Scott Baumgartner, Waterways Management Division at Coast Guard Sector Long Island Sound, telephone 203–468–4559, email *scott.a.baumgartner@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard promulgated safety zones and special local regulations for most of the events in the past and received no public comments. The most recently promulgated rulemaking was on April 4, 2013 when the Coast Guard published a notice of proposed rulemaking (NPRM) entitled ''Safety Zones & Special Local Regulation; Recurring Marine Events in Captain of the Port Long Island Sound Zone'' in the **Federal Register** (78 FR 20277).

Prior to the NPRM being published in the **Federal Register** (78 FR 20277), the Coast Guard promulgated a similar rulemaking on April 4, 2012 when it published an NPRM entitled ''Special Local Regulation and Safety Zones; Marine Events in Captain of the Port Sector Long Island Sound Zone'' in the **Federal Register** (77 FR 20324). That NPRM was followed by a final rule published on July 5, 2012, entitled, ''Special Local Regulation and Safety Zones; Marine Events in Captain of the Port Sector Long Island Sound Zone'' in the **Federal Register** (77 FR 39633).

For all of the proposed rulemakings listed in this section no public comments were received. There were no requests received for a public meeting and due to the fact that no significant issues were identified the Coast Guard determined that no public meetings were needed.

B. Basis and Purpose

The legal basis for this rule is 33 U.S.C. 1231, 1233; 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; Public Law 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define regulatory safety zones.

This regulation carries out four related actions: (1) Establish new marine event regulated areas, (2) remove old safety zones that are no longer needed, (3) modify and update some existing regulated areas and (4) clarify event time frames and notification requirements for marine events. This will account for new events, remove events that are no longer held, and to account for modifications to several of the recurring marine events that have occurred since last year.

C. Discussion of Comments, Changes and the Final Rule

No comments were received and no changes have been made to the final rule.

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.

We expect the economic impact of this rule to be minimal. Although this regulation may have some impact on the

public, the potential impact will be minimized for the following reasons:

The Coast Guard has previously promulgated safety zones, security zones or special local regulations, in accordance with 33 CFR Parts 100 and 165, for all event areas contained within this regulation and has not received notice of any negative impact caused by any of the safety zones or special local regulations.

Vessels will only be restricted from safety zones and special local regulation areas for a short duration of time. Vessels may transit in portions of the affected waterway except for those areas covered by the regulated areas. Notifications of exact dates and times of the enforcement period will be made to the local maritime community through the Local Notice to Mariners and Broadcast Notice to Mariners or through a Notice of Enforcement in the **Federal Register**. No new or additional restrictions would be imposed on vessel traffic.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard received zero comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The regulated areas will not have a significant economic impact on a substantial number of small entities for the following reasons: The regulated areas will be of limited size and of short duration; vessels that can safely do so may navigate in all other portions of the waterways except for the areas designated as regulated areas; most of these regulated areas have been promulgated in the past with no public comments submitted. Additionally, before the effective period, the Coast Guard will issue notice of the time and location of each regulated area through all appropriate means including but not limited to Local Notice to Mariners or Broadcast Notice to Mariners.

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 safety zones and special local regulations. This rule is categorically excluded from further review under paragraph 34(g) & (h) 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

33 CFR Part 100

Marine safety, Navigation (water), Reporting and recording requirements, Waterways.

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 parts 100 and 165 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. In § 100.100, revise paragraph (c) and the Table to § 100.100 to read as follows:

§ 100.100 Special Local Regulations; Regattas and Boat Races in the Coast Guard Sector Long Island Sound Captain of the Port Zone.

* * * * *

(c) Although listed in the Code of Federal Regulations, sponsors of events listed in Table to § 100.100 are still required to submit marine event applications in accordance with 33 CFR 100.15. Each application must:

(1) Be submitted no less than 60 days before the date of the proposed event.

(2) If the proposed event does not have a specified date the sponsor shall hold the event during the month it is listed in Table to § 100.100.

(3) Any proposed event not being held on the specified date or within the month listed in Table to § 100.100 shall be considered a new marine event and the sponsor shall submit a new marine event application in accordance with 33 CFR 100.15 no less than 135 days before the start of the event.

* * * * *

TABLE TO § 100.100

1.1 Harvard-Yale Regatta, Thames River, New London, CT	• Event type: Boat Race. • Date: Last Saturday in May through second Saturday of June, from 8 a.m. until 5 p.m. • Location: All waters of the Thames River at New London, Connecticut, between the Penn Central Draw Bridge 41°21′46.94″ N 072°5′14.46″ W to Bartlett Cove 41°25′35.9″ N 072°5′42.89″ W (NAD 83). • Additional stipulations: Spectator vessels must be at anchor within a designated spectator area or moored to a waterfront facility within the regulated area in such a way that they shall not interfere with the progress of the event at least 30 minutes prior to the start of the races. They must remain moored or at anchor until the men's varsity have passed their positions. At that time, spectator vessels located south of the Harvard Boathouse may proceed downriver at a reasonable speed. Vessels situated between the Harvard Boathouse and the finish line must remain stationary until both crews return safely to their boathouses. If for any reason the men's varsity crew race is postponed, spectator vessels will remain in position until notified by Coast Guard or regatta patrol personnel. The last 1000 feet of the race course near the finish line will be delineated by four temporary white buoys provided by the sponsor. All spectator craft shall remain behind these buoys during the event. Spectator craft shall not anchor: to the west of the race course, between Scotch Cap and Bartlett Point Light, or within the race course boundaries or in such a manner that would allow their vessel to drift or swing into the race course. During the effective period all vessels shall proceed at a speed not to exceed six knots in the regulated area. Spectator vessels shall not follow the crews during the races. Swimming is prohibited in the vicinity of the race course during the races. A vessel operating in the vicinity of the Submarine Base may not cause waves which result in damage to submarines or other vessels in the floating dry-docks.
1.2 Great Connecticut River Raft Race, Middletown, CT	• Event type: Boat Race. • Date: Last Saturday in July through the first Saturday in August, from 10 a.m. until 2 p.m. • Location: All waters of the Connecticut River Middletown, CT between Dart Island (Marker no. 73) 41°33′8.235″ N 072°33′24.459″ W and Portland Shoals (Marker no. 92) 41°33′46.828″ N 072°38′42.176″ W (NAD 83).
1.3 Head of the Connecticut Regatta, Connecticut River, CT	• Event type: Boat Race. • Date: The second Saturday of October, from 7:30 a.m. until 5 p.m. • Location: All waters of the Connecticut River between the southern tip of Gildersleeve Island 41°36′3.61″ N 072°37′18.08″ W and Light Number 87 41°33′32.905″ N 072°37′15.241″ W (NAD 83).

TABLE TO § 100.100—Continued

	• Additional stipulations: Vessels less than 20 meters in length will be allowed to transit the regulated area only under escort and at the discretion of the Coast Guard patrol commander. Vessels over 20 meters in length will be allowed to transit the regulated area, under escort, from 12:30 p.m. to 1:45 p.m. or as directed by the Coast Guard patrol commander. All transiting vessels shall operate at ''No Wake'' speed or five knots, whichever is slower. Southbound vessels awaiting escort through the regulated area will wait in the vicinity of the southern tip of Gildersleeve Island. Northbound vessels awaiting escort will wait at Light Number 87.
1.4 Riverfront Regatta, Hartford, CT	• Event type: Regatta. • Date: The first Sunday of October, from 8:30 a.m. until 4:30 p.m. • Location: All water of the Connecticut River, Hartford, CT, between the Putnum Bridge 41°42.87′ N 072°38.43′ W and the Riverside Boat House 41°46.42′ N 072°39.83′ W (NAD 83).
1.5 Patchogue Grand Prix, Patchogue, NY	• Event type: Boat Race. • Date: The last weekend of August Friday, Saturday and Sunday, from 11 a.m. until 5 p.m. • Location: All water of the Great South Bay, off Shorefront Park, Patchogue, NY from approximate position: Beginning at a point off Sand Spit Park, Patchogue, NY at position 40°44′45″ N, 073°00′51″ W then running south to a point in Great South Bay at position 40°43′46″ N, 073°00′51″ W then running south east to position 40°43′41″ N, 073°00′20″ W then running north east to position 40°43′54″ N, 072°58′46″ W then east to position 40°43′58″ N, 072°57′32″ W then east to position 40°43′57″ N, 072°56′49″ W then north to position 40°44′18″ N, 072°56′49″ W then west to position 40°44′18″ N, 072°57′32″ W then north west to position 40°44′30″ N, 072°58′32″ W then north west to position 40°44′33″ N, 072°59′12″ W then north west to position 40°44′41″ N, 072°59′51″ W then north west to position 40°44′46″ N, 073°00′04″ W and then closing the zone at position 40°44′45″ N, 073°00′51″ W (NAD 83).
1.6 Riverfront U.S. Title series Powerboat Race, Hartford, CT	• Event type: Boat Race. • Date: Labor Day weekend, Friday and Saturday from 10 a.m. until 6 p.m. and Sunday from 12:01 p.m. until 6 p.m. • Location: All water of the Connecticut River, Hartford, CT, between the Founders Bridge on the North approximate position 41° 45′53.47″ N, 072° 39′55.77″ W and 41° 45′37.39″ N, 072° 39′47.49″ W (NAD 83) to the South.
1.7 Hartford Dragon Boat Regatta	• Event type: Boat Race. • Dates: Saturday and Sunday during the third weekend of August. • Time 8 a.m. until 4:30 p.m. each day. • Regulated area: All waters of the Connecticut River in Hartford, CT between the Bulkeley Bridge 41°46′10.10″ N, 072°39′56.13″ W and the Wilbur Cross Bridge 41°45′11.67″ N, 072°39′13.64″ W (NAD 83).
1.8 Kayak for a Cause Regatta	• Event type: Boat Race. • Date: A single day during the third or fourth weekend of July. • Time: 8 a.m. until 3 p.m. • Regulated area: All water of Long Island Sound within a nine mile long and half mile wide rectangle shaped regatta course connecting Norwalk, CT and Crab Meadow, NY. The regulated area beginning in Norwalk CT east of Shady Beach at 41°5′32.24″ N, 073°23′11.18″ W then heads south crossing Long Island Sound to a point east of Crab Meadow Beach, Crab Meadow, NY at 40°55′37.21″ N, 073°19′2.14″ W then turns west connecting to a point west of Crab Meadow Beach at 40°55′48.3″ N, 073°19′51.88″ W, then turns north crossing Long Island Sound to the western boundary of Calf Pasture Beach Norwalk, CT at 41°04′57.54″ N, 073°23′53.21″ W then turns east back to its starting point at 41°5′32.24″ N, 073°23′11.18″ W (NAD 83). • Additional stipulations: 1) Spectators must maintain a minimum distance of 100 yards from each event participant and support vessel. 2) Vessels that maintain the minimum required distance from event participants and support vessels may transit through the regatta course.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 3. The authority citation for Part 165 continues to read as follows:

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

■ 4. Amend § 165.151 by revising paragraph (a)(3) and Tables 1 and 2 to read as follows:

§ 165.151 Safety Zones; Fireworks Displays, Air Shows and Swim Events in the Captain of the Port Long Island Sound Zone.

(a) * * *

(3) Although listed in the Code of Federal Regulations, sponsors of events listed in Tables 1 and 2 to § 165.151 are still required to submit marine event applications in accordance with 33 CFR 100.15. Each application must:

(i) Be submitted no less than 60 days before the date of the proposed event.

(ii) If the proposed event does not have a specified date the sponsor shall hold the event during the month it is listed in Tables 1 or 2 to § 165.151.

(iii) For those proposed events listed in Table 1 to § 165.151 to be held during the month of July, the event may take place during the final seven days of June.

(iv) Any proposed event not being held on the specified date or within the month listed in Tables 1 or 2 to § 165.151 shall be considered a new marine event and the sponsor shall submit a new marine event application in accordance with 33 CFR 100.15 no less than 135 days before the start of the event.

* * * * *

TABLE 1 TO § 165.151

2	February
2.1 Sag Harbor COC Winter Harbor Frost Fireworks	Date: A day during the first or second weekend of February from 6:15 p.m. until 6:45 p.m. Location: Waters of Sag Harbor off Long Wharf St. Pier in Sag Harbor, NY in approximate position 41°00′16.82″ N, 072°17′43.78″ W (NAD 83).
4	April
4.1 Bridgeport Bluefish April Fireworks	• Location: Waters of the Pequannock River's Lower Reach surrounding Steel Point in Bridgeport, CT in approximate position 41°10′35″ N 073°10′58″ W (NAD 83).
5	May
5.1 Jones Beach Air Show	• Date: The Thursday through Sunday before Memorial Day each May from 9:30 a.m. until 3:30 p.m. each day. • Location: Waters of Atlantic Ocean off Jones Beach State Park, Wantagh, NY. In approximate positions 40°34′54″ N, 073°33′21″ W, then running east along the shoreline of Jones Beach State Park to approximate position 40°35′49″ N, 073°28′47″ W; then running south to a position in the Atlantic Ocean off of Jones Beach at approximate position 40°33′15″ N, 073°33′09″ W; then running West to approximate position 40°35′05″ N, 073°28′34″ W; then running North to the point of origin. (NAD 83).
5.2 Greenport Spring Fireworks	• Date: A day during the last week of May or First week of June. • Location: Waters of Greenport Harbor off Mitchell Park and Marina, Greenport, NY in approximate position 41°05′59.09″ N, 072°21′31.44″ W (NAD 83).
6	June
6.1 Barnum Festival Fireworks	• Date: last Saturday in June • Rain Date: following Saturday • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of Bridgeport Harbor, Bridgeport, CT in approximate position 41°9′04″ N, 073°12′49″ W (NAD 83).
6.2 Town of Branford Fireworks	• Location: Waters of Branford Harbor, Branford, CT in approximate position, 41°15′30″ N, 072°49′22″ W (NAD 83).
6.3 Vietnam Veterans/Town of East Haven Fireworks	• Location: Waters off Cosey beach, East Haven, CT in approximate position, 41°14′19″ N, 072°52′9.8″ W (NAD 83).
6.4 Salute to Veterans Fireworks	• Date: The third Saturday of June. • Rain date: The fourth Saturday of June. • Location: Waters of Reynolds Channel off Hempstead, NY in approximate position 40°35′36.62″ N, 073°35′20.72″ W (NAD 83).
6.5 Cherry Grove Arts Project Fireworks	• Date: A single day during the first two weeks of June.

TABLE 1 TO § 165.151—Continued

	• Location: Waters of the Great South Bay off Cherry Grove, NY in approximate position 40°39′49.06″ N, 073°05′27.99″ W (NAD 83).
6.6 Bridgeport Bluefish June Fireworks	• Location: Waters of the Pequannock River's Lower Reach surrounding Steel Point in Bridgeport, CT in approximate position 41°10′35″ N, 073°10′58″ W (NAD 83).
7	July
7.1 Point O'Woods Fire Company Summer Fireworks	• Location: Waters of the Great South Bay, Point O'Woods, NY in approximate position 40°39′18.57″ N, 073°08′5.73″ W (NAD 83).
7.2 Cancer Center for Kids Fireworks	• Location: Waters off of Bayville, NY in approximate position 40°54′38.20″ N, 073°34′56.88″ W (NAD 83).
7.3 City of Westbrook, CT July Celebration Fireworks	• Location: Waters of Westbrook Harbor, Westbrook, CT in approximate position, 41°16′10.50″ N, 072°26′14″ W (NAD 83).
7.4 Norwalk Fireworks	• Location: Waters off Calf Pasture Beach, Norwalk, CT in approximate position, 41°04′50″ N, 073°23′22″ W (NAD 83).
7.5 Lawrence Beach Club Fireworks	• Location: Waters of the Atlantic Ocean off Lawrence Beach Club, Atlantic Beach, NY in approximate position 40°34′42.65″ N, 073°42′56.02″ W (NAD 83).
7.6 Sag Harbor Fireworks	• Location: Waters of Sag Harbor Bay off Havens Beach, Sag Harbor, NY in approximate position 41°00′26″ N, 072°17′9″ W (NAD 83).
7.7 South Hampton Fresh Air Home Fireworks	• Location: Waters of Shinnecock bay, Southampton, NY in approximate positions, 40°51′48″ N, 072°26′30″ W (NAD 83).
7.8 Westport Police Athletic league Fireworks	• Location: Waters off Compo Beach, Westport, CT in approximate position, 41°06′15″ N, 073°20′57″ W (NAD 83).
7.9 City of Middletown Fireworks	• Date: July 4. • Rain date: July 5. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of the Connecticut River, Middletown Harbor, Middletown, CT in approximate position 41°33′44.47″ N, 072°38′37.88″ W (NAD 83).
7.10 City of New Haven Fireworks	• Date: July 4. • Rain date: July 5. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of New Haven Harbor, off Long Warf Park, New Haven, CT in approximate position 41°17′24″ N, 072°54′55.8″ W (NAD 83).
7.11 City of Norwich July Fireworks	• Date: July 4. • Rain date: July 5. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of the Thames River, Norwich, CT in approximate position, 41°31′16.835″ N, 072°04′43.327″ W (NAD 83).
7.12 City of Stamford Fireworks	• Date: July 4. • Rain date: July 5. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of Fisher's Westcott cove, Stamford, CT in approximate position 41°02′09.56″ N, 073°30′57.76″ W (NAD 83).
7.13 City of West Haven Fireworks	• Date: July 4. • Rain date: July 5. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of New Haven Harbor, off Bradley Point, West Haven, CT in approximate position 41°15′07″ N, 072°57′26″ W (NAD 83).
7.14 CDM Chamber of Commerce Annual Music Fest Fireworks	• Date: July 4. • Rain date: July 5. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters off of Cedar Beach Town Park, Mount Sinai, NY in approximate position 40°57′59.58″ N, 073°01′57.87″ W (NAD 83).
7.15 Davis Park Fireworks	• Date: July 4. • Rain date: July 5.

TABLE 1 TO § 165.151—Continued

	• Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of the Great South Bay, Davis Park, NY in approximate position, 40°41′17″ N, 073°00′20″ W (NAD 83).
7.16 Fairfield Aerial Fireworks	• Date: July 4. • Rain date: July 5. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of Jennings Beach, Fairfield, CT in approximate position 41°08′22″ N, 073°14′02″ W (NAD 83).
7.17 Fund in the Sun Fireworks	• Date: July 4. • Rain date: July 5. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of the Great South Bay off The Pines, East Fire Island, NY in approximate position 40°40′07.43″ N, 073°04′13.88″ W (NAD 83).
7.18 Independence Day Celebration Fireworks	• Date: July 4. • Rain date: July 5. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters off of Umbrella Beach, Montauk, NY in approximate position 41°01′44″ N, 071°57′13″ W (NAD 83).
7.19 Jones Beach State Park Fireworks	• Date: July 4. • Rain date: July 5. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters off of Jones Beach State Park, Wantagh, NY in approximate position 40°34′56.676″ N, 073°30′31.186″ W (NAD 83).
7.20 Madison Cultural Arts Fireworks	• Date: July 4. • Rain date: July 5. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of Long Island Sound off of, Madison, CT in approximate position 41°16′10″ N, 072°36′30″ W (NAD 83).
7.21 Mason's Island Yacht Club Fireworks	• Date: July 4. • Rain date: July 5. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of Fisher's Island Sound, Noank, CT in approximate position 41°19′30.61″ N, 071°57′48.22″ W (NAD 83).
7.22 Patchogue Chamber of Commerce Fireworks	• Date: July 4. • Rain date: July 5. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of the Great South Bay, Patchogue, NY in approximate position, 40°44′38″ N, 073°00′33″ W (NAD 83).
7.23 Riverfest Fireworks	• Date: July 4. • Rain date: July 5. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of the Connecticut River Hartford, CT in approximate positions, 41°45′39.93″ N, 072°39′49.14″ W (NAD 83).
7.24 Village of Asharoken Fireworks	• Date: July 4. • Rain date: July 5. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of Northport Bay, Asharoken, NY in approximate position, 41°55′54.04″ N, 073°21′27.97″ W (NAD 83).
7.25 Village of Port Jefferson Fourth of July Celebration Fireworks	• Date: July 4. • Rain date: July 5. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of Port Jefferson Harbor Port Jefferson, NY in approximate position 40°57′10.11″ N, 073°04′28.01″ W (NAD 83).
7.26 Village of Quoque Foundering Anniversary Fireworks	• Date: July 4. • Rain date: July 5. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of Quantuck Bay, Quoque, NY in approximate position 40°48′42.99″ N, 072°37′20.20″ W (NAD 83).
7.27 City of Long Beach Fireworks	• Location: Waters off Riverside Blvd, City of Long Beach, NY in approximate position 40°34′38.77″ N, 073°39′41.32″ W (NAD 83).

TABLE 1 TO § 165.151—Continued

7.28	Great South Bay Music Festival Fireworks	• Location: Waters of Great South Bay, off Bay Avenue, Patchogue, NY in approximate position 40°44′45″ N, 073°00′25″ W (NAD 83).
7.29	Mashantucket Pequot Fireworks	• Location: Waters of the Thames River New London, CT in approximate positions Barge 1, 41°21′03.03″ N, 072°5′24.5″ W Barge 2, 41°20′51.75″ N, 072°5′18.90″ W (NAD 83).
7.30	Shelter Island Fireworks	• Location: Waters of Gardiner Bay, Shelter Island, NY in approximate position 41°04′39.11″ N, 072°22′01.07″ W (NAD 83).
7.31	Clam Shell Foundation Fireworks	• Location: Waters of Three Mile Harbor, East Hampton, NY in approximate position 41°1′15.49″ N, 072°11′27.50″ W (NAD 83).
7.32	Town of North Hempstead Bar Beach Fireworks	• Location: Waters of Hempstead Harbor, North Hempstead, NY in approximate position 40°49′54″ N, 073°39′14″ W (NAD 83).
7.33	Groton Long Point Yacht Club Fireworks	• Location: Waters of Long Island Sound, Groton, CT in approximate position 41°18′05″ N, 072°02′08″ W (NAD 83).
7.34	Devon Yacht Club Fireworks	• Date: A day during the first week of July. • Location: Waters of Napeague Bay, in Block Island Sound off Amagansett, NY in approximate position 40°59′41.40″ N, 072°06′08.70″ W (NAD 83).
7.35	Dolan Family Fourth Fireworks	• Date: July 4. • Rain date: July 5. • Location: Waters of Oyster Bay Harbor in Long Island Sound off Oyster Bay, NY in approximate position 40°53′42.50″ N, 073°30′04.30″ W (NAD 83).
7.36	Friar's Head Golf Club Fireworks	• Date: A day during the first two weeks of July. • Location: Waters of Long Island Sound off Baiting Hollow, NY in approximate position, 40°58′19.53″ N, 072°43′45.65″ W (NAD 83).
7.37	Islip Fireworks	• Date: July 4. • Rain date July 5. • Location: Waters of the Great South Bay off Bay Shore Manor Park, Islip, NY in approximate position 40°42′24″ N, 073°14′24″ W (NAD 83).
7.38	Madison Fireworks	• Date: July 4. • Rain date: The Saturday following July 4. • Location: Waters of Long Island Sound off Madison Beach, Madison, CT in approximate position 41°16′03.93″ N, 072°36′15.97″ W (NAD 83).
7.39	Stratford Fireworks	• Date: July 3. • Rain date: July 5. • Location: Waters of Long Island Sound surrounding Short Beach Park, Stratford, CT in approximate position 41°09′50.82″ N, 073°06′47.13″ W (NAD 83).
7.40	Rowayton Fireworks	• Date: July 4. • Rain date: July 5. • Location: Waters of Long Island Sound south of Bayley Beach Park in Rowayton, CT in approximate position 41°03′11″ N, 073°26′41″ W (NAD 83).
7.41	Niantic Bay Fireworks	• Date: A day during the first three weeks of July. • Location: Waters of Niantic Bay 1500 feet west of the Niantic River Railroad Bridge, Niantic, CT in approximate position 41°19′22.59″ N, 072°11′03.47″ W (NAD 83).
7.42	Connetquot River Summer Fireworks	• Date: A day during the first Week of July. • Location: Waters of the Connetquot River off Snapper Inn Restaurant, Oakdale, NY in approximate position 40°43′32.38″ N, 073°9′02.64″ W (NAD 83).
7.43	North Bay Fourth of July Fireworks	• Date: July, 4. • Rain Date: July, 5. • Location: Waters of the Great South Bay in Patchogue Bay 4000 feet south east of Blue Point, NY in approximate position 40°44′6.28″ N, 073°01′02.50″ W (NAD 83).
7.44	National Golf Links Fireworks	• Date: A day during the first week of July.

TABLE 1 TO § 165.151—Continued

	• Location: Waters of the Great Peconic Bay ¾ of a mile northwest of Bullhead Bay, Shinnecock, NY in approximate position 40°55′11.79″ N, 072°28′04.34″ W (NAD 83).
7.45 Xirinachs Family Foundation Fireworks	• Date: A day during the first two weekends of July. • Location: Waters of Hunting Bay off Beach Ave. Huntington Bay, NY in approximate position 40°54′23.27″ N, 73°25′08.04″ W (NAD 83).
7.46 Irwin family 4th of July	• Date: A day during the last week of June or first week of July. • Location: Waters of the Great South Bay off The Helm Rd. East Islip, NY in approximate position 40°42′12.28″ N, 73°12′00.08″ W (NAD 83).
7.47 Westbrook July Celebration	• Date: A day during the last week of June or first week of July. • Location: Water of Long Island Sound Westbrook Harbor, West Brook, CT in approximate position 41°16′10″ N, 72°26′14″ W (NAD 83).
7.48 Bridgeport Bluefish July Fireworks	• Location: Waters of the Pequannock River's Lower Reach surrounding Steel Point in Bridgeport, CT in approximate position 41°10′35″ N, 073°10′58″ W (NAD 83).
8	August
8.1 Village of Bellport Fireworks	• Location: Waters of Bellport Bay, off Bellport Dock, Bellport, NY in approximate position 40°45′01.83″ N, 072°55′50.43″ W (NAD 83).
8.2 Taste of Italy Fireworks	• Location: Waters of Norwich Harbor, off Norwich marina, Norwich, CT in approximate position 41°31′17.72″ N, 072°04′43.41″ W (NAD 83).
8.3 Old Black Point Beach Association Fireworks	• Location: Waters off Old Black Point Beach East Lyme, CT in approximate position, 41°17′34.9″ N, 072°12′55″ W (NAD 83).
8.4 Town of Babylon Fireworks	• Location: Waters off of Cedar Beach Town Park, Babylon, NY in approximate position 40°37′53″ N, 073°20′12″ W (NAD 83).
8.5 Shelter Island Yacht Club Fireworks	• Date: The second Saturday of August. • Rain date: the second Sunday of August. • Location: Waters of Dering Harbor north of Shelter Island Yacht Club, Shelter Island, NY in approximate position 41°05′23.47″ N, 072°21′11.18″ W (NAD 83).
8.6 Stamford Fireworks	• Date: The last Saturday of August. • Rain date: The last Sunday of August. • Location: Waters of Stamford Harbor, off Kosciuszco Park, Stamford, CT in approximate position 41°01′48.46″ N, 073°32′15.32″ W (NAD 83).
8.7 Nikon Theater at Jones beach Fireworks	• Date: A day during the first two weeks of August. • Location: Waters of Zacks Bay off the Nikon Theater, Jones Beach, NY in approximate position 40°36′02.12″ N, 073°30′05.65″ W (NAD 83).
8.8 Ascension Fireworks	• Date: A day during the third or fourth weekend of August. • Location: Waters of the Great South Bay off The Pines, East Fire Island, NY in approximate position 40°40′07.43″ N, 073°04′13.88″ W (NAD 83).
8.9 Bridgeport Bluefish August Fireworks	• Location: Waters of the Pequannock River's Lower Reach surrounding Steel Point in Bridgeport, CT in approximate position 41°10′35″ N, 073°10′58″ W (NAD 83).
9	September
9.1 East Hampton Fire Department Fireworks	• Location: Waters off Main Beach, East Hampton, NY in approximate position 40°56′40.28″ N, 072°11′21.26″ W (NAD 83).
9.2 Town of Islip Labor Day Fireworks	• Location: Waters of Great South Bay off Bay Shore Marina, Islip, NY in approximate position 40°42′24″ N, 073°14′24″ W (NAD 83).
9.3 Village of Island Park Labor Day Celebration Fireworks	• Location: Waters off Village of Island Park Fishing Pier, Village Beach, NY in approximate position 40°36′30.95″ N, 073°39′22.23″ W (NAD 83).

TABLE 1 TO § 165.151—Continued

9.4 The Creek Fireworks	• Date: A day during the first week of September. • Location: Waters of Long Island Sound off the Creek Golf Course, Lattingtown, NY in approximate position 40°54′13″ N, 073°35′58″ W (NAD 83).
9.5 Archangel Michael Greek Orthodox Church Fireworks	• Date: A day during the last week of September or first week of October. • Location: Water of Hempstead Harbor off Bar Beach Town Park Port Washington, NY in approximate position 40°49′42″ N, 073°39′07″ W (NAD 83).
9.6 Port Washington Sons of Italy Fireworks	• Location: Waters of Hempstead Harbor off Bar Beach, North Hempstead, NY in approximate position 40°49′48.04″ N, 073°39′24.32″ W (NAD 83).
9.7 Bridgeport Bluefish September Fireworks	• Location: Waters of the Pequannock River's Lower Reach surrounding Steel Point in Bridgeport, CT in approximate position 41°10′35″ N, 073°10′58″ W (NAD 83).
11	November
11.1 Charles W. Morgan Anniversary Fireworks	• Date: A day during the first or second weekend of November. • Location: Waters of the Mystic River, north of the Mystic Seaport Light, Mystic, CT in approximate position 41°21′56.455″ N, 071°57′58.32″ W (NAD 83).
11.2 Christmas Boat Parade Fireworks	• Location: Waters of Patchogue Bay off "Lombardi's on the Bay" restaurant Patchogue, NY in approximate position 40°44′39.18″ N 073°00′37.80″ W (NAD 83).
11.3 Connetquot River Fall Fireworks	• Location: Waters of the Connetquot River off Snapper Inn Restaurant, Oakdale, NY in approximate position 40°43′32.38″ N, 073°09′02.64″ W (NAD 83).
12	December
12.1 Greenport Winter Fireworks	• Date: From 11:45 p.m. December 31, until 12:30 a.m. January 1. • Location: Waters of Greenport Harbor off Mitchell Park and Marina, Greenport NY, in approximate position 41°05′59.09″ N 072°21′31.44″ W (NAD 83).

TABLE 2 TO § 165.151

[June, July & August]

1.1 Swim Across the Sound	• Location: Waters of Long Island Sound, Port Jefferson, NY to Captain's Cove Seaport, Bridgeport, CT. in approximate positions 40°58′11.71″ N, 073°05′51.12″ W, north-westerly to the finishing point at Captain's Cove Seaport 41°09′25.07″ N, 073°12′47.82″ W (NAD 83).
1.2 Huntington Bay Open Water Championships Swim	• Location: Waters of Huntington Bay, NY. In approximate positions start/finish at approximate position 40°54′25.8″ N, 073°24′28.8″ W, East turn at approximate position 40°54′45″ N 073°23′36.6″ W and a West turn at approximate position 40°54′31.2″ N, 073°25′21″ W, °09′25.07″ N 073°12′47.82″ W (NAD 83).
1.3 Maggie Fischer Memorial Great South Bay Cross Bay Swim	• Location: Waters of the Great South Bay, NY. Starting Point at the Fire Island Lighthouse Dock in approximate position 40°38′01″ N, 073°13′07″ W; northerly through approximate points 40°38′52″ N, 073°13′09″ W; 40°39′40″ N, 073°13′30″ W; 40°40′30″ N, 073°14′00″ W; and finishing at Gilbert Park, Brightwaters, NY at approximate position 40°42′25″ N, 073°14′52″ W (NAD 83).
1.4 Waves of Hope Swim	• Date: A day during the last week of June or first two weeks of July. • Time: 8 a.m. until 1 p.m. • Location: All waters of the Great South Bay off Amityville, NY shoreward of a line created by connecting the following points. Beginning at 40°39′22.38″ N, 073°25′31.63″ W, then to 40°39′02.18″ N, 073°25′31.63″ W, then to 40°39′02.18″ N, 073°24′03.81″ W, ending at 40°39′18.27″ N, 073°24′03.81″ W (NAD 83).
1.5 Stonewall Swim	• Date: A day during a weekend in August. • Time: 8:30 a.m. until 12:30 p.m.

TABLE 2 TO § 165.151—Continued

[June, July & August]

	• Location: All navigable waters of the Great South Bay within a three miles long and half mile wide box connecting Snedecor Avenue in Bayport, NY to Porgie Walk in Fire Island, NY. Formed by connecting the following points. Beginning at 40°43′40.24″ N, 073°03′41.50″ W; then to 40°43′40.00″ N, 073°03′13.40″ W; then to 40°40′04.13 N, 073°03′43.81″ W; then to 40°40′08.30″ N, 073°03′17.70″ W; and ending at the beginning point 40°43′40.24″ N, 073°03′41.5″ W (NAD 83).
1.6 Swim Across America Greenwich	• Date: A single day during June. • Time: 5:30 a.m. until noon. • Location: All navigable waters of Stamford Harbor within a half miles long and 1000 foot wide polygon shaped box stretching from Dolphin Cove to Rocky Point between Stamford and Greenwich, CT. Formed by connecting the following points. Beginning at point (A) 41°01′32.03″ N, 073°33′8.93″ W, then south east to point (B) 41°01′15.01″ N, 073°32′55.58″ W; then south west to point (c) 41°00′49.25N, 073°33′20.36″ W; then north west to point (D) 41°00′58.00″ N, 073°33′27.00″ W, then north east to point (E) 41°01′15.80″ N, 073°33′09.85″ W, then heading north and ending at point (A)(NAD 83).
1.7 US Coast Guard Triathlon Swim	• Date: A single day during August. • Location: All navigable waters of the Thames River, New London Harbor off Fort Trumbull State Park around a half mile long course that is west of the Federal navigation channel in New London, CT. Formed by connecting the following points. Beginning at point (A) 41°20′40.03″ N, 072°05′32.15″ W; then east to point (B) 41°20′40.08″ N, 072°05′22.03″ W, then north to point (C) 41°20′48.29N, 072°05′23.19″ W; then north west to point (D) 41°20′50.84″ N, 072°05′29.29″ W, then south west to end point (E) 41°20′46.41″ N, 072°05′35.77″ W, (NAD 83).

Dated: May 14, 2013.

J. M. Vojvodich,

Captain, U.S. Coast Guard, Captain of the Port Sector Long Island Sound.

[FR Doc. 2013–12392 Filed 5–23–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0911]

RIN 1625–AA09

Drawbridge Operation Regulation; Thea Foss Waterway Previously Known as City Waterway, Tacoma, WA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the operating schedule that governs the Murray Morgan Bridge, also known as the South 11th Street Bridge, across Thea Foss Waterway, mile 0.6, previously known as City Waterway, at Tacoma, WA. This modified rule allows more efficient staffing of the bridge operating crew by requiring advance notification for bridge openings during designated hours. This rule also removes previously authorized closure periods for the bridge to better reflect present day transportation needs. Lastly, this rule updates contact information for requesting emergency bridge openings.

DATES: This rule is effective June 24, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2012–0911. 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 Randall Overton, Bridge Administrator, Coast Guard Thirteenth District; telephone (206) 220–7282, email *Randall.D.Overton@uscg.mil.* If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Regulatory History and Information

On November 20, 2012 the Coast Guard published a notice of proposed rulemaking (NPRM) entitled, ''Drawbridge Operation Regulation; Thea Foss Waterway previously known as City Waterway, Tacoma, WA'' in the **Federal Register** (77 FR 69576). The Coast Guard received no comments on the proposed rule. No public meeting was requested, and none was held.

B. Basis and Purpose

The Murray Morgan Bridge, also known as the South 11th Street Bridge crosses the Thea Foss Waterway at mile 0.6 Tacoma, WA. The Thea Foss Waterway was previously known as City Waterway. The Murray Morgan is a vertical lift bridge which provides 60 feet of vertical clearance at mean high water (MHW) while in the closed position and 135 feet of vertical clearance in the open position. The bridge is currently operated in accordance with 33 CFR § 117.1061,

which states that the draw need not be opened from 6:30 a.m. to 8:30 a.m. and 3:30 p.m. to 5:30 p.m. Monday through Friday, for vessels less than 1,000 gross tons.

The City of Tacoma requested the current operating regulation for the Murray Morgan Bridge be modified to address changes in maritime and terrestrial transportation usage. The modifications to the operating schedule for the Murray Morgan Bridge outlined in this Final Rule will allow the City of Tacoma to staff the bridge operating crew more efficiently and better accommodate present day and reasonably foreseeable transportation needs. This modification also updates contact information needed to request emergency openings of the bridge.

C. Discussion of Comments, Changes and the Final Rule

The Coast Guard provided a 45-day comment period and no comments were received.

This Final Rule modifies the operating regulation for the Murray Morgan Bridge with three amendments. The first amendment requires that for bridge openings between 10 p.m. and 8 a.m., notification be made no later than 8 p.m. prior to the desired opening. This differs from the existing regulation in that presently the bridge is required to open at all times (except during authorized closure periods) provided two hours advance notice is given. This amendment for notification by 8 p.m. for openings between 10 p.m. and 8 a.m. is because openings between 10 p.m. and 8 a.m. are extremely rare. Over an 18 month period there were only 6 bridge openings requested between 10 p.m. and 8 a.m. One of the unique features of the Murray Morgan Bridge is its height above the waterway providing 60 feet of clearance at mean high water (MHW) in the closed position. Because of this vertical clearance the overwhelming majority of vessels which transit this waterway do not require a bridge opening. The majority of bridge openings are for locally moored and operated recreational sailboats with mast heights over 60 feet. Almost all of these vessels are moored at marinas in very close proximity of the bridge.

The second amendment to the regulation removes the authorized morning and afternoon bridge closure periods. The current regulation states that the draw need not be opened from 6:30 a.m. to 8:30 a.m. and 3:30 p.m. to 5:30 p.m. Monday through Friday, for vessels of less than 1,000 gross tons. This modification to the operating schedule requires the draw to open at all times with two hours advance notification, except as stated in the first amendment above. The morning and afternoon authorized bridge closures in the existing regulation were put into place when the bridge was part of SR 509, a continuous route from Northeast Tacoma to downtown, and traffic volumes were approximately 15,000 vehicles per day. In 1997 a new SR 509 was constructed approximately 0.7 miles south of the bridge and is now used as the main traffic corridor. After completion of the new SR 509, the Murray Morgan Bridge connection between Northeast Tacoma and downtown was severed due to roadway reconfiguration, resulting in a dramatic decrease of traffic volumes.

The third amendment to the existing regulation changes the contact information for emergency bridge openings. The existing regulation states ''In emergencies, openings shall be made as soon as possible upon notification to the Washington State Department of Transportation.'' This modification states notification for emergency openings would be made to the City of Tacoma. The reason for this change is because Washington State gave ownership and responsibility of the bridge to the City of Tacoma on January 6, 1998.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The Coast Guard bases this finding on the fact that very few vessels will be impacted because all requested bridge openings will be granted with the requisite advance notification.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This action will not have a significant economic impact on a substantial number of small entities because it does not authorize closure periods for the bridge, only advance notification requirements. Additionally, because the bridge provides 60 feet of vertical clearance when it is in the closed position only a very few numbers of vessels using the waterway require a bridge opening to transit the area. Vessels which do require an opening will be granted an opening without delay when appropriate notification is given.

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 affects your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

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

4. Collection of Information

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

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship

between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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 guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule simply promulgates the operating regulations or procedures for drawbridges. This rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction.

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

List of Subjects in 33 CFR Part 117

Bridges.

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

■ 2. In § 117.1061, revise paragraph (b) to read as follows:

§ 117.1061 Tacoma Harbor.

* * * * *

(b) The draw of the Murray Morgan Bridge, also known as the South 11th Street Bridge, across Thea Foss Waterway, previously known as City Waterway, mile 0.6, at Tacoma, shall open on signal if at least two hours notice is given. However, to obtain a bridge opening between 10 p.m. and 8 a.m. notification must be made to the City of Tacoma by 8 p.m. In emergencies, openings shall be made as soon as possible upon notification to the City of Tacoma.

Dated: May 14, 2013.

K. A. Taylor,

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

[FR Doc. 2013–12393 Filed 5–23–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2013–0117]

Drawbridge Operation Regulation; China Basin, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Third Street Drawbridge across the China Basin, mile 0.0, at San Francisco, CA. The deviation is necessary to allow the public to cross the bridge to participate in the scheduled San Francisco Marathon, a community event. This deviation allows the bridge to remain in the closed-to-navigation position during the deviation period.

DATES: This deviation is effective from 6 a.m. to 1:30 p.m. on June 16, 2013.

ADDRESSES: The docket for this deviation, [USCG–2013–0117], is available at *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 deviation. 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 temporary deviation, call or email David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516, email *David.H.Sulouff@uscg.mil.* If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The City of San Francisco requested a temporary

change to the operation of the Third Street Drawbridge, mile 0.0, over China Basin, at San Francisco, CA. The Third Street Drawbridge navigation span provides a vertical clearance of 7 feet above Mean High Water in the closed-to-navigation position. The draw opens on signal if at least one hour notice is given as required by 33 CFR 117.149. Navigation on the waterway is recreational.

The drawspan will be secured in the closed-to-navigation position 6 a.m. to 1:30 p.m. on June 16, 2013, to allow participants in the San Francisco Marathon to cross the bridge during the event. This temporary deviation has been coordinated with the waterway users. No objections to the proposed temporary deviation were raised. The drawspan can be operated upon one hour advance notice for emergencies requiring the passage of waterway traffic.

Vessels that can transit the bridge, while in the closed-to-navigation position, may continue to do so at any time.

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

Dated: May 9, 2013.

D.H. Sulouff,

Bridge Section Chief, Eleventh Coast Guard District.

[FR Doc. 2013–12396 Filed 5–23–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0140]

RIN 1625–AA00

Safety Zone; USA Triathlon; Milwaukee Harbor, Milwaukee, WI

AGENCY: Coast Guard, DHS.

ACTION: Temporary Final rule.

SUMMARY: The Coast Guard is establishing a safety zone within Milwaukee Harbor, Milwaukee, Wisconsin. This safety zone is intended to restrict vessels from a portion of Milwaukee Harbor due to the 2013 and 2014 Olympic and Sprint Distance National Championships. This safety zone is necessary to protect the surrounding public and vessels from the hazards associated with the 2013 and 2014 Olympic and Sprint Distance National Championships.

DATES: This final rule is effective from August 1, 2013, until August 30, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2013–0140. 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, contact MST1 Joseph McCollum, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7148 or by email at *Joseph.P.McCollum@USCG.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, 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
TFR Temporary Final Rule

A. Regulatory History and Information

On March 29, 2013, The Coast Guard published a notice of proposed rulemaking entitled Safety Triathlon; Milwaukee Harbor; Milwaukee, WI in the **Federal Register** (2013–07281). We did not receive any comments in response to the proposed rule. No public meeting was requested and none was held.

B. Basis and Purpose

The Olympic and Sprint Distance National Championships are scheduled to take place in Milwaukee, Wisconsin in August of 2013 and 2014. These events are expected to attract 4000 participants each year. Participants will compete in a swim—as part of a triathlon competition—across both the Lakeshore inlet and the Discovery World Marina within Milwaukee Harbor. The swim portion of the National Championship is anticipated to occur on August 10 and 11, 2013, and on August 9 and 10, 2014. The Captain of the Port, Lake Michigan, has determined that the likelihood of transiting watercraft during the swim competition involving a large number of competitors presents a significant risk of serious injuries or fatalities.

C. Discussion of Comments, Changes and the Final Rule

The Captain of the Port, Lake Michigan, has determined that a safety zone is necessary to mitigate the aforementioned safety risks. Thus, this rule establishes a safety zone that encompasses all waters of Milwaukee Harbor, including Lakeshore inlet and Discovery World Marina, west of a line across the entrance to the Discovery World Marina connecting 43°02′15.1″ N, 087°53′37.4″ W and 43°01′44.2″ N, 087°53′44.6″ W (NAD 83).

This rule will establish a safety zone within Milwaukee Harbor for the 2013 and 2014 calendar years. This rule will be effective from August 1, 2013, until August 30, 2014. Additionally, the Coast Guard anticipates that this safety zone will be enforced from 6:30 a.m. until 11 a.m. on August 10 and 11, 2013. This 2013 enforcement schedule may change, and in the event of a change, the Captain of the Port, Lake Michigan, will establish an updated enforcement schedule with a Notice of Enforcement. Likewise, the Captain of the Port, Lake Michigan, will establish the 2014 enforcement schedule via a Notice of Enforcement.

The Captain of the Port Lake Michigan will use all appropriate means to notify the public when the safety zone established by this rule will be enforced. Consistent with 33 CFR 165.7(a), such means may include, among other things, publication in the **Federal Register**, Broadcast Notice to Mariners, Local Notice to Mariners, or, upon request, by facsimile (fax).

Entry into, transiting, or anchoring within these safety zones during the period of enforcement is prohibited unless authorized by the Captain of the Port, Lake Michigan, or his or her designated on-scene representative. The Captain of the Port, Lake Michigan, or his or her designated on-scene representative may be contacted via VHF Channel 16.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of

Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for relatively short time. Also, this safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit portions of the waterways not affected by the safety zones. Thus, restrictions on vessel movements within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port, Lake Michigan. On the whole, the Coast Guard expects insignificant adverse impact to mariners from the activation of this safety zone.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. 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 would not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor within the waters of the Discovery World Marina or Lakeshore inlet during two days in August of 2013 and 2014.

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 so that they can better evaluate its effects on them and participate in the rulemaking process. If this 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 **FOR FURTHER INFORMATION CONTACT** section, above.

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

4. Collection of Information

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

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

This rule would not affect 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 would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

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

12. Energy Effects

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 which do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of safety zones and thus, is categorically excluded under paragraph (34)(g) of the Instruction. An environmental analysis checklist

supporting this determination is available in the docket where indicated under **ADDRESSES**.

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

■ 2. Add § 165.T09–0140 to read as follows:

§ 165.T09–0140 Safety Zone; USA Triathlon, Milwaukee Harbor, Milwaukee, Wisconsin.

(a) *Location.* All waters of Milwaukee Harbor, including Lakeshore inlet and Discovery World Marina, west of a line across the entrance to the Discovery World Marina connecting 43°02′15.1″ N, 087°53′37.4″ W and 43°01′44.2″ N, 087°53′44.6″ W (NAD 83).

(b) *Effective Period.* This section is effective from August 1, 2013, until August 30, 2014. This safety zone will be enforced for periods in August 2013 and 2014. The Captain of the Port, Lake Michigan, will establish an enforcement schedule via a Notice of Enforcement when the exact dates are known. The Captain of the Port, Lake Michigan, will also establish the 2014 enforcement schedule via a Notice of Enforcement.

(c) *Regulations.*

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

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Lake Michigan or his designated representative.

(3) The ''on-scene representative'' of the Captain of the Port, Lake Michigan is any Coast Guard commissioned, warrant or petty officer who has been his designated by the Captain of the Port, Lake Michigan to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Lake Michigan or his on-scene representative to obtain permission to do so.

(5) The Captain of the Port, Lake Michigan or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Lake Michigan, or his on-scene representative.

Dated: May 3, 2013.

M.W. Sibley,

Captain, U.S. Coast Guard, Captain of the Port, Lake Michigan.

[FR Doc. 2013–12395 Filed 5–23–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2012–0064, 0598, 0599, 0600, 0601, 0602, 0603, 0604, 0606, 0607 and 0647; FRL–9815–1]

National Priorities List, Final Rule No. 56

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''the EPA'' or ''the agency'') in determining which sites warrant further investigation. These further investigations will allow the EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule: Adds eight sites to the General Superfund section of the NPL; adds one site to the Federal Facilities section of the NPL; corrects an error in a footnote; and corrects an error in the state location for Five Points PCE Plume site.

DATES: *Effective Date:* The effective date for this amendment to the NCP is June 24, 2013.

ADDRESSES: Contact information for the EPA Headquarters:

- Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue NW.; EPA West, Room 3334, Washington, DC 20004, 202/566–0276.

The contact information for the Regional Dockets is as follows:

- Joan Berggren, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, 5 Post Office Square, Suite 100, Boston, MA 02109–3912; 617/918–1417.
- Ildefonso Acosta, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4344.
- Dawn Shellenberger (ASRC), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mail Code 3PM52, Philadelphia, PA 19103; 215/814–5364.
- Debbie Jourdan, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW., Mailcode 9T25, Atlanta, GA 30303; 404/562–8862.
- Todd Quesada, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA Superfund Division Librarian/SFD Records Manager SRC–7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886–4465.
- Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Suite 1200, Mailcode 6SFTS, Dallas, TX 75202–2733; 214/665–7436.
- Michelle Quick, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Mailcode SUPRERNB, Kansas City, KS 66101; 913/551–7335.
- Sabrina Forrest, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 1595 Wynkoop Street, Mailcode 8EPR–B, Denver, CO 80202–1129; 303/312–6484.
- Karen Jurist, Region 9 (AZ, CA, HI, NV, AS, GU, MP), U.S. EPA, 75 Hawthorne Street, Mail Code SFD–9–1, San Francisco, CA 94105; 415/972–3219.
- Ken Marcy, Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 6th Avenue, Mail Code ECL–112, Seattle, WA 98101; 206/463–1349.

FOR FURTHER INFORMATION CONTACT: Terry Jeng, phone: (703) 603–8852, email: *jeng.terry@epa.gov,* Site Assessment and Remedy Decisions Branch, Assessment and Remediation Division, Office of Superfund Remediation and Technology Innovation (Mailcode 5204P), U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue NW., Washington,

DC 20460; or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

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I. Background

A. What are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances, and releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What is the NCP?

To implement CERCLA, the EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR Part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, or releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. The EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action, for the purpose of taking removal action.'' ''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases of hazardous substances, pollutants or contaminants (42 U.S.C. 9601(23)).

C. What is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide the EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is of only limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by the EPA (the ''General Superfund Section'') and one of sites that are owned or operated by other federal agencies (the ''Federal Facilities Section''). With respect to sites in the Federal Facilities Section, these sites are generally being addressed by other federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody or control, although the EPA is responsible for preparing a Hazard Ranking System (''HRS'') score and determining whether the facility is placed on the NPL.

D. How are sites listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high

on the HRS, which the EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening tool to evaluate the relative potential of uncontrolled hazardous substances, pollutants or contaminants to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), the EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: Ground water, surface water, soil exposure and air. As a matter of agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL. (2) Pursuant to 42 U.S.C. 9605(a)(8)(B), each state may designate a single site as its top priority to be listed on the NPL, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated by each state as the greatest danger to public health, welfare or the environment among known facilities in the state. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2). (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- The EPA determines that the release poses a significant threat to public health.
- The EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

The EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658) and generally has updated it at least annually.

E. What happens to sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with a permanent remedy, taken instead of or in addition to removal actions. * * *'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2), placing a site on the NPL ''does not imply that monies will be expended.'' The EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. Does the NPL define the boundaries of sites?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so. Indeed, the precise nature and extent of the site are typically not known at the time of listing.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. However, the NPL site is not necessarily coextensive with the boundaries of the installation or plant, and the boundaries of the installation or plant are not necessarily the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location where that contamination has come to be located, or from where that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the ''Jones Co. plant site'') in terms of the property owned by a particular party, the site, properly understood, is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to, nor confined by, the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. In addition, the site name is merely used to help identify the geographic location of the contamination, and is not meant to constitute any determination of liability at a site. For example, the name ''Jones Co. plant site,'' does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the Remedial Investigation (''RI'') ''is a process undertaken * * * to determine the nature and extent of the problem presented by the release'' as more information is developed on site contamination, and which is generally performed in an interactive fashion with the Feasibility Study (''FS'') (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, the HRS inquiry focuses on an evaluation of the threat posed and therefore the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, it can submit supporting information to the agency at any time after it receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How are sites removed from the NPL?

The EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that the EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

H. May the EPA delete portions of sites from the NPL as they are cleaned up?

In November 1995, the EPA initiated a policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and made available for productive use.

I. What is the Construction Completion List (CCL)?

The EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) the EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) the site qualifies for deletion from the NPL. For the most up-to-date information on the CCL, see the EPA's Internet site at *http://www.epa.gov/superfund/cleanup/ccl.htm*

J. What is the Sitewide Ready for Anticipated Use measure?

The Sitewide Ready for Anticipated Use measure represents important Superfund accomplishments and the measure reflects the high priority the EPA places on considering anticipated future land use as part of the remedy selection process. See Guidance for Implementing the Sitewide Ready-for-Reuse Measure, May 24, 2006, OSWER 9365.0–36. This measure applies to final and deleted sites where construction is complete, all cleanup goals have been achieved, and all institutional or other controls are in place. The EPA has been successful on many occasions in carrying out remedial actions that ensure protectiveness of human health and the environment for current and future land uses, in a manner that allows contaminated properties to be restored to environmental and economic vitality. For further information, please go to *http://www.epa.gov/superfund/programs/recycle/pdf/sitewide_a.pdf*

K. What is state/tribal correspondence concerning NPL listing?

In order to maintain close coordination with states and tribes in the NPL listing decision process, the EPA's policy is to determine the position of the states and tribes regarding sites that the EPA is considering for listing. This consultation process is outlined in two memoranda that can be found at the following Web site: *http://www.epa.gov/superfund/sites/npl/hrsres/policy/govlet.pdf.* The EPA is improving the transparency of the process by which state and tribal input is solicited. The EPA will be using the Web and where appropriate more structured state and tribal correspondence that (1) explains the concerns at the site and the EPA's rationale for proceeding; (2) requests an explanation of how the state intends to address the site if placement on the NPL is not favored; and (3) emphasizes the transparent nature of the process by informing states that information on their responses will be publicly available.

A model letter and correspondence from this point forward between the EPA and states and tribes where applicable, will be added to the EPA's Web site at *http://www.epa.gov/superfund/sites/query/queryhtm/nplstcor.htm.*

II. Availability of Information to the Public

A. May I review the documents relevant to this final rule?

Yes, documents relating to the evaluation and scoring of the sites in this final rule are contained in dockets located both at the EPA Headquarters and in the Regional offices.

An electronic version of the public docket is available through *www.regulations.gov* (see table below for Docket Identification numbers). Although not all Docket materials may be available electronically, you may still access any of the publicly available Docket materials through the Docket facilities identified below in section II D.

DOCKET IDENTIFICATION NUMBERS BY SITE

Site name	City/county, state	Docket ID No.
Macon Naval Ordnance Plant	Macon, GA	EPA–HQ–SFUND–2012–0064
Pike and Mulberry Streets PCE Plume	Martinsville, IN	EPA–HQ–SFUND–2012–0598
Former United Zinc & Associated Smelters	Iola, KS	EPA–HQ–SFUND–2012–0599
Creese & Cook Tannery (Former)	Danvers, MA	EPA–HQ–SFUND–2012–0600
Walton & Lonsbury Inc	Attleboro, MA	EPA–HQ–SFUND–2012–0601
Matlack, Inc	Woolwich Township, NJ	EPA–HQ–SFUND–2012–0602
Riverside Industrial Park	Newark, NJ	EPA–HQ–SFUND–2012–0603
Clinch River Corporation	Harriman, TN	EPA–HQ–SFUND–2012–0604
700 South 1600 East PCE Plume	Salt Lake City, UT	EPA–HQ–SFUND–2012–0647

B. What documents are available for review at the headquarters docket?

The Headquarters Docket for this rule contains, for each site, the HRS score sheets, the Documentation Record describing the information used to compute the score, pertinent information regarding statutory requirements or the EPA listing policies that affect the site and a list of documents referenced in the Documentation Record. For sites that received comments during the comment period, the Headquarters Docket also contains a Support Document that includes the EPA's responses to comments.

C. What documents are available for review at the regional dockets?

The Regional Dockets contain all the information in the Headquarters Docket, plus the actual reference documents containing the data principally relied upon by the EPA in calculating or evaluating the HRS score for the sites located in their Region. These reference documents are available only in the Regional Dockets. For sites that received comments during the comment period, the Regional Docket also contains a Support Document that includes the EPA's responses to comments.

D. How do I access the documents?

You may view the documents, by appointment only, after the publication of this rule. The hours of operation for the Headquarters Docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays.

Please contact the Regional Dockets for hours. For addresses for the Headquarters and Regional Dockets, see **ADDRESSES** section in the beginning portion of this preamble.

E. How may I obtain a current list of NPL sites?

You may obtain a current list of NPL sites via the Internet at *http://www.epa.gov/superfund/sites/npl/index.htm* or by contacting the Superfund Docket (see contact information in the beginning portion of this notice).

III. Contents of This Final Rule

A. Additions to the NPL

This final rule adds the following nine sites to the NPL, eight to the General Superfund Section and one to the Federal Facilities Section. All of the sites included in this final rulemaking are being added to the NPL based on HRS scores of 28.50 or above. The sites are presented in the table below:

State	Site name	City/County
General Superfund section:		
GA	Macon Naval Ordnance Plant	Macon.
IN	Pike and Mulberry Streets PCE Plume	Martinsville.
KS	Former United Zinc & Associated Smelters	Iola.
MA	Creese & Cook Tannery (Former)	Danvers.
MA	Walton & Lonsbury Inc.	Attleboro.
NJ	Matlack, Inc.	Woolwich Township.
NJ	Riverside Industrial Park	Newark.
TN	Clinch River Corporation	Harriman.
Federal Facilities section:		
UT	700 South 1600 East PCE Plume	Salt Lake City.

B. What did the EPA do with the public comments it received?

The EPA reviewed all comments received on the sites in this rule and responded to all relevant comments. This rule adds nine sites to the NPL.

The EPA is adding nine sites to the NPL in this final rule, eight general sites and one federal facility site. Comments on the Macon Naval Ordnance Plant site (Macon, GA) are addressed in a response to comment support document available in the public docket concurrently with this rule. Two generic comments, applicable to the Macon Naval Ordnance Plant site and all other sites proposed March 15, 2012 (77 FR 15344), were previously addressed in the September 2012 NPL final rule preamble (77 FR 57499–57500, September 18, 2012).

None of the other eight sites being added to the NPL in this rule, which were proposed September 18, 2012 (77 FR 57546), received comments relating to the determination of the HRS site scores. One commenter's submission to the Matlack, Inc. docket also contained comments directed to Pike and Mulberry Streets PCE Plume, Clinch River Corporation, Creese & Cook Tannery (Former), Former United Zinc & Associated Smelters, Riverside Industrial Park, and Walton & Lonsbury Inc. These comments are addressed below. One comment was submitted to the Walton & Lonsbury Inc. docket, but was directed at the 700 South 1600 East PCE Plume site, and is also addressed below.

The Pike & Mulberry Streets PCE Plume (Martinsville, IN) received two comments. One comment that solely supported the listing was included in a commenter's submission to the Matlack, Inc. docket, as mentioned above; this comment noted the potential for vapor intrusion contamination into residential basements. The other comment, from a firm which indicated experience in remediation of vapor intrusion, asked that the EPA consider the firm when cleaning up the site. In response, NPL listing makes a site eligible for remedial action funding under CERCLA. The Pike & Mulberry Streets PCE Plume site will be further investigated during the remedial investigation/feasibility (RI/FS) phase of the Superfund process to determine what response, if any, is appropriate. Actual funding of cleanup work may not necessarily be undertaken in the precise order of HRS scores, however, and upon more detailed investigation may not be necessary at all in some cases. If a response is later deemed necessary, the EPA will follow government-wide federal procurement requirements in selecting cleanup contractors for the site.

The Creese & Cook Tannery (Former) (Danvers, MA) received two comments. One comment that solely supported the listing was included in a commenter's submission to the Matlack, Inc. docket, as mentioned above; this commenter indicated that the site contamination affected local fisheries and wetland frontage on the Crane River. The other comment urged that oil and hazardous materials companies be held accountable for their actions in creating waste dumps, and that the EPA require the waste to be disposed of properly. In response, liability for response costs is not considered under the HRS and is not established at the time of the NPL listing. The NPL serves primarily as an informational and management tool. The identification of a site for the NPL is intended primarily to guide the EPA in determining which sites warrant further investigation to assess the nature and extent of the human health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. Identification of a site for the NPL does not reflect a judgment on the activities of the owner(s), operator(s), or generator(s) associated with a site. It does not require those persons to undertake any action, nor does it assign any liability to any person. Subsequent government actions will be necessary in order to do so, and these actions will be attended by all appropriate procedural safeguards. This position, stated in the legislative history of CERCLA, has been explained in the **Federal Register** (48 FR 40674, September 8, 1983 and 53 FR 23988, June 24, 1988). The EPA is adding the site to the NPL and, if cleanup is later deemed necessary, will require wastes at the site to be handled appropriately so that human and environmental risks are mitigated.

The EPA received seven comments on the 700 South 1600 East PCE Plume site

(Salt Lake City, UT). The site is being listed as a federal facility (Veterans Administration). As noted earlier, one of the comments was submitted to the Walton & Lonsbury Inc. docket and is addressed here. This comment and three other comments solely supported the listing; two pointed out the potential for contamination of residential basements, one noted the plume should be cleaned for human health and ecological reasons, and one expressed concern for drinking water contamination. The fifth comment supported the listing and added that listing should not negatively impact property values because any astute buyer would already be aware of the contamination issues once the site had been proposed, and final listing was needed to ensure cleanup. In response to these five comments, the EPA is listing the site to study the risks and determine what, if any, actions need to be taken to ensure protection of human health and the environment.

A sixth commenter on the 700 South 1600 East PCE Plume was concerned with the impact of listing on property values for properties located within or nearby the plume. The commenter urged that if the site is placed on the NPL, the EPA ensure the administrative record clearly identifies the source of the contamination so that innocent landowners will not be affected in the context of liability, land use and land values. The commenter also asked the EPA to confirm whether any stakeholders, including local and state governments, were contemplating pursuing a cleanup under RCRA 7002 before the Agency takes final action on the NPL proposal. In response, as discussed above for the Creese & Cook Tannery (Former) site, listing only identifies that a release needs to be evaluated to determine what, if any, cleanup is needed; it does not identify liable parties. Liability is determined later in the Superfund process and any decision is accompanied by appropriate legal safeguards. Further, under the EPA's ''Policy Toward Owners of Property Containing Contaminated Aquifers'' (1995), the agency generally does not take enforcement actions to require the performance of response actions or the payment of response costs against the owner of property, who meets certain conditions, where hazardous substances have come to be located on or in a property solely as a result of the subsurface migration in an aquifer from a source or sources outside the property. In addition, under the ''Policy Toward Owners of Residential Property at Superfund Sites'' (1991), the EPA generally does not take enforcement actions, subject to certain conditions, against an owner of residential property unless the residential homeowner's activities lead to a release or threat of release of hazardous substances, resulting in the taking of a response action at the site. In response to the use of the citizen suit provision of RCRA 7002, as of the time of this final rule, the EPA is not aware of any notices of intent to litigate pursuant to RCRA at this time. This comment results in no change to the HRS score and no change in the Agency's decision to place the site on the NPL.

A seventh comment submitted to the 700 South 1600 East PCE Plume site docket was directed to the EPA's decision to withdraw the proposed listing of Evergreen Manor Ground Water Contamination (Winnebago County, IL) in the same proposed rule. The commenter was opposed to the withdrawal of Evergreen Manor Ground Water Contamination because the commenter opposed a cleanup remedy that involved connection to municipal water. The commenter felt there were contaminants in municipal water, providing access to municipal water is expensive, and installing additional private wells should be the cleanup selected. In response, as stated in the proposed rule, the cleanup for the Evergreen Manor site has already been completed. Contrary to the commenter's assertions, placing private wells into contaminated aquifers may well result in those residents having drinking water more contaminated than if residents are hooked up to a municipal system drawing from a clean aquifer. The commenter's arguments result in no change in the agency's decision to withdraw the 1998 proposal to add the Evergreen Manor Ground Water Contamination site to the NPL.

The EPA received five comments on the Matlack, Inc. site (Woolwich Township, NJ). One commenter said Superfund was a great program. One commenter, who submitted the comment to the Riverside Industrial Park docket, discussed the dangers of volatile organic compounds. The three other commenters all supported listing the site, and each outlined the risks associated with various chemicals found at the site and included lists of references. In response to all five comments, the EPA has placed the site on the NPL. The EPA will consider the information provided by the commenters as it evaluates the risks posed and cleanup options at the site.

One comment on the Clinch River Corporation site (Harriman, TN), in a submission to the Matlack, Inc. docket, solely supported the listing, mentioning concern over risks to animals and the environment posed by polynuclear aromatic hydrocarbons (PAHs). One comment on the Walton & Lonsbury Inc. listing, in a submission to the Matlack, Inc. docket, solely supported the listing, noting that poor plant maintenance over decades of use has resulted in contamination of nearby wetlands. The EPA will consider the information provided by the commenter as it evaluates the risks posed and cleanup options at these sites.

The EPA received six comments on Riverside Industrial Park site (Newark, NJ), including a comment submission to the Matlack, Inc. docket, as mentioned above. This comment solely supported the listing, indicating that the underground storage tanks need to be removed. Also as noted above, one of the comments submitted to the Riverside Industrial Park docket was directed to Matlack, Inc., and was addressed in this preamble in discussing comments for that site. A third commenter supported the Riverside Industrial Park listing, presented information on the toxicity and health risks of benzene, and also wanted more testing of additional pathways of potential concern. In response to the request, the HRS does not require scoring all pathways if scoring those pathways does not change the listing decision. For some sites, data for scoring a pathway are unavailable, and obtaining these data would be time-consuming or costly. In other cases, data for scoring some pathways are available, but will have only a minimal effect on the site score. In still other cases, data on other pathways could substantially add to a site score, but would not affect the listing decision. The HRS is a screening model that uses limited resources to determine whether a site should be placed on the NPL for possible Superfund response. The EPA will consider other contaminants and pathways during the RI/FS, during which more extensive sampling and evaluation will occur. A fourth commenter supported the listing and encouraged the EPA to more thoroughly evaluate the health risks of mercury at the site. The EPA will consider those risks during the RI/FS when more extensive analyses of the site occur. (In addition, see responses above to the Pike & Mulberry Streets PCE Plume site and the Creese & Cook Tannery (Former) site for further discussion of the Superfund process.)

A fifth commenter supported the Riverside Industrial Park listing but suggested that the EPA could better address the negative stigma

accompanying listing in its **Federal Register** notices, the EPA should impose a mandatory obligation on property owners to investigate suspected releases, and the EPA should require responsible parties to purchase sand bags to prevent the Passaic River flooding from spreading contamination. Liability is not considered under the HRS and is not established at the time of the NPL listing. (See the response above to the Creese & Cook Tannery (Former) site for further discussion regarding liability). In response to the comment related to property owner obligations, Superfund provides the opportunity for potentially responsible parties (PRPs) to take the lead in investigating and remediating wastes for which they may have been responsible; if they refuse, the EPA may take the lead and recover costs from the PRPs. With respect to the purchase of sand bags, the EPA will consider the need for sand bags or other options to restrict contaminant transport by flooding when it evaluates the site. Regarding the stigma concern, some portion of the language desired by the commenter does typically appear in NPL rule preambles, including that listing serves informational purposes and that listing does not imply liability. The EPA notes that any stigma at a site listed on the NPL is a result of the contamination, not the listing. Any perceived or actual negative fluctuations in property values or development opportunities that may result from contamination may be countered by positive changes when a CERCLA investigation and any necessary cleanup are completed.

The remaining Riverside Industrial Park comment requested that a particular parcel included in the site be excluded from the listing because it has been the subject of several years of remedial investigation under the oversight of the New Jersey Department of Environmental Protection (NJDEP). The commenter indicated an engineered cap is the remedy being selected and claimed that the oversight by NJDEP was all that was needed. In response, the actions taken to date have been considered in the decision to list this site, but the risks posed to the public and the environment by the past, and potentially future releases, at the site were not addressed. These actions neither removed all the hazardous substances from the sources that were evaluated, nor did they eliminate the risk posed by the release of those remaining hazardous substances. In addition, New Jersey provided a support letter prior to proposal requesting the entire industrial park be listed, including the parcel mentioned by the commenter. Upon receiving this comment, the EPA requested the position of NJ, and in an email the state reiterated that it wants the entire park listed. As the email said: ''Regardless of DEP [Department of Environmental Protection] involvement with the specific property, Federal Refining Company, in question where a deed notice for remaining soil contamination and a classification exception area for remaining groundwater contamination has been approved, DEP requested that the entire Riverside Industrial Park be listed for evaluation as an NPL site . . . The proposed listing should not be changed.'' This documentation of the state's position has been added to the Riverside Industrial Park docket at promulgation. The EPA and the state will coordinate activities to ensure there is no duplication of effort with respect to this particular parcel, and will consider all actions taken to date before deciding what if any further remedial action is necessary.

C. Correction of Appendix B Footnote ''A'' Description

The EPA received no comments on its September 18, 2012 proposal to correct the partial deletion notation in Table 1 (77 FR 57546, Docket #EPA–HQ–SFUND–2012–0606). Therefore, this final rule corrects an error in the footnote ''A'' description in Appendix B to CFR part 300. In Table 1, the incorrect portion of the footnote currently reads ''(if scored, HRS score need not be ≤28.50)''. In Table 2, the incorrect portion of the footnote currently reads ''(if scored, HRS score need not be >28.50)''. The EPA is correcting both footnote ''A'' descriptions by changing them to ''A = Based on issuance of health advisory by Agency for Toxic Substances and Disease Registry (if scored, HRS score need not be greater than or equal to 28.50)''.

D. Correction of State Location for Five Points PCE Plume Site

The EPA received no comments on its September 18, 2012 proposal to correct the state location in Table 1 for the Five Points PCE Plume site (77 FR 57546, Docket #EPA–HQ–SFUND–2012–0607). Therefore, this final rule corrects an error in Table 1 of Appendix B to CFR part 300 in which the location of the Five Points PCE Plume site is incorrectly listed as being in the state of Washington. The correct location of the Five Points PCE Plume is the state of Utah.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

1. What is Executive Order 12866?

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the agency must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities or the principles set forth in the Executive Order.

2. Is this final rule subject to Executive Order 12866 Review?

No. The listing of sites on the NPL does not impose any obligations on any entities. The listing does not set standards or a regulatory regime and imposes no liability or costs. Any liability under CERCLA exists irrespective of whether a site is listed. It has been determined that this action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

1. What is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9.

2. Does the Paperwork Reduction Act apply to this final rule?

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* the EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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 the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

1. What is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations and small governmental jurisdictions). 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. SBREFA amended the Regulatory Flexibility Act to require federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

2. How has the EPA complied with the Regulatory Flexibility Act?

This rule listing sites on the NPL does not impose any obligations on any group, including small entities. This rule also does not establish standards or requirements that any small entity must meet, and imposes no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking. Thus, this rule does not impose any requirements on any small entities. For the foregoing reasons, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

1. What is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures by state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before the EPA promulgates a rule where a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of the EPA regulatory proposals with significant federal intergovernmental mandates and informing, educating and advising small governments on compliance with the regulatory requirements.

2. Does UMRA apply to this final rule?

This final rule does not contain a federal mandate that may result in expenditures of $100 million or more for state, local and tribal governments, in the aggregate, or the private sector in any one year. Listing a site on the NPL does not itself impose any costs. Listing does not mean that the EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of placing a site on the NPL. Thus, this rule is not subject to the requirements of section 202 and 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. As is mentioned above, site listing does not impose any costs and would not require any action of a small government.

E. Executive Order 13132: Federalism

1. What is Executive Order 13132?

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.''

2. Does Executive Order 13132 apply to this final rule?

This final rule 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, because it does not contain any requirements applicable to states or other levels of government.

Thus, the requirements of the Executive Order do not apply to this final rule.

The EPA believes, however, that this final rule may be of significant interest to state governments. In the spirit of Executive Order 13132, and consistent with the EPA policy to promote communications between the EPA and state and local governments, the EPA therefore consulted with state officials and/or representatives of state governments early in the process of developing the rule to permit them to have meaningful and timely input into its development. All sites included in this final rule were referred to the EPA by states for listing. For all sites in this rule, the EPA received letters of support either from the governor or a state official who was delegated the authority by the governor to speak on their behalf regarding NPL listing decisions.

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

1. What is Executive Order 13175?

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the federal government and the Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.''

2. Does Executive Order 13175 apply to this final rule?

This final rule does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). Listing a site on the NPL does not impose any costs on a tribe or require a tribe to take remedial action. Thus, Executive Order 13175 does not apply to this final rule.

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

1. What is Executive Order 13045?

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

2. Does Executive Order 13045 apply to this final rule?

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the agency does not have reason to believe the environmental health or safety risks addressed by this section present a disproportionate risk to children.

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

1. What is Executive Order 13211?

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use'' (66 FR 28355, May 22, 2001), requires federal agencies to prepare a ''Statement of Energy Effects'' when undertaking certain regulatory actions. A Statement of Energy Effects describes the adverse effects of a ''significant energy action'' on energy supply, distribution, and use, reasonable alternatives to the action and the expected effects of the alternatives on energy supply, distribution, and use.

2. Does Executive Order 13211 apply to this final rule?

This action is not a ''significant energy action'' as defined in Executive Order 13211, because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. Further, the agency has concluded that this final rule is not likely to have any adverse energy impacts because adding a site to the NPL does not require an entity to conduct any action that would require energy use, let alone that which would significantly affect energy supply, distribution or usage. Thus, Executive Order 13211 does not apply to this action.

I. National Technology Transfer and Advancement Act

1. What is the National Technology Transfer and Advancement Act?

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

2. Does the National Technology Transfer and Advancement Act apply to this final rule?

No. This rulemaking does not involve technical standards. Therefore, the EPA did not consider the use of any voluntary consensus standards.

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

1. What is Executive Order 12898?

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

2. Does Executive Order 12898 apply to this final rule?

The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. As this rule does not impose any enforceable duty upon state, tribal or local governments, this rule will neither increase nor decrease environmental protection.

K. Congressional Review Act

1. Has the EPA submitted this rule to Congress and the Government Accountability Office?

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement

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

2. Could the effective date of this final rule change?

Provisions of the Congressional Review Act (CRA) or section 305 of CERCLA may alter the effective date of this regulation.

The EPA has submitted a report under the CRA for this rule. The rule will take effect, as provided by law, within 30 days of publication of this document, since it is not a major rule. NPL listing is not a major rule because, by itself, imposes no monetary costs on any person. It establishes no enforceable duties, does not establish that the EPA necessarily will undertake remedial action, nor does it require any action by any party or determine liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Section 801(a)(3) provides for a delay in the effective date of major rules after this report is submitted.

3. What could cause a change in the effective date of this rule?

Under 5 U.S.C. 801(b)(1), a rule shall not take effect, or continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, described under section 802.

Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha,* 462 U.S. 919,103 S. Ct. 2764 (1983), and *Bd. of Regents of the University of Washington* v. *EPA,* 86 F.3d 1214,1222 (D.C. Cir. 1996), cast the validity of the legislative veto into question, the EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, the EPA will publish a document of clarification in the **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: May 17, 2013.

Barry N. Breen,

Principal Deputy Assistant Administrator, Office of Solid Waste and Emergency Response.

40 CFR part 300 is amended as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

■ 2. Amend Appendix B of part 300 by:

■ a. Table 1 of Appendix B is amended as follows:

■ i. By adding entries for ''Macon Naval Ordnance Plant, Pike and Mulberry Streets PCE Plume, Former United Zinc & Associated Smelters, Creese & Cook Tannery (Former), Walton & Lonsbury Inc., Matlack, Inc., Riverside Industrial Park and Clinch River Corporation'' in alphabetical order by state;

■ ii. By revising footnote ''A''; and

■ iii. By removing the ''Five Points PCE Plume'' entry under the state of Washington, adding a ''Five Points PCE Plume'' entry under the state of Utah; and

■ b. Table 2 of Appendix B to Part 300 is amended as follows:

■ i. By adding an entry for ''700 South 1600 East PCE Plume'' in alphabetical order by state; and

■ ii. By revising footnote ''A''.

The revisions and additions read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/County	Notes [a]
*	*	*	*
GA	Macon Naval Ordnance Plant	Macon	
*	*	*	*
IN	Pike and Mulberry Streets PCE Plume	Martinsville	
*	*	*	*
KS	Former United Zinc & Associated Smelters	Iola	
*	*	*	*
MA	Creese & Cook Tannery (Former)	Danvers	
*	*	*	*
MA	Walton & Lonsbury Inc.	Attleboro	
*	*	*	*
NJ	Matlack, Inc.	Woolwich Township	
*	*	*	*
NJ	Riverside Industrial Park	Newark	

TABLE 1—GENERAL SUPERFUND SECTION—Continued

State	Site name	City/County	Notes [a]
*	*	*	*
TN	Clinch River Corporation	Harriman	
*	*	*	*
UT	Five Points PCE Plume	Woods Cross/Bountiful	
*	*	*	*

[a] A = Based on issuance of health advisory by Agency for Toxic Substances and Disease Registry (if scored, HRS score need not be greater than or equal to 28.50).

* * * * *

TABLE 2—FEDERAL FACILITIES SECTION

State	Site name	City/County	Notes [a]
*	*	*	*
UT	700 South 1600 East PCE Plume	Salt Lake City	
*	*	*	*

[a] A = Based on issuance of health advisory by Agency for Toxic Substances and Disease Registry (if scored, HRS score need not be greater than or equal to 28.50).

* * * * *

[FR Doc. 2013–12324 Filed 5–23–13; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 78, No. 101
Friday, May 24, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0270; Airspace Docket No. 13–AGL–4]

Proposed Amendment of Class D Airspace; Columbus, Rickenbacker International Airport, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class D airspace at Rickenbacker International Airport, Columbus, OH. Changes to the airspace description are necessary due to the closure of South Columbus Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for standard instrument approach procedures at the airport. The airport name and geographic coordinates would also be updated.

DATES: Comments must be received on or before July 8, 2013.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2013–0270/Airspace Docket No. 13–AGL–4, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: 817–321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2013–0270/Airspace Docket No. 13–AGL–4''. The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking 202–267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by amending Class D airspace at Rickenbacker International Airport, Columbus, OH, to reflect the closure of South Columbus Airport. The exclusion of controlled airspace within a 1.3-mile radius of South Columbus Airport is no longer needed and would be removed from the airspace description, restoring Class D airspace to within a 4.5-mile radius of Rickenbacker International Airport for the safety and management of IFR operations. The airport name would also be updated from Rickenbacker Airport to Rickenbacker International Airport, and the airport's geographic coordinates would be updated to coincide with the FAA's aeronautical database.

Class D airspace areas are published in Paragraph 5000 of FAA Order 7400.9W, dated August 8, 2012 and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority

described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend controlled airspace at Rickenbacker International Airport, Columbus, OH.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AGL OH D Columbus, Rickenbacker International Airport, OH [Amended]

Columbus, Rickenbacker International Airport, OH
(Lat. 39°48′50″ N., long. 82°55′40″ W.)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 4.5-mile radius of Rickenbacker International Airport, excluding that airspace within the Port Columbus International Airport, OH, Class C airspace area.

Issued in Fort Worth, TX on May 3, 2013.

David P. Medina,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2013–12478 Filed 5–23–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–1141; Airspace Docket No. 12–ASW–12]

Proposed Amendment of Class E Airspace; Mason, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Mason, TX. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAP) at Mason County Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

DATES: Comments must be received on or before July 8, 2013.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2012–1141/Airspace Docket No. 12–ASW–12, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: (817) 321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2012–1141/Airspace Docket No. 12–ASW–12.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate new standard instrument approach procedures at Mason County Airport, Mason, TX. Accordingly, a segment would extend from the current 6.4-mile radius of the airport to 11.8 miles north of the airport, to retain the safety and management of IFR aircraft in Class E airspace to/from the en route environment.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9W, dated August 8, 2012 and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation

listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend controlled airspace at Mason County Airport, Mason, TX.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5 Mason, TX [Amended]

Mason County Airport, TX
(lat. 30°43′56″ N., long. 99°11′02″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Mason County Airport, and within 2 miles each side of the 001° bearing from the airport extending from the 6.4-mile radius to 11.8 miles north of the airport.

Issued in Fort Worth, TX, on May 3, 2013.

David P. Medina,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2013–12477 Filed 5–23–13; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0004; Airspace Docket No. 13–AGL–1]

Proposed Establishment of Class E Airspace; Wagner, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Wagner, SD. Controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAP) at Wagner Municipal Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

DATES: Comments must be received on or before July 8, 2013.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2013–0004/Airspace Docket No. 13–AGL–1, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: 817–321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2013–0004/Airspace Docket No. 13–AGL–1.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of

the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking 202–267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), part 71 by establishing Class E airspace extending upward from 700 feet above the surface within an 8-mile radius of Wagner Municipal Airport, Wagner, SD, to accommodate new standard instrument approach procedures at the airport. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9W, dated August 8, 2012 and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish controlled airspace at Wagner Municipal Airport, Wagner, SD.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL SD E5 Wagner, SD [New]

Wagner Municipal Airport, SD
(Lat. 43°03′51″ N., long. 98°17′47″ W.)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Wagner Municipal Airport.

Issued in Fort Worth, TX on April 11, 2013.

David P. Medina,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2013–12479 Filed 5–23–13; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 734, 736, 740, 742, 748, 758, 772, and 774

[Docket No. 130110030–3030–01]

RIN 0694–AF87

Export Administration Regulations (EAR): Control of Spacecraft Systems and Related Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML)

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Proposed rule.

SUMMARY: This proposed rule describes how certain articles the President determines no longer warrant control under United States Munitions List (USML) Category XV—spacecraft and related items—would be controlled on the Commerce Control List (CCL). Such items would be controlled by new Export Control Classification Numbers (ECCNs) 9A515, 9B515, 9D515, and 9E515 proposed by this rule and existing ECCNs. This is one in a planned series of proposed rules describing how various types of articles the President determines, as part of the Administration's Export Control Reform Initiative, no longer warrant USML control, would be controlled on the CCL and by the EAR. This proposed rule is being published in conjunction with a proposed rule from the Department of State, Directorate of Defense Trade Controls, which would amend the list of articles controlled by USML Category XV. The revisions proposed in this rule are part of Commerce's retrospective regulatory review plan under EO 13563 completed in August 2011.

DATES: Comments must be received by July 8, 2013.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* The identification number for this rulemaking is BIS–2013–0012.
- By email directly to *publiccomments@bis.doc.gov.* Include RIN 0694–AF87 in the subject line.
- By mail or delivery to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Refer to RIN 0694–AF87.

Commerce's full plan can be accessed at: *http://open.commerce.gov/news/*

2011/08/23/commerce-plan-retrospective-analysis-existing-rules.

FOR FURTHER INFORMATION CONTACT: For questions about the ECCNs included in this rule contact Dennis Krepp, Office of National Security and Technology Transfer Controls, Bureau of Industry and Security, U.S. Department of Commerce, Telephone: 202–482–1309, Email: *Dennis.Krepp@bis.doc.gov.* For general questions about the ''500 series'' regulatory changes, contact Robert Monjay, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, at 202–482–2440 or *Robert.Monjay@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

On January 2, 2013, President Obama signed the National Defense Authorization Act for Fiscal Year 2013 (''2013 NDAA'') (Pub. L. 112–239). Section 1261 of the 2013 NDAA amended Section 1513 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (''1999 NDAA'') by striking the requirement that all satellites and related items be subject to the export control jurisdiction of the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130). The President is now authorized and obligated, pursuant to section 38(f) of the Arms Export Control Act (AECA) (22 U.S.C. 2778(f)), to review the USML ''to determine what items, if any, no longer warrant export controls under'' the AECA.

This notice requests public comment on the changes described in this proposed rule and the corresponding State Department's proposed revisions to the ITAR. These rulemakings are the Administration's first step in implementing the authorities returned to the President by the 2013 NDAA to determine the proper and more tailored controls over the export of satellites and related items as recommended by the Departments of Defense (DOD) and State. These two proposed rules are part of the Administration's larger Export Control Reform effort described, inter alia, in the Commerce Department's July 15, 2011 proposed rule (76 FR 41958) (''July 15 (framework) rule'') setting up a structure to control in the EAR items that the President determines no longer warrant control under the ITAR in accordance with section 38(f) of the AECA. On November 7, 2011, BIS published a proposed rule (76 FR 68675) (''November 7 (aircraft) rule'') that proposed several changes to the framework in the July 15 proposed rule. On June 19, 2012, BIS published a proposed rule to define the term ''specially designed'' (77 FR 36409) (''the June 19 (specially designed) rule''). On June 21, 2012, BIS published a rule entitled Proposed Revisions to the Export Administration Regulations: Implementation of Export Control Reform; Revisions to License Exceptions After Retrospective Regulatory Review, (77 FR 37524) (''the June 21 (transition) rule''). Readers may find it useful to review these four proposed rules when preparing their comments on this proposed rule. Generally following the structure of the July 15 (framework) and the November 7 (aircraft) rules, this proposed rule describes BIS's proposal for controlling under the EAR's CCL the ''spacecraft'' and related articles now controlled under Category XV of the ITAR's United States Munitions List (22 CFR part 121) (USML) that would not be controlled under the revised USML Category XV.

In March 2012, the Departments of Defense and State filed with Congress their ''Final Report'' required by section 1248 of the National Defense Authorization Act of Fiscal Year 2010. *See http://www.defense.gov/home/features/2011/0111_nsss/docs/1248_Report_Space_Export_Control.pdf* (the ''1248 Report''). The 1248 Report identified the types of satellites and related items that should not be designated as ''defense articles'' controlled under the ITAR. ''For the sake of national and economic security, the Departments recommend[ed] that authority to determine the appropriate export control status of satellites and space-related items be returned to the President.'' Id. The changes described in this proposed rule and in the State Department's companion proposed rule on Category XV of the USML are based on a review of Category XV by the Defense Department, which, as described in the 1248 Report, worked with the Departments of State and Commerce in preparing the proposed amendments.

The Defense Department reviewed the articles in Category XV to determine which are either (i) inherently military and otherwise warrant control on the USML or (ii) if, common to non-military space applications, possess parameters or characteristics that provide a critical military or intelligence advantage to the United States, and that are almost exclusively available from the United States. If an article satisfied one or both of those criteria, the article remained on the USML. All other satellites and related items are, pursuant to the State and Commerce Department notices, proposed to move to the export control jurisdiction of the EAR. The licensing requirements and other EAR-specific controls for such items described in this notice would enhance national security by permitting the U.S. Government to focus its resources on controlling, monitoring, investigating, analyzing, and, if need be, prohibiting exports and reexports of more significant items to destinations, end uses, and end users of greater concern than NATO allies and other multi-regime partners.

In the July 15 (framework) rule, BIS proposed creating a ''600 series'' for the new ECCNs to control the munitions items that would be removed from the USML and items currently on the CCL that are also on the Wassenaar Arrangement Munitions List (WAML). This rule proposes to create a new ''500 series'' of ECCNs to control ''spacecraft'' systems and associated equipment that would be removed from the USML. This new series would be created for ''spacecraft'' systems and associated equipment because, although these items are currently on the USML, many of them are commercial items with no military or intelligence applications, such as commercial communications satellites. It would be inappropriate to include these types of items in the ''600 series,'' which is, by definition, comprised of munitions items. Additionally, because many items proposed to be moved in this rule do have military or intelligence applications, it would be unnecessarily complicated and confusing to move certain ''spacecraft'' systems and associated equipment to new ''600 series'' ECCNs while moving the commercial items to existing ECCNs. The creation of a new series would provide a place for ''spacecraft'' systems and associated equipment transferred from the USML, and would allow BIS to apply the appropriate controls to these items. The new series would be identified as the ''500 series'' because the third character in each of the new ECCNs would be a ''5.'' The first two characters of the 500 series ECCNs serve the same function as any other ECCN as described in § 738.2 of the EAR. The first character is a digit in the range 0 through 9 that identifies the Category on the CCL in which the ECCN is located. In addition, it would be inappropriate to put these new controls in one of the multilateral controls of the CCL, such as the ''000 series'' for items controlled under the Wassenaar Arrangement, because none of the items described in proposed ECCN 9x515 in this notice are exclusively subject to multilateral United States controls.

Although the items in the proposed new 9x515 ECCNs would not be listed in the 600 series, the order of review for

the new ECCNs is similar to that for 600 series ECCNs. That is, when determining whether an item that is now controlled under USML Category XV would be controlled on the EAR if it is not within the scope of the revised USML Category XV, one must first look to the 9x515 ECCNs. Only if it is not controlled in one of the new ECCNs would one then look to the remaining ECCNs in the CCL to determine whether the item is on the CCL or, if not, an EAR99 item. The order of review guidance in Supplement No. 4 to Part 774 is proposed to be amended accordingly.

The ECCNs created in this rule would begin with ''9,'' because that is the corresponding CCL category for controls on ''spacecraft.'' The second character is a letter in the range A through E that identifies the product group within a CCL Category. In the ''500 series,'' the third character is the number 5. The final two characters of the ECCNs would be fifteen to identify the corresponding USML category that had covered the items in the new ECCN. The ECCNs that would be created or revised by this proposed rule are described more fully below.

BIS will publish additional **Federal Register** notices containing proposed amendments to the CCL that will describe proposed controls for additional categories of articles the President determines no longer warrant control under the USML. The State Department will publish concurrently proposed amendments to the USML that correspond to the BIS notices. BIS will also publish proposed rules to further align the CCL with the WAML and the Missile Technology Control Regime Equipment, Software and Technology Annex.

The revisions proposed in this rule are part of Commerce's retrospective regulatory review plan under EO 13563 completed in August 2011. Commerce's full plan can be accessed at: *http://open.commerce.gov/news/2011/08/23/commerce-plan-retrospective-analysis-existing-rules.*

Detailed Description of Changes Proposed by This Rule

This rule proposes changes to the text of the EAR as modified by the Initial Implementation Rule of April 16, 2013 (78 FR 22660). BIS made changes to the EAR in the Initial Implementation Rule that provide the framework for the ''500 series.'' The changes made to the EAR in the Initial Implementation Rule will be effective on October 15, 2013.

New 9X515 Series of ECCNs

This proposed rule would create four new ''500 series'' ECCNs in CCL Category 9 (ECCNs 9A515, 9B515, 9D515, and 9E515) to describe the EAR controls over the items the President determines no longer warrant control under the USML Category XV and that are not otherwise within the scope of an existing ECCN. Terms such as ''part'' and ''component'' and ''accessories'' and ''attachments'' are applied in the same manner in this rule as those terms are defined in the Initial Implementation Rule of April 16, 2013 (78 FR 22660). This rule would also add a new definition for the ''500 series'' to § 772.1. The new ''500 series'' would not include the International Space Station, which remains under ECCN 9A004.

This rule also proposes to amend the related controls paragraph of eighteen ECCNs—i.e., 3A001, 3A002, 3A611, 3D001, 3E001, 3E003, 5A001, 5A991, 5E001, 6A002, 6A004, 6D001, 6D002, 6E001, 6E002, 7A004, 7A104 and 9A004. The cross references to the USML for items listed in the proposed USML Category XV would be revised. The cross references to the USML for items that are proposed to transition from Category XV of the USML would be removed. This rule additionally proposes to remove paragraph .b from the List of Items Controlled in ECCN 9A004. Paragraph .b was added to the CCL on March 15, 1999, when all satellites, including commercial communications satellites, and related items were transferred to the USML pursuant to the 1999 NDAA. Paragraph .b provided a space on the CCL to control specific ''spacecraft'' related items that were determined to be not subject to the ITAR through the commodity jurisdiction procedure administered by the Department of State. The new ''500 series'' ECCNs, specifically 9A515, would control all ''spacecraft'' and related items that are not otherwise enumerated on the USML or CCL. Therefore, it is appropriate to delete 9A004.b and bring these ''spacecraft'' related items into the orbit of 9A515.

New ECCN 9X515

Proposed ECCN 9A515 paragraph .a would control ''spacecraft,'' including satellites, manned or unmanned space vehicles, whether designated developmental, experimental, research or scientific, not enumerated in USML Category XV. Paragraph 9A515.b would control ground control systems and training simulators ''specially designed'' for telemetry, tracking, and control of the ''spacecraft'' in paragraph 9A515.a. Paragraph .c would be reserved.

Paragraph .d would control certain radiation hardened microelectronic circuits that are ''specially designed'' for defense articles on the USML, ''600 series'' items, or items controlled by 9A515 that meet or exceed five specific characteristics. A reminder note is proposed for ECCN 9A515.d to state that application specific integrated circuits (ASICs) ''specially designed'' for defense articles are controlled by Category XI(c) of the USML, regardless of characteristics. A second note is proposed for ECCN 9A515.d that ''space qualified'' microelectronic circuits that do not meet the radiation-hardening or other criterion of 9A515.d are controlled by ECCN 9A515.x. A third note is proposed for ECCN 9A515.d to refer to controls in 3A001.a for microelectronic circuits that are ''subject to the EAR'' and not controlled by 9A515. A fourth note is proposed for ECCN 9A515.d to state that microelectronic circuits ''specially designed'' for defense articles on the USML (other than Category XV) or ''600 series'' items that do not meet the radiation hardening criteria of paragraph .d would be controlled by the proposed ''600 series'' ECCN 3A611.

Paragraphs .e through .w would be reserved.

Paragraph .x would control ''parts,'' ''components,'' ''accessories,'' and ''attachments'' that are ''space qualified'' and not controlled on the USML, elsewhere within ECCN 9A515, or in one of the existing ECCNs that has ''space qualified'' as a control criterion. A note is proposed for ECCN 9A515.x to remind readers that ''parts,'' ''components,'' and ''accessories'' and ''attachments'' specified in USML subcategory XV(e) or enumerated in other USML categories are subject to the controls of the USML.

New ECCN 9B515

Proposed ECCN 9B515 paragraph .a would control test, inspection, and production ''equipment'' ''specially designed'' for the ''production'' or ''development'' of commodities enumerated in ECCN 9A515 or USML Category XV.

Paragraph .b would control ''equipment,'' cells, and stands ''specially designed'' for testing, analysis and fault isolation of commodities enumerated in ECCN 9A515, 9A004 or USML Category XV.

Paragraph .c would control environmental test chambers capable of pressures below (10^{-4}) Torr, and ''specially designed'' ''components'' therefor.

New ECCN 9D515

Proposed ECCN 9D515 would control ''software'' ''specially designed'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by ECCNs 9A515 and 9B515.

New ECCN 9E515

Proposed ECCN 9E515 paragraph .a would control ''technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul or refurbishing of items controlled by ECCN 9A515, 9B515, or 9D515.

The appendix to the 1248 Report referred to a possible need to control technology required for passenger participation in space travel (e.g., sub-orbital, orbital, lunar, interplanetary or habitat) for space tourism, research or scientific endeavors, or transportation from one point to another for commercial purposes. The Departments of Defense and State have since reviewed such technology and concluded that it is not per se now subject to USML Category XV. There is thus no proposed inclusion of such technology as a general matter in either the proposed USML Category XV or the proposed 9E515. To the extent other technology described in either the proposed USML XV or 9E515 would be released to a foreign person during such activities, then it would be controlled according to the requirements of the relevant paragraph.

Applicable controls for new ''500 series'' ECCNs.

All items in the 9X515 ECCNs, as proposed in this rule, would be subject to national security (NS Column 1) and regional stability (RS Column 1) controls, as well as antiterrorism (AT Column 1) controls. Some of the items would be subject to missile technology (MT) controls in some cases. The licensing policy would be a case-by-case review to determine whether the transaction is contrary to the national security or foreign policy interests of the United States. However, applications for ''500 series'' items destined to a country listed in Country Group D:5 (Supplement No. 1 to Part 740) as a country subject to a U.S. arms embargo will be reviewed consistent with United States arms embargo policies. Country Group D:5 (Supplement No. 1 to Part 740) is set out in the Initial Implementation Rule of April 16, 2013 (78 FR 22660). The U.S. Government has long considered U.S. arms embargo policies when reviewing license applications to export items subject to the EAR. BIS has now explicitly stated that the review policy for all ''600 series'' items will be consistent with U.S. arms embargos. DOD and the State Department recommended in the 1248 Report to Congress that BIS explicitly adopt this review policy for items transitioning from the USML to ensure that exporters are aware that all items subject to embargo remain so on the CCL. BIS agrees with this recommendation and would amend §§ 742.4(b)(1)(ii) and 742.6(b)(1) to add the term ''500 series.'' Additionally, as required by Section 1261 of the 2013 NDAA, applications for ''500 series'' items destined to the People's Republic of China, North Korea, or any country that is a state sponsor of terrorism, would be subject to a policy of denial.

''Space-Qualified''

In December 2012, the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (''Wassenaar Arrangement'') amended its definition of ''space-qualified'' to be ''[d]esigned, manufactured, or qualified through successful testing, for operation at altitudes greater than 100 km above the surface of the Earth. **Note:** A determination that a specific item is ''space qualified'' by virtue of testing does not mean that other items in the same production run or model series are ''space qualified'' if not individually tested.'' BIS plans to adopt this definition in the EAR when it publishes its amendments to the EAR to implement the amendments agreed to by the Wassenaar Arrangement. To comment on the proposed changes to the EAR in this notice that pertain to the meaning of ''space-qualified,'' the public should use the above definition.

The Wassenaar Arrangement adopted the revised definition after the Departments of State and Defense submitted to Congress the 1248 Report, describing the proposed controls on ''space qualified'' items not controlled elsewhere. In addition, the revised definition was adopted after the U.S. Government had received and considered public comments on its proposed definition of ''specially designed,'' which would be the control parameter in its other ''.x'' catch-all controls. In order to (i) maintain the ''space qualified'' control scope described in the 1248 Report, (ii) maintain consistency between this catch-all control and the other ''space qualified'' controls in the CCL, and (iii) limit the ambiguity between the scope of this catch-all approach and the other new ''.x'' catch-alls that use ''specially designed,'' BIS is proposing the addition of a note to the new ''space qualified'' definition. The note would state that, for purposes of these controls, the terms 'designed' and 'manufactured' in the Wassenaar's definition of ''space qualified'' are synonymous with the EAR's new definition of ''specially designed.'' Thus, for example, an item that is ''specially designed'' for a spacecraft is deemed to be 'designed' or 'manufactured' for operation at altitudes greater than 100 km and an item that is not ''specially designed'' for a spacecraft is not deemed to have been so 'designed' or 'manufactured.' An implication of this note would be that an item that becomes ''space qualified'' by virtue of successful testing would be ''space qualified'' regardless of whether it would be considered ''specially designed.'' This note does not constitute a modification of the Wassenaar definition of the term, only a comment about how it is relates to the EAR's definition of ''specially designed.''

Effects of This Proposed Rule

De minimis

Items made outside the United States that incorporate items subject to the EAR are subject to the EAR if they exceed a *de minimis* percentage of controlled U.S.-origin content, as described in § 734.3 of the EAR. The Initial Implementation Rule of April 16, 2013 (78 FR 22660) established the *de minimis* threshold for a foreign-made item that incorporates U.S.-origin ''600 series'' items at zero percent when the foreign-made item is destined for a country subject to a U.S. arms embargo and 25 percent for destinations that are not subject to a U.S. arms embargo. This rule proposes to adopt the same *de minimis* thresholds for the ''500 series'' as is proposed for the ''600 series.'' Foreign-made items that incorporate any amount of U.S.-origin ''500 series'' items would be subject to the EAR when destined to a country that is subject to a U.S. arms embargo (i.e., Afghanistan, Belarus, Burma, China, Cote d'Ivoire, Cuba, Cyprus, Democratic Republic of Congo, Eritrea, Fiji, Haiti, Iraq, Iran, Lebanon, Liberia, Libya, North Korea, Somalia, Sri Lanka, Sudan, Syria, Venezuela, Vietnam, and Zimbabwe). A foreign-made item that incorporates U.S.-origin ''500 series'' items, destined to a country that is not subject to a U.S. arms embargo, would be eligible for *de minimis* treatment and would not be subject to the EAR if the value of all of its U.S.-origin controlled content does not exceed 25 percent of foreign-made item's value.

Foreign-Produced Direct Product

The Initial Implementation Rule of April 16, 2013 (78 FR 22660) expanded the foreign-produced direct products of U.S. ''technology'' that are subject to the EAR. Foreign-produced direct products of U.S.-origin ''600 series'' ''technology,'' or of a plant or major component of a plant that is a direct product of U.S.-origin ''600 series'' ''technology,'' that are ''600 series'' items are proposed to be subject to the EAR when reexported or exported from abroad to countries listed in Country Groups D:1 (national security countries of concern), D:3 (chemical and biological countries of concern), D:4 (missile technology countries of concern), or E:1 (countries that support terrorism) in Supplement No. 1 to part 740 or countries subject to a U.S. arms embargo. Foreign-made items subject to the EAR because of this rule are subject to the same license requirements to the new country of destination as if they were of U.S. origin. This rule proposes to extend the ''600 series'' direct product rule to items in the ''500 series'' as well.

Use of License Exceptions

Most ''500 series'' items would be eligible for several license exceptions, including STA, which would be available for exports to certain countries that are NATO members or multi-regime close allies. Certain items described in ECCNs 9D515 and 9E515, however, would not be eligible for export under STA, as described in those ECCNs. Additionally, the MT controlled commodities in 9A515 and some types of technology in 9E515 would not be eligible for any license exceptions, including STA. The use of STA for ''500 series'' items would require the consignee to consent to an end-user check by the U.S. Government in addition to the standard consignee statement required for all STA transactions. ''600 series'' items are subject to additional criteria for the use of License Exception STA. Specifically, the Ultimate Consignee must be in an A:5 country and either (a) the ultimate end user must be the government of an A:5 country or the United States Government, or (b) the items must be for the ''development'' or ''production'' of an item in that will ultimately be used by any such government agencies, the United States Government, or a person in the United States. BIS is not proposing to make this ''600 series'' specific STA requirement applicable to the ''500 series.'' ''500 series'' items are not munitions items and are generally not intended for ultimate end use by governmental end users. The majority of the items in the ''500 series'' are commercial items, and while many of the ''parts'' and ''components'' have military or intelligence applications, they are dual-use items that have commercial applications. Therefore, the application of this requirement to the ''500 series'' would be inappropriate.

Items controlled under proposed ECCNs 9A515 and 9B515 would also be eligible for License Exception LVS (limited value shipments) up to a value of $1,500 ($5,000 for 9B515.c), TMP (temporary exports), GOV (U.S. Government), and RPL (servicing and replacement parts). The use of license exceptions for ''500 series'' items generally would be prohibited to any destination subject to a U.S. arms embargo, except to the U.S. Government under License Exception GOV.

License Applications

In a license application for a transaction involving ''500 series'' items that is equivalent to a transaction that was previously approved by the State Department under the ITAR, the applicant may report the ITAR license or other approval number to BIS in Block 24 of the license application. Only those license applications where the particulars (e.g., the function, performance capabilities, form and fit of the item, the purchaser, ultimate consignee and end user(s)) are the same in both the EAR license application and the previously issued ITAR authorization would receive full consideration under this paragraph. For example, if a U.S. company had an ITAR authorization to export certain radiation hardened microchips that will be controlled under 9A515.d to a governmental end user in Japan, the company may list that authorization in Block 24 if it plans to export more of the same chips to the same end user in Japan. However, if the company wishes to export the same chip to a commercial end user or the next generation of chip to the same government end user, it may not list the prior authorization as precedent. Block 24 would alert BIS and the other U.S. Government agencies reviewing a particular ''500 series'' license application that this new application to BIS concerns a transaction that is equivalent to a previously approved transaction. This information may be relevant to review of the transaction and may result in an expedited determination.

Export Clearance

This rule proposes to adopt the ''600 series'' export clearance requirements proposed in the June 21 (transition) rule. This rule would revise § 758.1 to require that information on all exports of ''500 series'' items be filed in AES regardless of value or destination. BIS is required to report to Congress on all ''500 series'' exports and would only be able to obtain information on low value unlicensed shipments if an AES filing is made. This rule would also revise § 758.2 to preclude the option of post-departure filing for exports of ''500 series'' items. This revision would maintain the current status of these items under the ITAR as ineligible for post-departure filing. Finally, this rule would revise § 758.6 to require that the ECCN for each ''500 series'' item being shipped be provided on the same documents on which the Destination Control Statement is required. This would require that the ECCN for each ''500 series'' item be entered on the invoice and on the bill of lading, air waybill, or another export control document that accompanies the shipment from its point of origin in the United States to the ultimate consignee or end user abroad.

Order of Review

Supplement No. 4 to Part 774 would be amended to include a reference to the new 9x515 ECCNs so that those engaging in classification analyses of items formerly in USML Category XV but no longer controlled under the amended USML Category XV know to review the new 9X515 ECCNs before reviewing other potentially applicable ECCNs in the CCL.

Request for Comments

BIS seeks comments on this proposed rule. BIS will consider all comments received on or before July 8, 2013. All comments (including any personally identifying information or information for which a claim of confidentially is asserted either in those comments or their transmittal emails) will be made available for public inspection and copying. Parties who wish to comment anonymously may do so by submitting their comments via Regulations.gov, leaving the fields that would identify the commenter blank and including no identifying information in the comment itself.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 15, 2012, 77 FR 49699 (August 16, 2012), has continued the Export Administration Regulations in effect

under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 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, distribute 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 a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

2. Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB control number. This proposed rule would affect two approved collections: Simplified Network Application Processing System (control number 0694–0088), which includes, among other things, license applications, and License Exceptions and Exclusions (0694–0137).

BIS believes that the effect of adding items to the EAR that would be removed from the ITAR as a result of this rule as part of the administration's Export Control Reform Initiative would increase the number of license applications to be submitted to BIS by approximately 1,500 annually, resulting in an increase in burden hours of 425 (1,500 transactions at 17 minutes each) under control number 0694–0088.

Most ''spacecraft'' and ground control systems, ''space qualified'' ''parts,'' ''components,'' ''accessories'' and ''attachments,'' and related ''software'' and ''technology'' formerly on the USML would become eligible for License Exception STA under this rule. BIS believes that the increased use of License Exception STA resulting from the effect of adding items to the EAR that would be removed from the ITAR as a result of this rule as part of the administration's Export Control Reform Initiative would increase the burden associated with control number 0694–0137 by about 2,258 hours (1,935 transactions @ 1 hour and 10 minutes each).

BIS expects that this increase in burden would be more than offset by a reduction in burden hours associated with approved collections related to the ITAR. The largest impact of the proposed rule would likely apply to exporters of parts, components, accessories, and attachments specifically designed or modified for satellite and other ''spacecraft'' items that would have been approved for export under the ITAR pursuant to a license for export to NATO allies and regime partners. Because, with few exceptions, the ITAR allows exemptions from license requirements only for certain exports to Canada, most exports of such parts, even when destined to NATO and other allied countries, require specific State Department authorization. Under the EAR, as proposed in this notice, such ''parts'' and ''components'' would become eligible for export to NATO and other multi-regime allies under License Exception STA. Use of License Exception STA imposes a paperwork and compliance burden because, for example, exporters must furnish information about the item being exported to the consignee and obtain from the consignee an acknowledgement and commitment to comply with the EAR. However, the Administration understands that complying with the burdens of STA is likely less burdensome than applying for licenses or other approval from the State Department. For example, under License Exception STA, a single consignee statement can apply to an unlimited number of products, need not have an expiration date, and need not be submitted to the government in advance for approval. Suppliers with regular customers can tailor a single statement and assurance to match their business relationship, rather than applying repeatedly for licenses with every purchase order to supply reliable customers in countries that are close allies or members of export control regimes or both.

Even in situations in which a license would be required under the EAR, the burden is likely to be reduced compared to the license requirement of the ITAR. In particular, license applications for exports of ''technology'' controlled by ECCN 9E515 are likely to be less complex and burdensome than the authorizations required to export ITAR-controlled ''technology,'' *i.e.,* Manufacturing License Agreements and Technical Assistance Agreements.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.,* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Chief Counsel for Regulation, Department of Commerce, submitted a memorandum to the Chief Counsel for Advocacy, Small Business Administration, certifying that this proposed rule will not have a significant impact on a substantial number of small entities. A summary of the factual basis for this certification follows.

Number of Small Entities

BIS does not collect data on the size of entities that apply for and are issued export licenses. Although BIS is unable to estimate the exact number of small entities that would be affected by this rule, it acknowledges that this rule would affect some unknown number.

Economic Impact

This proposed rule is part of the Administration's Export Control Reform Initiative. Under that initiative, the USML (22 CFR part 121) would be revised to be a ''positive'' list, *i.e.,* a list that does not use generic, catch-all controls on any part, component, accessory, attachment, or end item that was in any way specifically modified for a defense article, regardless of the article's military or intelligence significance or non-military applications. At the same time, articles that are determined to no longer warrant control on the USML would become controlled on the CCL. ''Spacecraft'' and related items so designated will be identified in specific ECCNs known as the ''500 series'' ECCNs. In practice, the greatest impact of this rule on small entities would likely be reduced administrative costs and reduced delay for exports of items that are now on the

USML but would become subject to the EAR.

Many ''spacecraft'' and specific parts and components would remain on the USML. However, ''parts,'' ''components,'' ''accessories,'' and ''attachments'' for such ''equipment'' would be included on the CCL unless expressly enumerated on the USML. Such ''parts'' and ''components'' are more likely to be produced by small businesses than complete ''spacecraft,'' which would in many cases become subject to the EAR. Moreover, officials at the Department of State have informed BIS that license applications for such ''parts'' and ''components'' are a high percentage of the license applications for USML articles reviewed by that department. The proposed changes in this rule will not result in the decontrol of such items, but will reduce administrative and collateral regulatory burdens by, for example, allowing for the use of License Exception STA for exports to NATO and other multi-regime allied countries.

Thus, changing the jurisdictional status of certain Category XV articles would reduce the burden on small entities (and other entities as well) through: Elimination of some license requirements, greater availability of license exceptions, simplification of license application procedures, and reduction (or elimination) of registration fees. In addition, parts and components controlled under the ITAR remain under ITAR control when incorporated into foreign-made items, regardless of the significance or insignificance of the item, discouraging foreign buyers from incorporating such U.S. content.

Exporters and reexporters of the Category XV articles, particularly ''parts'' and ''components,'' that would be placed on the CCL by this rule would need fewer licenses because their transactions would become eligible for license exceptions that apply to shipments to United States Government agencies, shipments valued at less than $1,500, ''parts'' and ''components'' being exported for use as replacement parts, temporary exports, and License Exception Strategic Trade Authorization (STA). License Exceptions under the EAR would allow suppliers to send routine parts and low level parts to NATO and other export control regime partner countries without having to obtain export licenses. Under License Exception STA, the exporter would need to furnish information about the item being exported to the consignee and obtain a statement from the consignee that, among other things, would commit the consignee to comply with the EAR and other applicable U.S. laws.

Because such statements and obligations can apply to an unlimited number of transactions and have no expiration date, they would impose a net reduction in burden on transactions that the government routinely approves through the license application process that the License Exception STA statements would replace.

Even for exports and reexports in which a license would be required, the process would be simpler and less costly under the EAR than under the USML. When a USML Category XV article moves to the CCL, the number of destinations for which a license is required would remain unchanged. However, the burden on the license applicant would decrease because the licensing procedure for CCL items is simpler and more flexible than the license procedure for USML articles.

Under the USML licensing procedure, an applicant must include a purchase order or contract with its application. There is no such requirement under the CCL licensing procedure. This difference gives the CCL applicant at least two advantages. First, the applicant has a way of determining whether the U.S. Government will authorize the transaction before it enters into potentially lengthy, complex, and expensive sales presentations or contract negotiations. Under the USML procedure, the applicant will need to caveat all sales presentations with a reference to the need for government approval, and is more likely to have to engage in substantial effort and expense only to find that the government will reject the application. Second, a CCL license applicant need not limit its application to the quantity or value of one purchase order or contract. It may apply for a license to cover all of its expected exports or reexports to a particular consignee over the life of a license (normally four years, but may be longer if circumstances warrant a longer period), reducing the total number of licenses for which the applicant must apply.

In addition, many applicants, who are exporting or reexporting items that this rule would transfer from the USML to the CCL, would realize cost savings through the elimination of some or all registration fees currently assessed under the USML's licensing procedure. Currently, USML applicants must pay to use the USML licensing procedure even if they never actually are authorized to export. Registration fees for manufacturers and exporters of articles on the USML start at $2,250 per year, increase to $2,750 for organizations applying for one to ten licenses per year and further increases to $2,750 plus $250 per license application (subject to a maximum of three percent of total application value) for those who need to apply for more than ten licenses per year.

There are no registration costs or application processing fees for applications to export items listed on the CCL. Once the Category XV articles that are the subject to this rulemaking are added to the CCL and removed from the USML, entities currently applying for licenses from the Department of State would find their registration fees reduced if the number of USML licenses those entities need declines. If an entity's entire product line is moved to the CCL, then its ITAR registration and registration fee requirement would be eliminated and it would no longer incur that expense.

De minimis treatment under the EAR would also become available for all items that this rule would transfer from the USML to the CCL. Items subject to the ITAR remain subject to the ITAR when they are incorporated abroad into a foreign-made product, regardless of the percentage of U.S. content in that foreign-made product. Foreign-made products that incorporate items that this rule would move to the CCL would be subject to the EAR only if their total controlled U.S.-origin content exceeds 25 percent for most destinations. Because including small amounts of U.S.-origin content would not subject foreign-made products to the EAR, foreign manufacturers would have less incentive to avoid such U.S.-origin ''parts'' and ''components,'' a development that potentially would mean greater sales for U.S. suppliers, including small entities.

Conclusion

BIS is unable to determine the precise number of small entities that would be affected by this rule. Based on the facts and conclusions set forth above, BIS believes that any burdens imposed by this rule would be offset by the reduction in the number of items that would require a license, increased opportunities for use of license exceptions for exports to certain countries, simpler export license applications, reduced or eliminated registration fees and application of a *de minimis* threshold for foreign-made items incorporating U.S.-origin ''parts'' and ''components,'' which would reduce the incentive for foreign buyers to design out or avoid U.S.-origin content. For these reasons, the Chief Counsel for Regulation of the Department of Commerce certified to

the Chief Counsel for Advocacy of the Small Business Administration that this rule, if adopted in final form, would not have a significant economic impact on a substantial number of small entities.

List of Subjects

15 CFR Parts 734, 740, 748 and 758

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Parts 736 and 772

Exports.

15 CFR Parts 742 and 774

Exports, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR Parts 730–774), as amended by the final rule published April 16, 2013 (78 FR 22660), effective October 15, 2013, are proposed to be further amended as follows:

PART 734—[AMENDED]

■ 1. The authority citation for 15 CFR part 734 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012); Notice of November 1, 2012, 77 FR 66513 (November 5, 2012).

■ 2. Section 734.4 is amended by revising paragraph (a)(6) to read as follows:

§ 734.4 *De minimis* U.S. content.

(a) * * *

(6) There is no *de minimis* level for foreign-made items that incorporate U.S.-origin ''500 series'' or ''600 series'' items when destined to a country listed in Country Group D:5 of Supplement No. 1 to part 740 of the EAR.

* * * * *

PART 736—[AMENDED]

■ 3. The authority citation for 15 CFR part 736 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 2151 note; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; Notice of May 9, 2012, 77 FR 27559 (May 10, 2012); Notice of August 15, 2012, 77 FR 49699 (August 16, 2012); Notice of November 1, 2012, 77 FR 66513 (November 5, 2012).

■ 4. Section 736.2 is amended by revising paragraph (b)(3)(iii) through (v) to read as follows:

§ 736.2 General prohibitions and determination of applicability.

* * * * *

(b) * * *

(3) * * *

(iii) *Additional country scope of prohibition for ''500 series'' or ''600 series'' items.* You may not, except as provided in paragraphs (b)(3)(v) or (vi) of this section, reexport or export from abroad without a license any ''500 series'' or ''600 series'' item subject to the scope of this General Prohibition Three to a destination in Country Groups D:1, D:3, D:4, D:5 or E:1 (See Supplement No.1 to part 740 of the EAR).

(iv) *Product scope of ''500 series'' and ''600 series'' items subject to this prohibition.* This General Prohibition Three applies if a ''500 series'' or ''600 series'' item meets either of the following conditions:

(A) *Conditions defining direct product of ''technology'' or ''software'' for ''500 series'' and ''600 series'' items.* Foreign-made ''500 series'' and ''600 series'' items are subject to this General Prohibition Three if the foreign-made items meet both of the following conditions:

(*1*) They are the direct product of ''technology'' or ''software'' that is in the ''500 series'' or ''600 series'' as designated on the applicable ECCN of the Commerce Control List in Supplement No. 1 to part 774 of the EAR; and

(*2*) They are in the ''500 series'' or ''600 series'' as designated on the applicable ECCN of the Commerce Control List in part 774 of the EAR.

(B) *Conditions defining direct product of a plant for ''500 series'' and ''600 series'' items.* Foreign-made ''500 series'' and ''600 series'' items are also subject to this General Prohibition Three if they are the direct product of a complete plant or any major component of a plant if both of the following conditions are met:

(*1*) Such plant or major component is the direct product of ''500 series'' or ''600 series'' ''technology'' as designated on the applicable ECCN of the Commerce Control List in part 774 of the EAR, and

(*2*) Such foreign-made direct products of the plant or major component are in the ''500 series'' or ''600 series'' as designated on the applicable ECCN of the Commerce Control List in part 774 of the EAR.

(v) ''500 series'' and ''600 series'' foreign-produced direct products of U.S. ''technology'' or ''software'' subject to this General Prohibition Three do not require a license for reexport or export from abroad to the new destination unless the same item, if exported from the U.S. to the new destination would have been prohibited or made subject to a license requirement by part 742, 744, 746, or 764 of the EAR.

* * * * *

PART 740—[AMENDED]

■ 5. The authority citation for 15 CFR part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

■ 6. Section 740.2 is amended by revising paragraph (a)(12) and adding paragraph (a)(17) to read as follows:

§ 740.2 Restrictions on all License Exceptions.

(a) * * *

(12) The item is described in a ''500 series'' or ''600 series'' ECCN and is destined to, shipped from, or was manufactured in a destination listed in Country Group D:5 (see Supplement No.1 to part 740 of the EAR), except that such items are eligible for License Exception GOV (§ 740.11(b)(2) of the EAR) unless otherwise restricted by that paragraph.

* * * * *

(17) ''500 series'' items that are controlled for missile technology (MT) reasons may not be exported, reexported, or transferred (in-country) under License Exception STA (§ 740.20 of the EAR). Items controlled under ECCNs 9D515.b through .g and 9E515.b are not eligible for license exceptions except for License Exception GOV (§ 740.11(b)(2) of the EAR).

* * * * *

■ 7. Section 740.9 is amended by revising the last sentence of paragraph (a) introductory text to read as follows:

§ 740.9 Temporary imports, exports, and reexports (TMP).

* * * * *

(a) * * * The references to various countries and country groups in these TMP-specific provisions do not limit or amend the prohibitions in § 740.2 of the EAR on the use of license exceptions generally, such as for exports of ''500 series'' or ''600 series'' items to destinations in Country Group D:5.

* * * * *

■ 8. Section 740.10 is amended by revising paragraphs (a)(3)(viii), (a)(4)(ii), (b)(3)(i)(F) to read as follows:

§ 740.10 License Exception Servicing and replacement of parts and equipment (RPL).

(a) * * *

(3) * * *

(viii) ''Parts,'' ''components,'' ''accessories,'' and ''attachments'' classified in ''500 series'' or ''600 series'' ECCNs may not be exported or reexported to a destination listed in Country Group D:5 (see Supplement No. 1 to this part).

(4) * * *

(ii) The conditions described in paragraph (a)(3) relating to replacement of ''parts,'' ''components,'' ''accessories,'' or ''attachments'' (excluding ''500 series'' and ''600 series'' ECCNs) do not apply to reexports to a foreign country of ''parts,'' ''components,'' ''accessories,'' or ''attachments'' as replacements in foreign-origin products, if at the time the replacements are furnished, the foreign-origin product is eligible for export to such country under any of the License Exceptions in this part or the foreign-origin product is not subject to the EAR pursuant to § 734.4.

* * * * *

(b) * * *

(3) * * *

(i) * * *

(F) Commodities or ''software'' ''subject to the EAR'' and classified in ''500 series'' or ''600 Series'' ECCNs may not be exported or reexported to a destination identified in Country Group D:5 (see Supplement No. 1 to this part).

* * * * *

■ 9. Section 740.20 is amended by adding a sentence to the end of paragraph (d)(2) introductory text to read as follows:

§ 740.20 License Exception Strategic Trade Authorization (STA).

(d) * * *

(2) * * * Paragraph (d)(2)(vii) is also required for transactions including ''500 series'' items.

PART 742—[AMENDED]

■ 10. The authority citation for 15 CFR part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012); Notice of November 1, 2012, 77 FR 66513 (November 5, 2012).

■ 11. Section 742.4 is amended by revising paragraph (b)(1)(ii) and adding paragraph (b)(1)(iii) to read as follows:

§ 742.4 National security.

* * * * *

(b) * * *

(1) * * *

(ii) When destined to a country listed in Country Group D:5 in Supplement No. 1 to Part 740 of the EAR, however, items classified under ''500 series'' or ''600 series'' ECCNs will be reviewed consistent with United States arms embargo policies (§ 126.1 of the ITAR).

(iii) When destined to the People's Republic of China or a country listed in Country Group E:1 in Supplement No. 1 to Part 740 of the EAR, items classified under any ''500 series'' ECCN will be subject to a policy of denial.

* * * * *

■ 12. Section 742.6 is amended by revising the first and fourth sentence and adding a sentence to the end of paragraph (b)(1) to read as follows:

§ 742.6 Regional stability.

* * * * *

(b) * * *

(1) Applications for exports and reexports of ''500 series'' and ''600 series'' items will be reviewed on a case-by-case basis to determine whether the transaction is contrary to the national security or foreign policy interests of the United States. * * * Applications for export or reexport of items classified under any ''500 series'' or ''600 series'' ECCN requiring a license in accordance with paragraph (a)(1) of this section will also be reviewed consistent with United States arms embargo policies (§ 126.1 of the ITAR) if destined to a country set forth in Country Group D:5 in Supplement No. 1 to part 740 of the EAR. * * * When destined to the People's Republic of China or a country listed in Country Group E:1 in Supplement No. 1 to Part 740 of the EAR, items classified under any ''500 series'' ECCN will be subject to a policy of denial.

* * * * *

PART 748—[AMENDED]

■ 13. The authority citation for 15 CFR part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

■ 14. Section 748.8 is amended by revising paragraph (x) to read as follows:

§ 748.8 Unique application and submission requirements.

* * * * *

(x) License application for a transaction involving a ''500 series'' and ''600 series'' item that is equivalent to a transaction previously approved under an ITAR license or other approval.

■ 15. Supplement No. 1 to part 748 (BIS–748P, BIS–748P–A: Item Appendix, and BIS–748P–B: End-User Appendix; Multipurpose Application Instructions) is amended by revising the first and fifth sentences of Block 24 to read as follows:

Supplement No. 1 to Part 748—Item Appendix, and Bis–748P–B: End-User Appendix; Multipurpose Application Instructions

* * * * *

Block 24: Additional Information

This Block should be completed if your application includes a ''500 series'' or ''600 series'' item that is equivalent to a transaction previously approved under an ITAR license or other approval. * * * The classification of the ''500 series'' or ''600 series'' item in question will no longer be the same because the item would no longer be ''subject to the ITAR,'' but all other aspects of the description of the item must be the same in order to be reviewed under this expedited process under paragraph (x) of Supplement No. 2 to part 748 of the EAR.

* * * * *

■ 16. Supplement No. 2 to part 748 (Unique Application and Submission Requirements) is amended by revising paragraph (x) to read as follows:

Supplement No. 2 to Part 748—Unique Application and Submission Requirements

* * * * *

(x) *License application for a transaction involving a''500 series'' or ''600 series'' item that is equivalent to a transaction previously approved under an ITAR license or other approval.* To request that the U.S. Government review of a license application for a ''500 series'' or ''600 series'' item also take into consideration a previously approved ITAR license or other approval, applicants must also include the State license number or other approval identifier in Block 24 of the BIS license application (see the instructions in Supplement No. 1 to part 748 under Block 24).

* * * * *

PART 758—[AMENDED]

■ 17. The authority citation for 15 CFR part 758 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

■ 18. Section 758.1 is amended by revising paragraph (b)(3) to read as follows:

§ 758.1 The Automated Export System (AES) record.

* * * * *

(b) * * *

(3) For all exports of ''500 series'' or ''600 series'' items enumerated in paragraphs .a through .x of a ''500 series'' or ''600 series'' ECCN regardless of value or destination, including exports to Canada;

* * * * *

■ 19. Section 758.2, as amended April 16, 2013, at 78 FR 22726, is further amended by revising paragraph (c)(4) to read as follows:

§ 758.2 Automated Export System (AES).

* * * * *

(c) * * *

(4) Exports are made under License Exception Strategic Trade Authorization (STA); are made under Authorization Validated End User (VEU); or are of ''500 series'' or ''600 series'' items.

* * * * *

■ 20. Section 758.6, as amended April 16, 2013, at 78 FR 22726, is further amended by revising paragraph (b) to read as follows:

§ 758.6 Destination control statement and other information furnished to consignees.

* * * * *

(b) *Additional Requirement for ''500 series'' and ''600 series'' items.* In addition to the DCS as required in paragraph (a) of this section, the ECCN for each ''500 series'' or ''600 series'' item being exported must be printed on the invoice and on the bill of lading, air waybill, or other export control document that accompanies the shipment from its point of origin in the United States to the ultimate consignee or end user abroad.

■ 21. The authority citation for 15 CFR part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

■ 22. Section 772.1 is amended by adding, in alphanumerical order, a definition for the term ''500 series'' and revising the definition for the term ''space-qualified'' as set forth below:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

500 series. ECCNs in the ''xY5zz'' format on the Commerce Control List (CCL) that control ''dual use'' ''spacecraft'' and related items on the CCL that were previously controlled on the United States Munitions List. The ''5'' indicates the entry is a ''spacecraft'' entry on the CCL. The ''x'' represents the CCL category and ''Y'' the CCL product group. The ''500 series'' constitutes the ''spacecraft'' ECCNs within the larger CCL. The ''500 series'' does not include items designated in ECCNs 0A521, 0B521, 0C521, 0D521, or 0E521.

* * * * *

''Space-qualified''. (Cat 3, 6, and 9) Designed, manufactured, or qualified through successful testing, for operation at altitudes greater than 100 km above the surface of the Earth.

Note: A determination that a specific item is ''space qualified'' by virtue of testing does not mean that other items in the same production run or model series are ''space qualified'' if not individually tested.

Note: The terms 'designed' and 'manufactured' in this definition are synonymous with ''specially designed.'' Thus, for example, an item that is ''specially designed'' for a spacecraft is deemed to be 'designed' or 'manufactured' for operation at altitudes greater than 100 km and an item that is not ''specially designed'' for a spacecraft is not deemed to have been so 'designed' or 'manufactured.'

* * * * *

PART 774—[AMENDED]

■ 23. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

■ 24. In Supplement No. 1 to Part 774, Category 3, revise the MT paragraph of the License Requirements section and the Related Controls paragraphs (1) and (2) and add a new sentence to the beginning of the Related Definitions paragraph of Export Control Classification Number (ECCN) 3A001 to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

3A001 Electronic ''components'' and ''specially designed'' ''parts'' and ''components'' therefor, as follows (see List of Items Controlled).

License Requirements

* * * * *

MT applies to 3A001.a.1.a for 'microcircuits' ''usable in'' ''missiles'' for protecting ''missiles'' against nuclear effects (e.g. Electromagnetic Pulse (EMP), X-rays, combined blast and thermal effects) and to 3A001.a.5.a when ''designed or modified'' for military use, hermetically sealed and rated for operation in the temperature range from below −54 °C to above +125 °C.	MT Column 1

* * * * *

List of Items Controlled

* * * * *

Related Controls: (1) See Category XV of the USML for certain ''space qualified'' electronics ''subject to the ITAR'' (see 22 CFR parts 120 through 130). (2) See also 3A101, 3A201, 3A991, and 9A515. * * *

* * * * *

Related Definitions: 'Microcircuit' means a device in which a number of passive or active elements are considered as indivisibly associated on or within a continuous structure to perform the function of a circuit. * * *

■ 25. In Supplement No. 1 to Part 774, Category 3, revise the Related Controls paragraph of Export Control Classification Number (ECCN) 3A002 to read as follows:

3A002 General purpose electronic ''equipment'' and ''accessories'' therefor, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Related Controls: See Category XV(e)(9) of the USML for certain ''space qualified'' atomic frequency standards ''subject to the ITAR'' (see 22 CFR parts 120 through 130). See also 3A292 and 3A992.

* * * * *

■ 26. In Supplement No. 1 to Part 774, Category 3, revise the Related Controls paragraph of Export Control Classification Number (ECCN) 3D001 to read as follows:

3D001 ''Software'' ''specially designed'' for the ''development'' or ''production'' of ''equipment'' controlled by 3A001.b to 3A002.g or 3B (except 3B991 and 3B992).

* * * * *

List of Items Controlled

* * * * *

Related Controls: ''Software'' ''specially designed'' for the ''development'' or ''production'' of certain ''space qualified'' atomic frequency standards described in Category XV(e)(9) of the USML is ''subject to the ITAR'' (see 22 CFR parts 120 through 130). See also 3D101.

* * * * *

■ 27. In Supplement No. 1 to Part 774, Category 3, revise the License Exception TSR and Related Controls paragraphs of

Export Control Classification Number (ECCN) 3E001 to read as follows:

3E001 ''Technology'' according to the General Technology Note for the ''development'' or ''production'' of ''equipment'' or ''materials'' controlled by 3A (except 3A292, 3A980, 3A981, 3A991, 3A992, or 3A999), 3B (except 3B991 or 3B992) or 3C (except 3C992).

* * * * *

License Exceptions

* * * * *

TSR: Yes, except N/A for MT, and ''technology'' specially designed for the ''development'' or ''production'' of: (a) Traveling Wave Tube Amplifiers described in 3A001.b.8, having operating frequencies exceeding 19 GHz; and (b) solar cells, coverglass-interconnect-cells or covered-interconnect-cells (CIC) ''assemblies,'' solar arrays and/or solar panels described in 3A001.e.4.

List of Items Controlled

* * * * *

Related Controls: ''Technology'' according to the General Technology Note for the ''development'' or ''production'' of certain ''space qualified'' atomic frequency standards described in Category XV(e)(9) of the USML is ''subject to the ITAR'' (see 22 CFR parts 120 through 130). See also 3E101 and 3E201.

* * * * *

■ 28. In Supplement No. 1 to Part 774, Category 3, revise the Related Controls paragraph of Export Control Classification Number (ECCN) 3E003 to read as follows:

3E003 Other ''technology'' for the ''development'' or ''production'' of the following (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Related Controls: See 3E001 for the ''development'' or ''production'' related to radiation hardening of integrated circuits, including silicon-on-insulation (SOI) ''technology.''

* * * * *

■ 29. In Supplement No. 1 to Part 774, Category 5, revise the Related Controls paragraph and remove the second note to Items paragraph (a.3) of Export Control Classification Number (ECCN) 5A001 to read as follows:

5A001 Telecommunications ''systems,'' ''equipment,'' ''parts,'' ''components'' and ''accessories,'' as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Related Controls: (1) See USML Category XI for direction finding ''equipment'' defined in 5A001.e that are ''subject to the ITAR'' (see 22 CFR parts 120 through 130). (2) See also 5A101 and 5A991.

* * * * *

■ 30. In Supplement No. 1 to Part 774, Category 5, revise the Related Controls paragraph of Export Control Classification Number (ECCN) 5A991 to read as follows:

5A991 Telecommunication ''equipment,'' not controlled by 5A001 (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Related Controls: See also 5E101, 5E980 and 5E991.

* * * * *

■ 31. In Supplement No. 1 to Part 774, Category 5, revise the Related Controls paragraph of Export Control Classification Number 5E001 (ECCN) to read as follows:

5E001 ''Technology'' as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Related Controls: See also 5E101, 5E980, and 5E991.

* * * * *

■ 32. In Supplement No. 1 to Part 774, Category 6, revise the Related Controls paragraph of Export Control Classification Number (ECCN) 6A002 to read as follows:

6A002 Optical sensors and ''equipment,'' ''parts'' and ''components'' therefor, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Related Controls: (1) See USML Categories XII and XV for controls on ''image intensifiers'' defined in 6A002.a.2 and ''focal plane arrays'' defined in 6A002.a.3 that are ''subject to the ITAR'' (see 22 CFR parts 120 through 130). (2) See also 6A102, 6A202, and 6A992.

* * * * *

■ 33. In Supplement No. 1 to Part 774, Category 6, revise the Related Controls paragraph of Export Control Classification Number (ECCN) 6A004 to read as follows:

6A004 Optical ''equipment,'' ''parts'' and ''components,'' as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Related Controls: (1) For optical mirrors or 'aspheric optical elements' ''specially designed'' for lithography ''equipment,'' see ECCN 3B001. (2) See also 6A994.

* * * * *

■ 34. In Supplement No. 1 to Part 774, Category 6, revise the Related Controls paragraph of Export Control Classification Number (ECCN) 6D001 to read as follows:

6D001 ''Software'' ''specially designed'' for the ''development'' or ''production'' of ''equipment'' controlled by 6A004, 6A005, 6A008 or 6B008.

* * * * *

List of Items Controlled

* * * * *

Related Controls: See also 6D991, and ECCN 6E001 (''development'') for ''technology'' for items controlled under this entry.

* * * * *

■ 35. In Supplement No. 1 to Part 774, Category 6, revise the Related Controls paragraph of Export Control Classification Number (ECCN) 6D002 to read as follows:

6D002 ''Software'' ''specially designed'' for the ''use'' of ''equipment'' controlled by 6A002.b, 6A008 or 6B008.

* * * * *

List of Items Controlled

* * * * *

Related Controls: ''Software'' ''specially designed'' for the ''use'' of ''space qualified'' LIDAR ''equipment'' ''specially designed'' for surveying or for meteorological observation, released from control under the note in 6A008.j, is controlled in 6D991. See also 6D102, 6D991, and 6D992.

* * * * *

■ 36. In Supplement No. 1 to Part 774, Category 6, revise the Related Controls paragraph of Export Control Classification Number (ECCN) 6E001 to read as follows:

6E001 ''Technology'' according to the General Technology Note for the ''development'' of ''equipment,'' ''materials'' or ''software'' controlled by 6A (except 6A991, 6A992, 6A994, 6A995, 6A996, 6A997, or 6A998), 6B (except 6B995), 6C (except 6C992 or 6C994), or 6D (except 6D991, 6D992, or 6D993).

* * * * *

List of Items Controlled

* * * * *

Related Controls: See also 6E101, 6E201, and 6E991.

* * * * *

■ 37. In Supplement No. 1 to Part 774, Category 6, revise the Related Controls paragraph of Export Control Classification Number (ECCN) 6E002 to read as follows:

6E002 ''Technology'' according to the General Technology Note for the ''production'' of ''equipment'' or ''materials'' controlled by 6A (except 6A991, 6A992, 6A994, 6A995, 6A996, 6A997 or 6A998), 6B (except 6B995) or 6C (except 6C992 or 6C994).

* * * * *

List of Items Controlled

* * * * *

Related Controls: See also 6E992.

* * * * *

■ 38. In Supplement No. 1 to Part 774, Category 7, revise the Related Controls paragraph of Export Control Classification Number (ECCN) 7A004 to read as follows:

7A004 'Star trackers' and components therefor, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Related Controls: 1) See USML Category XV for certain 'Star trackers' that are ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

* * * * *

■ 39. In Supplement No. 1 to Part 774, Category 7, revise the Related Controls paragraph of Export Control Classification Number (ECCN) 7A104 to read as follows:

7A104 Gyro-astro compasses and other devices, other than those controlled by 7A004, which derive position or orientation by means of automatically tracking celestial bodies or satellites and specially designed components therefor.

* * * * *

List of Items Controlled

* * * * *

Related Controls: (1) See USML Categories IV and XV for certain 'Star trackers' that are ''subject to the ITAR'' (see 22 CFR parts 120 through 130). (2). * * *

* * * * *

■ 40. In Supplement No. 1 to Part 774, Category 9, revise the Related Controls paragraphs (1) and (3) through (5), and remove items paragraph (b) from the Items paragraph in the List of Items Controlled of Export Control Classification Number (ECCN) 9A004 to read as follows:

9A004 Space launch vehicles and ''spacecraft''.

* * * * *

List of Items Controlled

* * * * *

Related Controls:

(1) See also 9A104, 9A515, and 9B515.

(2) * * *

(3) Spacecraft, launch vehicles and related articles that are enumerated in the USML are ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

(4) All other ''spacecraft'' and related commodities not controlled under 9A004 or enumerated in the USML are controlled under ECCN 9A515 and 9B515.

(5) Technical data required for the detailed design, development, manufacturing, or production of the international space station remains ''subject to the ITAR'' (see 22 CFR parts 120 through 130). All technical data and all defense services, including all technical assistance, for launch of the international space station, including launch vehicle compatibility, integration, or processing data, are ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

* * * * *

■ 41. In Supplement No. 1 to Part 774, between the entries for ECCNs 9A120 and 9A980, add new entry for ECCN 9A515 to read as follows:

9A515 ''Spacecraft'' and related commodities, as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, MT, RS, AT

Control(s)	*Country chart*
NS applies to entire entry	NS Column 1
RS applies to entire entry	RS Column 1
MT applies to 9A515.d when ''usable in'' ''missiles'' for protecting ''missiles'' against nuclear effects (e.g. Electromagnetic Pulse (EMP), X-rays, combined blast and thermal effects).	MT Column 1
AT applies to entire entry	AT Column 1

License Exceptions

LVS: $1500

GBS: N/A

CIV: N/A

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 9A515.

List of Items Controlled

Unit: End items in number; ''parts,'' ''components,'' ''accessories,'' and ''attachments'' in $ value

Related Controls: Spacecraft, launch vehicles and related articles that are enumerated in the USML, and technical data (including ''software'') directly related thereto, launch services, and launch failure analysis for items in 9A515.a, are ''subject to the ITAR.'' A license is required under the ITAR for a ''U.S. person'' to provide ''defense services'' to a foreign person for a ''spacecraft'' to be launched from outside the United States, even if that ''spacecraft'' may be exported under License Exception STA. See 22 CFR 120.9. All other ''spacecraft,'' as enumerated below and defined in section 772.1, are subject to the controls of this ECCN. See also ECCNs 3A001, 3A002, 3A991, 3A992, 6A002, 6A004, 6A008, and 6A998 for specific ''space-qualified'' items and 9A004 for the International Space Station.

Related Definitions: N/A.

Items:

a. ''Spacecraft,'' including satellites, manned or unmanned space vehicles, whether designated developmental, experimental, research or scientific, not enumerated in USML Category XV.

Note: *ECCN 9A515.a includes commercial communications satellites, remote sensing satellites not identified in USML Category XV, planetary rovers, and planetary and interplanetary probes.*

b. Ground control systems and training simulators ''specially designed'' for telemetry, tracking, and control of the ''spacecraft'' in paragraph 9A515.a.

c. [Reserved]

d. Microelectronic circuits rated, certified, or otherwise specified or described as meeting or exceeding all the following characteristics and that are ''specially designed'' for defense articles, ''600 series'' items, or items controlled by 9A515:

(1) A total dose of 5×10^5 Rads (Si) (5×10^3 Gy (Si));

(2) A dose rate upset threshold of 5×10^8 Rads (Si)/sec (5×10^6 Gy (Si)/sec);

(3) A neutron dose of 1×10^{14} n/cm^2 (1 MeV equivalent);

(4) An uncorrected single event upset sensitivity of 1×10^{-10} errors/bit/day or less, for the CRÈME–MC geosynchronous orbit, Solar Minimum Environment for heavy ion flux; and

(5) An uncorrected single event upset sensitivity of 1×10^{-3} errors/part or less for a fluence of 1×10^7 protons/cm^2 for proton energy greater than 50 MeV.

Note 1: *Application specific integrated circuits (ASICs) ''specially designed'' for defense articles are controlled by Category XI(c) of the USML regardless of characteristics.*

Note 2: *See 9A515.x for controls on ''space qualified'' microelectronic circuits that are not rated certified, or otherwise specified or described as meeting or exceeding the characteristics in paragraph .d.*

Note 3: *See 3A001.a for controls radiation-hardened microelectronic circuits ''subject to the EAR'' that are not controlled by 9A515.d or 9A515.x.*

Note 4: *Microelectronic circuits that are ''specially designed'' for defense articles on the USML or for ''600 series'' items are controlled under 3A611.x.*

e. through w. [Reserved]

x. ''Parts,'' ''components,'' ''accessories'' and ''attachments'' that are ''space qualified'' and not enumerated or controlled in the USML, elsewhere within ECCN 9A515, or an ECCN containing ''space-qualified'' as a control criterion, i.e., 3A001.b.1, 3A001.e.4, 3A002.a.3, 3A002.g.1, 3A991.o, 3A992.b.3, 6A002.a.1, 6A002.b.2, 6A002.d.1, 6A002.e, 6A004.c and .d, 6A008.j.1, or 6A998.b.

Note 1: *''Parts,'' ''components,'' ''accessories,'' and ''attachments'' specified in USML subcategory XV(e) or enumerated in other USML categories are subject to the controls of that paragraph or category.*

■ 42. In Supplement No. 1 to Part 774, between the entries for ECCNs 9B117 and 9B990, add new entry for ECCN 9B515 to read as follows:

9B515 Test, inspection, and production ''equipment'' ''specially designed'' for ''spacecraft'' and related commodities, as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT

Control(s)	Country chart
NS applies to entire entry	NS Column 1
RS applies to entire entry	RS Column 1
AT applies to entire entry	AT Column 1

License Exceptions

LVS: $1500; $5000 for 9B515.c.
GBS: N/A.
CIV: N/A.
STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 9B515.

List of Items Controlled

Unit: N/A.
Related Controls: N/A.
Related Definitions: N/A.
Items:

a. Test, inspection, and production ''equipment'' ''specially designed'' for the ''production'' or ''development'' of commodities enumerated in ECCN 9A515 or USML Category XV.

b. ''Equipment,'' cells, and stands ''specially designed'' for testing, analysis and fault isolation of commodities enumerated in ECCN 9A515, 9A004 or USML Category XV.

c. Environmental test chambers capable of pressures below (10^{-4}) Torr, and ''specially designed'' ''components'' therefor.

■ 43. In Supplement No. 1 to Part 774, between the entries for ECCNs 9D105 and 9D990, add a new entry for ECCN 9D515 to read as follows:

9D515 ''Software'' ''specially designed'' for the ''development,'' ''production'' operation, installation, maintenance, repair, overhaul, or refurbishing of ''spacecraft'' and related commodities, as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT.

Control(s)	Country chart
NS applies to entire entry	NS Column 1
RS applies to entire entry	RS Column 1
AT applies to entire entry	AT Column 1

License Exceptions

CIV: N/A.
TSR: N/A.
STA: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for 9D515.b through .g. (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any ''software'' in 9D515.

List of Items Controlled

Unit: $ value.
Related Controls: ''Software'' directly related to articles enumerated in USML Category XV is subject to the control of USML paragraph XV(f). See also ECCNs 3D001, 6D001, 6D002, and 6D991 for controls of specific software ''specially designed'' for certain ''space qualified'' items.
Related Definitions: N/A.
Items:

a. ''Software'' (other than ''software'' controlled in paragraphs .b through .g of this entry) ''specially designed'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by ECCN 9A515 or ''equipment'' controlled by 9B515.

b. ''Source code'' that contains the algorithms or control principles (e.g., clock management), precise orbit determination (e.g., ephemeris, pseudo range), signal construct (e.g., pseudo-random noise (PRN) anti-spoofing) ''specially designed'' for items controlled by ECCN 9A515.

c. ''Source code'' ''specially designed'' for the integration, operation, or control (i.e., use) of items controlled by ECCN 9A515.

d. ''Source code'' that contains algorithms or modules ''specially designed'' for system, subsystem, component, part, or accessory calibration, manipulation, or control of items controlled by ECCN 9A515.

e. ''Source code'' ''specially designed'' for data assemblage, extrapolation, or manipulation of items controlled by ECCN 9A515.

f. ''Source code'' that contains the algorithms or control laws ''specially designed'' for attitude, position, or flight control of items controlled in ECCN 9A515.

g. ''Source code'' ''specially designed'' for built-in test and diagnostics for items controlled by ECCN 9A515.

■ 44. In Supplement No. 1 to Part 774, between the entries for ECCNs 9E102 and 9E990, add new entry for ECCN 9E515 to read as follows:

9E515 ''Technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishing of ''spacecraft'' and related commodities, as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, MT, RS, AT

Control(s)	Country chart
NS applies to entire entry	NS Column 1
MT applies to technology for items in 9A515.d controlled for MT reasons.	MT Column 1
RS applies to entire entry	RS Column 1
AT applies to entire entry	AT Column 1

License Exceptions

CIV: N/A.
TSR: N/A.
STA: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for 9E515.b. (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any ''technology'' in 9E515.

List of Items Controlled

Unit: $ value.
Related Controls: Technical data directly related to articles enumerated in USML Category XV are subject to the control of USML paragraph XV(f). See also ECCNs 3E001, 3E003, 6E001, and 6E002 for specific ''space-qualified'' items.
Related Definitions: N/A.
Items:

a. ''Technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul or refurbishing of commodities controlled by ECCN 9A515, ''equipment'' controlled by 9B515, or ''software'' controlled by 9D515.

Note: *''Build-to-print technology'' excluded from paragraph b. is classified under 9E515.a.*

b. ''Technology'' (other than ''build-to-print technology'') ''required'' for the ''development,'' ''production,'' design verification, manufacturability, or quality control for items in ECCN 9A515, except items in ECCN 9A515.b.

■ 45. In Supplement No. 4 to Part 774, add three sentences to the conclusion of paragraph (a)(3) and one sentence to the conclusion of paragraph (a)(4) and revise the first sentence of paragraph (a)(5), to read as follows:

Supplement No. 3 to Part 774—Commerce Control List Order of Review

* * * * *

(a) * * *

(3) Step 3. * * * The 9x515 ECCNs describe satellites, related items, and some types of radiation-hardened microelectronic circuits that were once subject to the ITAR under USML Category XV. Similarly, the first step when determining the classification status of such items that are no longer listed on USML Category XV is to determine whether they are controlled in a 9x515 ECCN. If so, the item is classified under that 9x515 ECCN paragraph. If not, then one needs to review the rest of the CCL to determine whether the item is within the scope of another ECCN.

(4) Step 4. * * * Similarly, if a satellite, related item, or radiation-hardened microelectric circuit are not described in 9A515, then review 9A515.x to determine if it is controlled there as a result of being ''space qualified.''

* * * * *

(5) Step 5. If an item is not classified by a ''600 series'' or ''500 series'' ECCN, then starting from the beginning of the product group analyze each ECCN to determine whether any other ECCN in that product group describes the item. * * *

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Dated: May 14, 2013.

Kevin J. Wolf,

Assistant Secretary of Commerce for Export Administration.

[FR Doc. 2013–11986 Filed 5–23–13; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF STATE

22 CFR Parts 120, 121, and 124

[Public Notice: 8329]

RINs 1400–AC80 and 1400–AD33

Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Category XV and Definition of ''Defense Service''

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: As part of the President's Export Control Reform effort, the Department of State proposes to amend the International Traffic in Arms Regulations (ITAR) to revise Category XV (Spacecraft Systems and Related Articles) of the U.S. Munitions List (USML) to describe more precisely the articles warranting control on the USML. The definition of ''defense service'' is to be revised to, among other changes, specifically include the furnishing of assistance for certain spacecraft related activities. The revisions contained in this rule are part of the Department of State's retrospective plan under E.O. 13563 completed on August 17, 2011.

DATES: The Department of State will accept comments on this proposed rule until July 8, 2013.

ADDRESSES: Interested parties may submit comments within 45 days of the date of publication by one of the following methods:

- *Email: DDTCResponseTeam@state.gov* with the subject line, ''ITAR Amendment—USML Category XV and Defense Services.''
- *Internet:* At *www.regulations.gov,* search for this notice by using this rule's RIN (1400–AD33).

Comments received after that date will be considered if feasible, but consideration cannot be assured. Those submitting comments should not include any personally identifying information they do not desire to be made public or information for which a claim of confidentiality is asserted because those comments and/or transmittal emails will be made available for public inspection and copying after the close of the comment period via the Directorate of Defense Trade Controls Web site at *www.pmddtc.state.gov.* Parties who wish to comment anonymously may do so by submitting their comments via *www.regulations.gov,* leaving the fields that would identify the commenter blank and including no identifying information in the comment itself. Comments submitted via *www.regulations.gov* are immediately available for public inspection.

FOR FURTHER INFORMATION CONTACT: Ms. Candace M.J. Goforth, Director, Office of Defense Trade Controls Policy, U.S. Department of State, telephone (202) 663–2792, or email *DDTCResponseTeam@state.gov.* ATTN: Regulatory Change, USML Category XV and Defense Services. The Department of State's full retrospective plan can be accessed at *http://www.state.gov/documents/organization/181028.pdf.*

SUPPLEMENTARY INFORMATION: The Directorate of Defense Trade Controls (DDTC), U.S. Department of State, administers the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130). The items subject to the jurisdiction of the ITAR, *i.e.,* ''defense articles'' and ''defense services,'' are identified on the ITAR's U.S. Munitions List (USML) (22 CFR 121.1). With few exceptions, items not subject to the export control jurisdiction of the ITAR are subject to the jurisdiction of the Export Administration Regulations (''EAR,'' 15 CFR parts 730–774, which includes the Commerce Control List (CCL) in Supplement No. 1 to part 774), administered by the Bureau of Industry and Security (BIS), U.S. Department of Commerce. Both the ITAR and the EAR impose license requirements on exports and reexports. Items not subject to the ITAR or to the exclusive licensing jurisdiction of any other set of regulations are subject to the EAR.

All references to the USML in this rule are to the list of defense articles controlled for the purpose of export or temporary import pursuant to the ITAR, and not to the defense articles on the USML that are controlled by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) for the purpose of permanent import under its regulations. *See* 27 CFR part 447. Pursuant to section 38(a)(1) of the Arms Export Control Act (AECA), all defense articles controlled for export or import are part of the USML under the AECA. For the sake of clarity, the list of defense articles controlled by ATF for the purpose of permanent import is the U.S. Munitions Import List (USMIL). The transfer of defense articles from the ITAR's USML to the EAR's CCL for the purpose of export control does not affect the list of defense articles controlled on the USMIL under the AECA for the purpose of permanent import.

Revision of Category XV

Public Law 105–261, the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, required that space-related items, including all satellites, were to be controlled as defense articles and removed the President's authority to change their jurisdictional status.

Section 1248 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84) provided that the Secretaries of Defense and State carry out an assessment of the risks associated with removing satellites and related components from the USML. The Departments of Defense and State conducted this review and identified certain satellites and related items that do not contain technologies unique to the United States, are not critical to national security, and are more appropriately controlled by the EAR, which allows for the creation of license exceptions for exports to certain destinations and complete controls for exports to others. This report was provided to the Congress in April 2012.

The National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239), in section 1261, effectively returned to the President the authority to determine which regulations govern the export of satellites and related articles. With this authority, and pursuant to the President's Export Control Reform effort, the Department proposes the following revisions to USML Category XV.

Paragraphs (a) and (e) are to be revised to more specifically describe the articles controlled therein.

Paragraph (b) is to be revised to limit its scope to ground control systems and training simulators specially designed for telemetry, tracking, and control of spacecraft in paragraph (a).

The articles currently covered in paragraph (c), certain Global Positioning System receiving equipment, are proposed to be controlled on the USML under Category XII. Until a revised USML Category XII is implemented, these articles will continue to be covered in USML Category XV(c).

The articles currently covered in paragraph (d), certain radiation-hardened microelectronic circuits, are to be controlled on the CCL in new ECCN 9A515.d.

Additionally, articles common to the Missile Technology Control Regime Annex and the USML are to be identified on the USML, including in USML Category XV, with the parenthetical ''(MT)'' at the end of each section containing such articles.

A new ''(x) paragraph'' has been added to USML Category XV, allowing ITAR licensing for commodities, software, and technical data subject to the EAR provided those commodities, software, and technical data are to be used in or with defense articles

controlled in USML Category XV *and* are described in the purchase documentation submitted with the application.

Although the proposed revisions to the USML do not preclude the possibility that satellites and related items in normal commercial use would or should be ITAR-controlled because, *e.g.,* they provide the United States with a critical military or intelligence advantage, the U.S. Government does not want to inadvertently control items on the ITAR that are in normal commercial use. The public is thus asked to provide specific examples of satellites and related items, if any, that would be controlled by the revised USML Category XV that are now in normal commercial use.

Definition for Defense Services

A proposed revision of the definition of defense service, pursuant to ECR, was first published on April 13, 2011, as RIN 1400–AC80 (*see* ''International Traffic in Arms Regulations: Defense Services,'' 76 FR 20590). In that rule, the Department explained it was determined that the definition is overly broad, capturing certain forms of assistance or services that do not warrant ITAR control.

Rather than proceed to a final rule on the definition, the Department is republishing the definition as a proposed rule, incorporating certain changes stemming from the public comment review, but also including in the definition the provision of certain assistance with regard to spacecraft.

For the first revision, thirty-nine parties submitted comments within the established comment period recommending changes to the revised definition. The Department reviewed and considered these comments and, when the recommended changes added to the clarity of the regulation and were congruent with ECR objectives, the Department accepted them. The Department's evaluation of certain of the written comments and recommendations follows, grouped by general subject matter.

Comments on Terms and Definitions in Defense Services

Two commenting parties recommended clarification that ''integration'' as used in ITAR § 120.9(a)(2) does not mean activities to ensure compatibility, secure, load, or install cargo that is subject to the EAR for stowage in spacecraft or other aircraft, vessels, or vehicles which are themselves subject to the ITAR. The Department confirms that the meaning of ''integration'' does not encompass the meaning of ''stowage.''

Three commenting parties recommended replacing the term ''incorporation'' in ITAR § 120.9(b)(3) with either ''installation'' or ''integration,'' to avoid confusion. The Department accepted this recommendation and has replaced ''incorporated'' with ''integrated.''

Two commenting parties recommended ''mere plug-and-play installation activities'' should not be considered a defense service and thus described in ITAR § 120.9(b). The Department agrees that such services are not within the definition of a defense service. However, given that ITAR § 120.9(a)(2) is limited to integration services a separate exclusion paragraph is unnecessary. To clarify the distinction between services comprised of ''installation'' and those of ''integration,'' the Department is providing within the regulation the definitions of those terms that were provided in the first proposed rule's supplementary information section.

Three commenting parties recommended replacing the phrase ''employment of defense articles'' with ''use of defense articles'' in ITAR § 120.9(a)(3) and ITAR § 124.1(a) for clarity. Similarly, another commenting party recommended replacing the word ''employment'' with the word ''use,'' as the term is defined in the EAR. And, another commenting party recommended modifying the term ''employment'' with the terms ''tactical or combat.'' The Department has revised this section adding the term ''tactical,'' to differentiate training in such employment from the type that is not to be within the definition of a defense service (training in basic operation).

One commenting party recommended that reference to ''foreign units and forces'' in ITAR § 120.9(a)(3) be revised to ''foreign military units and forces'' for consistency with ITAR § 124.1(a). The Department has reviewed the terminology in this section, but rather than accept the recommendation, ''foreign person'' will replace ''foreign units and forces'' in ITAR § 120.9(a)(3), and is removed from ITAR § 124.1(a) entirely.

One commenting party requested clarification of whether companies not involved in the manufacture of defense articles would nonetheless be required to register with DDTC if their items are integrated into USML controlled items pursuant to ITAR § 120.9(a)(2). Mere integration of an item into a defense article does not render it a defense article, and thereby necessitating registration of the manufacturer of the item. The manufacturer may determine its classification by consulting the USML for its enumeration, applying the specially designed definition, or by submitting a commodity jurisdiction request to the Department for its official determination.

One commenting party requested clarification of whether companies will be required to amend approved agreements for activities that may no longer be considered defense services. While companies will not be required to submit amendment requests in these instances, the Department recommends these companies contact the Department of State or Commerce for any necessary clarification of their circumstances and which authorizations are required.

Comments on the Use of Public Domain Information in a Defense Service

Five commenting parties recommended ITAR § 120.9(a)(4) be revised to clarify that an aggregation of public domain data is still public domain data, and two commenting parties requested clarification that the aggregation of public domain data cannot be considered a defense service or render the data ''other than public domain.'' The Department confirms that a defense service involves technical data and therefore the use of publicly available information would not constitute a defense service according to the new ITAR § 120.9(b)(2). The Department notes, however, that it is seldom the case that a party can aggregate public domain data for purposes of application to a defense article without using proprietary information or creating a data set that itself is not in the public domain.

Ten commenting parties recommended replacing the phrase ''other than public domain'' in ITAR § 120.9(a)(1) with ''using technical data (see § 120.10),'' as the former phrase would extend the definition of ''defense service'' to include services the Department did not intend to capture, including assistance provided using proprietary data not controlled by the ITAR. The Department did not accept this comment because it intends to control as a defense service certain services that use other than technical data. An example would be the services covered under ITAR § 120.9(a)(3).

Two commenting parties recommended exclusion of ''fundamental research'' from ITAR controls, similar to the EAR treatment of this term found in 15 CFR 734.8. These parties suggested that this measure would ensure science and academic research are not unnecessarily hampered. The Department notes that

''fundamental research,'' as it is defined in ITAR § 120.11, is not controlled by the ITAR.

One commenting party noted that the supplementary information section of the proposed rule indicated that using data that is ''other than public domain data'' (including proprietary data or ''technology'' ''subject to the Export Administration Regulations'') to provide assistance would constitute a defense service, but this is not reflected in the actual regulation. This matter will be addressed more fully in the forthcoming rules regarding the revision of the definitions for technical data and public domain information.

One commenting party stated that the Department's intention of narrowing the focus of defense services to the furnishing of assistance using ''other than public domain data'' is frustrated by the exclusion of the phrase ''other than public domain data'' from paragraphs (a)(2)–(a)(4) of the definition. Similarly, another commenting party requested clarification from the Department on whether the exclusion was an oversight. The Department confirms excluding the phrase from those paragraphs was intentional, and disagrees with the first commenting party for the following reasons. In paragraph (a)(2), the service of integrating an item into a defense article is covered, which necessarily involves the use of technical data (meaning, the Department believes that the service of ''integration'' cannot be effected only with public domain information). Paragraph (a)(3) may control services that use other than technical data. And the phrase ''other than public domain data'' is not relevant to the service described and controlled in paragraph (a)(4).

One commenting party recommended that proprietary data furnished by a foreign person not be covered by the phrase ''other than public domain data.'' And two commenting parties recommended the controls in ITAR § 120.9 be based on the use of ''U.S. origin'' technical data. The Department intends to regulate the identified services regardless of the origin of the data used in the provision of the service.

Comments on Proposed Exclusions Paragraph

Two commenting parties recommended that the exclusion in ITAR § 120.9(b)(1) be extended to include intermediate-level maintenance for greater interoperability. The Department did not accept this recommendation. The Department wants to continue controlling this level of maintenance.

Twelve commenting parties suggested that use of the phrase ''U.S. citizen'' in ITAR § 120.9(b)(2) raises questions regarding the employment of lawful permanent residents, or unnecessarily rules out other categories of U.S. person employees (*e.g.,* lawful permanent residents as defined by 8 U.S.C. 1101(a)(20) and protected individuals defined by 8 U.S.C. 1324b(a)(3)) from the exclusion, and that this phrase should be replaced with ''U.S. person'' as defined by ITAR § 120.15, ''an individual who is a U.S. person,'' or ''U.S. person (natural person).'' The Department accepted this comment in part by revising the phrase to read ''natural U.S. person.''

One commenting party stated that use of the phrase ''mere employment'' in ITAR § 120.9(b)(2) is too narrow and would not exclude U.S. persons from performing the duties of their employment, and recommended that this part be revised to explicitly exclude these activities as well. Stating that this section is ambiguous, two commenting parties recommended it be revised to more explicitly state which employment activities are excluded by this section. This part of the regulation is meant to provide that the act of employing a natural U.S. person does not automatically mean that a foreign person will be receiving a defense service. The Department believes the phrasing conveys this meaning.

One commenting party requested that, because ITAR § 120.9(b)(2) covers cases where a foreign person employing a U.S. person may constitute the provision of a defense service, the Department clarify whether an individual may register as a manufacturer or exporter of defense articles and defense services, since that individual would first have to be registered with the Department before he can seek a license. Another commenting party recommended that individual U.S. employees working abroad should be permitted to use U.S. origin technical data exported to their parent foreign company without a license. A third commenting party recommended that ITAR § 120.9(b)(2) be revised to stipulate that the definition of a defense service not include the instance where a U.S. person uses foreign-source technical data that would be ITAR-controlled had it been acquired by the U.S. person in the United States. The issue of whether an individual U.S. person may be required to register with the Department will be addressed in future guidance.

Two commenting parties recommended stipulating that all law enforcement, physical security, or personal protective services not be included within the definition of a defense service, and not only that which uses public domain data. The use of technical data is a controlled activity, regardless of the type of service provided. Therefore, the Department did not accept this recommendation.

One commenting party recommended exclusion from the definition of defense service the integration of items controlled on the CCL into items on the USML using solely public domain data. Given the nature of the integration process, the Department does not agree that this type of service should be excluded.

One commenting party recommended clarification that the provision of defense services exclusively to the U.S. Government outside the United States is not a defense service. The Department agrees activities between two U.S. persons do not constitute a defense service.

One commenting party recommended that ITAR § 120.9(b)(3), which excludes from the definition of a defense service the servicing of an item subject to the EAR that has been integrated or installed into a defense article, be clarified to include ''installation'' and ''removal'' of CCL items during those activities. Similarly, one commenting party recommended adding ''troubleshooting,'' ''inspection,'' and ''other routine services for'' to that paragraph, as examples of services not considered defense services. The Department has rephrased the paragraph to cover the ''servicing of an item subject to the EAR,'' which includes the activities described by these commenting parties.

One commenting party recommended the example of what is not a defense service identified in § 120.9(b)(1) be expanded to include actual performance of basic maintenance on a defense article on behalf of a foreign person. Similarly, another commenting party requested clarification on whether actual performance is included. The Department notes that for certain countries, there are licensing exemptions for the performance of basic maintenance (*see* ITAR § 124.2). This is the extent to which the Department wants to exempt from the licensing requirement actual performance of basic maintenance on a defense article on behalf of a foreign person.

One commenting party recommended that because ''organizational-level maintenance'' is not cited in ITAR § 120.9(a)(1), it should be explicitly included as an exclusion in ITAR § 120.9(b). Training in organizational-level maintenance is specifically

excluded as a defense service in paragraph (b)(1).

Five commenting parties recommended clarification of whether ITAR § 120.9(b) provides an exhaustive list of what does not constitute a defense service, and if not, that the regulatory text specify that the examples provided in paragraph (b) are not exhaustive. The examples in ITAR § 120.9(b) are not an exhaustive listing of services that are not within the definition of a defense service. Rather, the paragraph is meant to highlight those services about which the Department has received, or anticipates receiving, inquiries regarding their classification.

Paragraph (a)(2) and Miscellaneous Comments

Two commenting parties noted that ITAR § 120.9(a)(2) includes within the definition of a defense service the integration into a defense article of items controlled on the USML or on the CCL, but not items that are subject to the EAR but classified as EAR99. The commenting party recommended this exclusion be specifically stated to avoid confusion. Similarly, two commenting parties recommended clarification to explicitly exclude integration of items designated as EAR99. The Department has replaced reference to items controlled on the CCL with items subject to the EAR. The focus of this paragraph is on the service of ''integration'' into a USML article, which of necessity requires use of technical data.

One commenting party requested clarification of whether integration of a foreign item into a defense article would constitute a defense service. The Department confirms that the origin of an item is not relevant in determining whether a defense service is being provided.

One commenting party recommended that the definition of defense service address instances where USML articles are incorporated or installed into a CCL item, similar to how ITAR § 120.9(b)(3) addresses CCL items integrated or installed into USML items. This circumstance will be addressed in a separate rule.

One commenting party stated that activities beyond the jurisdiction of U.S. law are captured by the new defense services definition. The commenting party provides as an example of such activity the case where a foreign person located outside the United States furnishes assistance to another foreign person for the integration of a foreign item into another foreign item. By definition, defense services are only provided by U.S. person to a foreign person. ITAR § 120.9 does not capture the circumstance described by the commenting party.

One commenting party recommended ITAR § 120.9(a)(2) should focus on the nature of the integration activity and not on the part being integrated and suggested the proposed phrasing would allow a U.S. person to integrate a foreign origin article without providing a ''defense service,'' because these parts are not under U.S. jurisdiction. For the purposes of clarity, ITAR § 120.9(a)(2) does identify the classification of articles (USML and CCL) that are included for the purposes of control in this defense service. Nevertheless, the focus of this provision is the service of ''integration'' into a defense article. And as noted in the paragraph, the service of integration into an ITAR controlled defense article is a defense service regardless of the origin of the articles.

Additional Changes

The Department proposes that ITAR § 124.1(a), which describes the approval requirements of manufacturing license agreements and technical assistance agreements, be revised to remove the requirement of Department approval for the provision of a defense service using public domain data or data otherwise exempt from ITAR licensing requirements. The Department also proposes that it be revised to remove a redundant provision regarding the necessity to obtain approval for the training of foreign military forces, an activity covered in ITAR § 120.9(a)(3).

The Department proposes to remove ITAR § 124.2(a). The activity described therein—the provision of training in the basic operation of a defense article—will not be controlled as a defense service, therefore obviating the need for this exemption. ITAR § 124.2(b) will be removed for similar reasons: The activity described therein is not controlled as a defense service, nullifying the reason for this exemption. ITAR § 124.2(c) will be revised to reflect the proposed deletion of § 124.2(a). These changes conform to the proposed revision of the defense service definition.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules implementing this function are exempt from sections 553 (rulemaking) and 554 (adjudications) of the Administrative Procedure Act (APA). Although the Department is of the opinion that this rule is exempt from the rulemaking provisions of the APA, the Department is publishing this rule with a 45-day provision for public comment and without prejudice to its determination that controlling the import and export of defense services is a foreign affairs function. As noted above, and also without prejudice to the Department position that this rulemaking is not subject to the APA, the Department previously published a related Advance Notice of Proposed Rulemaking (RIN 1400–AC78) and accepted comments for 60 days, and also published a proposed definition of ''defense service'' on April 13, 2011 (RIN 1400–AC80), and accepted comments for 60 days.

Regulatory Flexibility Act

Since the Department is of the opinion that this proposed rule is exempt from the provisions of 5 U.S.C. 553, there is no requirement for an analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This proposed rulemaking does not involve a mandate that will 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 year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rulemaking has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Orders 12372 and 13132

This proposed rulemaking 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. Therefore, in accordance with Executive Order 13132, it is determined that this proposed rulemaking does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and

activities do not apply to this proposed rulemaking.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess 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, distributed impacts, and equity). These executive orders stress the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. These rules have been designated ''significant regulatory actions,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, this proposed rule has been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

The Department of State has reviewed this proposed rulemaking in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State has determined that this proposed rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, the provisions of Executive Order 13175 do not apply to this proposed rulemaking.

Paperwork Reduction Act

Following is a listing of approved collections that will be affected by revision, pursuant to the President's Export Control Reform (ECR) initiative, of the U.S. Munitions List (USML) and the Commerce Control List. The list of collections and the description of the manner in which they will be affected pertains to revision of the USML in its entirety, not only to the category published in this rule:

(1) Statement of Registration, DS–2032, OMB No. 1405–0002. The Department estimates that 1,000 of the currently-registered persons will not need to maintain registration following full revision of the USML. This would result in a burden reduction of 1,000 hours annually.

(2) Application/License for Permanent Export of Unclassified Defense Articles and Related Unclassified Technical Data, DSP–5, OMB No. 1405–0003. The Department estimates that there will be 35,000 fewer DSP–5 submissions annually following full revision of the USML. This would result in a burden reduction of 35,000 hours annually. In addition, the DSP–5 will allow respondents to select USML Category XIX, a newly-established category, as a description of articles to be exported.

(3) Application/License for Temporary Import of Unclassified Defense Articles, DSP–61, OMB No. 1405–0013. The Department estimates that there will be 200 fewer DSP–61 submissions annually following full revision of the USML. This would result in a burden reduction of 100 hours annually. In addition, the DSP–61 will allow respondents to select USML Category XIX, a newly-established category, as a description of articles to be temporarily imported.

(4) Application/License for Temporary Export of Unclassified Defense Articles, DSP–73, OMB No. 1405–0023. The Department estimates that there will be 800 fewer DSP–73 submissions annually following full revision of the USML. This would result in a burden reduction of 800 hours annually. In addition, the DSP–73 will allow respondents to select USML Category XIX, a newly-established category, as a description of articles to be temporarily exported.

(5) Application for Amendment to License for Export or Import of Classified or Unclassified Defense Articles and Related Technical Data, DSP–6, –62, –74, –119, OMB No. 1405–0092. The Department estimates that there will be 2,000 fewer amendment submissions annually following full revision of the USML. This would result in a burden reduction of 1,000 hours annually. In addition, the amendment forms will allow respondents to select USML Category XIX, a newly-established category, as a description of articles the subject of the amendment request.

(6) Request for Approval of Manufacturing License Agreements, Technical Assistance Agreements, and Other Agreements, DSP–5, OMB No. 1405–0093. The Department estimates that there will be 1,000 fewer agreement submissions annually following full revision of the USML. This would result in a burden reduction of 2,000 hours annually. In addition, the DSP–5, the form used for the purposes of electronically submitting agreements, will allow respondents to select USML Category XIX, a newly-established category, as a description of articles to be exported.

(7) Maintenance of Records by Registrants, OMB No. 1405–0111. The requirement to actively maintain records pursuant to provisions of the International Traffic in Arms Regulations (ITAR) will decline commensurate to the drop in the number of persons who will be required to register with the Department pursuant to the ITAR. As stated above, the Department estimates that 1,000 of the currently-registered persons will not need to maintain registration following full revision of the USML. This would result in a burden reduction of 20,000 hours annually. The ITAR does provide, though, for the maintenance of records for a period of five years. Therefore, persons newly relieved of the requirement to register with the Department may still be required to maintain records.

(8) Export Declaration of Defense Technical Data or Services, DS–4071, OMB No. 1405–0157. The Department estimates that there will be 2,000 fewer declaration submissions annually following full revision of the USML. This would result in a burden reduction of 1,000 hours annually.

List of Subjects

22 CFR Parts 120 and 121

Arms and munitions, Classified information, Exports.

22 CFR Part 124

Arms and munitions, Exports, Technical assistance.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, parts 120, 121, and 124, are proposed to be amended as follows:

PART 120—PURPOSE AND DEFINITIONS

■ 1. The authority citation for part 120 continues to read as follows:

Authority: Sections 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2794; 22 U.S.C. 2651a; Pub. L. 105–261, 112 Stat. 1920; Pub. L. 111–266; Section 1261, Pub. L. 112–239; E.O. 13637, 78 FR 16129.

■ 2. Section 120.9 is revised to read as follows:

§ 120.9 Defense service.

(a) *A defense service* means:

(1) The furnishing of assistance (including training) using other than public domain information (*see* § 120.11 of this subchapter) to a foreign person (*see* § 120.16 of this subchapter), whether in the United States or abroad, in the design, development, engineering, manufacture, production, assembly, testing, intermediate- or depot-level maintenance (*see* § 120.38 of this subchapter), modification,

demilitarization, destruction, or processing of defense articles (*see* § 120.6 of this subchapter);

(2) The furnishing of assistance to a foreign person, whether in the United States or abroad, for the integration of any item controlled on the U.S. Munitions List (USML) (*see* § 121.1 of this subchapter) or items subject to the EAR (*see* § 120.42 of this subchapter) into an end item (*see* § 121.8(a) of this subchapter) or component (see § 121.8(b) of this subchapter) that is controlled as a defense article on the USML, regardless of the origin;

Note to paragraph (a)(2): ''Integration'' means the systems engineering design process of uniting two or more items in order to form, coordinate, or blend into a functioning or unified whole, including introduction of software to enable proper operation of the article. This includes determining where to integrate an item (*e.g.,* integration of a civil engine into a destroyer which requires changes or modifications to the destroyer in order for the civil engine to operate properly; not plug and play). ''Integration'' is distinct from ''installation,'' which means the act of putting something in its place and does not require changes or modifications to the item in which it is being installed (*e.g.,* installing a dashboard radio into a military vehicle where no changes or modifications to the vehicle are required).

(3) The furnishing of assistance (including training), to a foreign person regardless of whether technical data (*see* § 120.10 of this subchapter) is transferred, including formal or informal instruction in the United States or abroad by any means, in the tactical employment (not basic operation) of a defense article;

(4) Conducting direct combat operations for a foreign person (*see* paragraph (b)(5) of this section);

(5) The furnishing of assistance (including training) in the integration of a satellite or spacecraft to a launch vehicle, including both planning and onsite support, regardless of the jurisdiction of, the ownership of, or the origin of the satellite or spacecraft, or whether technical data is used; or

(6) The furnishing of assistance (including training) in the launch failure analysis of a satellite, spacecraft, or launch vehicle, regardless of the jurisdiction of, the ownership of, or the origin of the satellite, spacecraft, or launch vehicle, or whether technical data is used.

(b) The following is not a *defense service:*

(1) Training in organizational-level (basic-level) maintenance (*see* § 120.38 of this subchapter) of a defense article lawfully approved for export from the United States or subsequently approved for reexport or retransfer to an end-user, unless otherwise proscribed in § 126.1 of this subchapter or otherwise ineligible (*see* § 126.7(a)(4) and (6) of this subchapter);

(2) Mere employment of a natural U.S. person by a foreign person;

(3) Servicing of an item subject to the EAR (*see* § 120.42 of this subchapter) that has been integrated or installed into a defense article;

(4) Providing law enforcement, physical security, or personal protective services (including training and advice) to or for a foreign person (*see* § 120.16 of this subchapter) using only public domain information; or

(5) Services performed, to include direct combat operations, as a member of the regular military forces of a foreign nation by a U.S. person who has been drafted into such forces.

PART 121—THE UNITED STATES MUNITIONS LIST

■ 3. The authority citation for part 121 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2651a; Pub. L. 105–261, 112 Stat. 1920; Section 1261, Pub. L. 112–239; E.O. 13637, 78 FR 16129.

■ 4. Section 121.1 is amended by revising U.S. Munitions List Category XV to read as follows:

§ 121.1 General. The United States Munitions List.

* * * * *

Category XV—Spacecraft Systems and Related Articles

(a) Spacecraft, including satellites, manned or unmanned space vehicles, whether designated developmental, experimental, research or scientific, or having a commercial, civil, or military end-use, that:

*(1) Are specially designed to mitigate effects (*e.g.,* scintillation) of or for detection of a nuclear detonation;

*(2) Track ground, airborne, missile, or space objects using imaging, infrared, radar, or laser systems;

*(3) Conduct signals or measurement and signatures intelligence;

(4) Provide space-based logistics, assembly or servicing of any spacecraft (*e.g.,* refueling);

*(5) Are anti-satellite or anti-spacecraft (*e.g.,* kinetic, RF, laser, charged particle);

*(6) Have space-to-ground weapons systems (*e.g.,* kinetic or directed energy);

*(7) Have any of the following electro-optical remote sensing capabilities or characteristics:

(i) Electro-optical visible and near infrared (VNIR) (*i.e.,* 400nm to 1,000nm) or infrared (*i.e.,* greater than 1,000nm to 30,000nm) with less than 40 spectral bands having an aperture greater than 0.35 meters;

(ii) Electro-optical hyperspectral with 40 spectral bands or more in the VNIR, short-wavelength infrared (SWIR) (*i.e.,* greater than 1,000nm to 2,500nm) or any combination of the aforementioned and having a Ground Sample Distance (GSD) less than 30 meters;

(iii) Electro-optical hyperspectral with 40 spectral bands or more in the mid-wavelength infrared (MWIR) (*i.e.,* greater than 2,500nm to 5,500nm) having a narrow spectral bandwidth of $\Delta\lambda$ less than or equal to 20nm full width at half maximum (FWHM) or having a wide spectral bandwidth with $\Delta\lambda$ greater than 20nm FWHM and a GSD less than 200 meters; or

(iv) Electro-optical hyperspectral with 40 spectral bands or more in the long-wavelength infrared (LWIR) (*i.e.,* greater than 5,500nm to 30,000nm) having a narrow spectral bandwidth of $\Delta\lambda$ less than or equal to 50nm FWHM or having a wide spectral bandwidth with $\Delta\lambda$ greater than 50nm FWHM and a GSD less than 500 meters;

Note 1 to paragraph (a)(7): Ground Sample Distance (GSD) is measured from a spacecraft's nadir (*i.e.,* local vertical) position.

Note 2 to paragraph (a)(7): Optical remote sensing spacecraft or satellite spectral bandwidth is the smallest difference in wavelength (*i.e.,* $\Delta\lambda$) that can be distinguished at full width at half maximum (FWHM) of wavelength λ.

Note 3 to paragraph (a)(7): An optical satellite or spacecraft is not SME if non-earth pointing.

*(8) Have radar remote sensing capabilities or characteristics (*e.g.,* active electronically scanned array (AESA), synthetic aperture radar (SAR), inverse synthetic aperture radar (ISAR), ultra-wideband SAR) except those having a center frequency equal to or greater than 1 GHz but less than or equal to 10 GHz AND having a bandwidth less than 300 MHz;

(9) Provide Positioning, Navigation, and Timing (PNT);

Note to paragraph (a)(9): This paragraph does not control a satellite or spacecraft that provides only a differential correction broadcast for the purposes of positioning, navigation, or timing.

*(10) Are specially designed to be used in a constellation or formation that when operated together, in essence or effect, form a virtual satellite (*e.g.,* functioning as if one satellite) with the

characteristics of other items in paragraph (a);

(11) Are man-rated sub-orbital, orbital, lunar, interplanetary or habitat; or

*(12) Are classified, contain classified software or hardware, are manufactured using classified production data, or are being developed using classified information (*e.g.,* having classified requirements, specifications, functions, or operational characteristics or include classified cryptographic items controlled under USML Category XIII of this subchapter). ''Classified'' means classified pursuant to Executive Order 13526, or predecessor order, and a security classification guide developed pursuant thereto or equivalent, or to the corresponding classification rules of another government or international organization.

Note to paragraph (a): Spacecraft that are not identified in this paragraph are subject to the EAR.

(b) Ground control systems and training simulators specially designed for telemetry, tracking, and control of spacecraft in paragraph (a) of this category.

Note to paragraph (b): Parts, components, accessories, attachments, equipment, or systems that are common to satellite ground systems or simulators used to control non-USML satellites are subject to the EAR.

(c) Global Positioning System (GPS) receiving equipment specifically designed, modified, or configured for military use; or GPS receiving equipment with any of the following characteristics:

(1) Designed for encryption or decryption (*e.g.,* Y-Code) of GPS precise positioning service (PPS) signals;

(2) Designed for producing navigation results above 60,000 feet altitude and at 1,000 knots velocity or greater;

(3) Specifically designed or modified for use with a null steering antenna or including a null steering antenna designed to reduce or avoid jamming signals;

(4) Designed or modified for use with unmanned air vehicle systems capable of delivering at least a 500 kg ''payload'' to a ''range'' of at least 300 km.

Note 1 to paragraph (c)(4): ''Payload'' is the total mass that can be carried or delivered by the specified rocket, space launch vehicle, missile, drone, or unmanned aerial vehicle that is not used to maintain flight. ''Range'' is the maximum distance that the specified aircraft system is capable of traveling in the mode of stable flight as measured by the projection of its trajectory over the surface of the Earth. The maximum capability based on the design characteristics of the system, when fully loaded with fuel or propellant, will be taken into consideration in determining ''range.'' The ''range'' for aircraft systems will be determined independently of any external factors such as operational restrictions, limitations imposed by telemetry, data links, or other external constraints. For aircraft systems, the ''range'' will be determined for a one-way distance using the most fuel-efficient flight profile (*e.g.,* cruise speed and altitude), assuming International Civil Aviation Organization (ICAO) standard atmosphere with zero wind.

Note 2 to paragraph (c)(4): GPS receivers designed or modified for use with military unmanned air vehicle systems with less capability are considered to be specifically designed, modified, or configured for military use and therefore covered under this paragraph (c)(4). Any GPS equipment not meeting this definition is subject to the jurisdiction of the Department of Commerce (DOC). Manufacturers or exporters of equipment under DOC jurisdiction are advised that the U.S. Government does not assure the availability of the GPS P-Code for civil navigation. It is the policy of the Department of Defense (DOD) that GPS receivers using P-Code without clarification as to whether or not those receivers were designed or modified to use Y-Code will be presumed to be Y-Code capable and covered under this paragraph. The DOD policy further requires that a notice be attached to all P-Code receivers presented for export. The notice must state the following: ''ADVISORY NOTICE: This receiver uses the GPS P-Code signal, which, by U.S. policy, may be switched off without notice.''

(d) [Reserved]

(e) Spacecraft parts, components, accessories, attachments, equipment, or systems, as follows:

(1) Antennas as follows:

(i) Having a diameter greater than 25 meters;

(ii) Are actively scanned;

(iii) Are adaptive beam forming; or

(iv) Are for interferometric radar;

(2) Space-qualified optics (*i.e.,* lens or mirror), including optical coating, having active properties (*e.g.,* adaptive or deformable), or having a largest lateral dimension greater than 0.35 meters;

(3) ''Space-qualified'' focal plane arrays (FPA) having a peak response in the wavelength range exceeding 900nm and readout integrated circuit (ROIC) specially designed therefor;

(4) ''Space-qualified'' mechanical cryocooler, active cold finger, and associated control electronics specially designed therefor;

(5) ''Space-qualified'' active vibration suppression, including isolation and dampening, and associated control electronics therefor;

(6) Optical bench assemblies for items in paragraph (a) of this category and the multi-aperture assemblies; fast steering mirrors (*i.e.,* greater than 300 rad/sec^2 acceleration), pushbroom assemblies, flexure mounts, beam splitters, mirror folds, focus or channeling mechanisms, alignment mechanisms, inertial reference unit (IRU), black body cavities, baffles and covers, and control electronics specially designed therefor;

(7) Non-communications space-qualified directed energy (*e.g.,* lasers or RF) systems and specially designed for a spacecraft in paragraph (a) of this category;

(8) Space-based kinetic systems or charged particle energy systems, including power conditioning and beam-handling/switching, propagation, tracking, or pointing equipment, and specially designed parts and components therefor;

(9) ''Space-qualified'' cesium, rubidium, hydrogen maser, or quantum (*e.g.,* based upon Al, Hg, Yb, Sr, Be Ions) atomic clocks, and specially designed parts and components therefor;

(10) Attitude determination and control systems, and specially designed parts and components therefor, that provide earth location accuracy without using Ground Location Points better than or equal to:

(i) 5 meters from low earth orbit (LEO);

(ii) 30 meters from medium earth orbit (MEO);

(iii) 150 meters from geosynchronous orbit (GEO); or

(iv) 225 meters from high earth orbit (HEO);

(11) Space-based nuclear thermionic or non-nuclear thermionic converters or generators, and specially designed parts and components therefor;

(12) Thrusters (*e.g.,* rocket engines) that provide for orbit adjustment greater than 150 lbf (*i.e.,* 667.23 N) vacuum thrust;

(13) Control moment gyroscope;

(14) ''Space-qualified'' monolithic microwave integrated circuits (MMIC) that combine transmit and receive (T/R) functions on a single die as follows:

(i) Having a power amplifier with maximum saturated peak output power (in watts), Psat, greater than 200 divided by the maximum operating frequency (in GHz) squared [Psat >200 W*GHz^2/fGHz^2]; or

(ii) Having a common path (*e.g.,* phase shifter-digital attenuator) circuit with greater than 3 bits phase shifting at operating frequencies 10 GHz or below, or greater than 4 bits phase shifting at operating frequencies above 10 GHz;

(15) ''Space-qualified'' oscillator for radar in paragraph (a) of this category with phase noise less than -120 dBc/Hz

+ (20 $\log_{10}$(RF) (in GHz)) measured at 2 KHz*RF (in GHz) from carrier;

(16) ''Space-qualified'' star tracker or star sensor with angular accuracy less than or equal to 1 arcsec in all three axes and a tracking rate equal to or greater than 3.0 deg/sec, and specially designed parts and components therefor (MT);

*(17) Secondary or hosted payload, and specially designed parts and components therefor, that perform any of the functions described in paragraph (a) of this category;

*(18) Department of Defense-funded secondary or hosted payload, and specially designed parts and components therefor; or

(19) Spacecraft re-entry vehicles, and specially designed parts and components therefor, as follows (MT if usable in rockets, SLVs, missiles, drones, or UAVs capable of delivering a ''payload'' of at least 500 kg to a ''range'' of at least 300 km):

(i) Heat shields, and components therefore, fabricated of ceramic or ablative materials;

(ii) Heat sinks and components therefore, fabricated of light-weight, high heat capacity materials; or

(iii) Electronic equipment specially designed for spacecraft re-entry vehicles;

Note to paragraph (e)(19): For definition of ''range'' as it pertains to aircraft systems, *see* note to paragraph (c)(4) of this category. For definition of ''range'' as it pertains to rocket systems, *see* note to paragraph (f)(6) of USML Category VI.

*(20) Any part, component, accessory, attachment, equipment, or system that (i) is classified;

(ii) Contains classified software; or

(iii) Is being developed using classified information.

''Classified'' means classified pursuant to Executive Order 13526, or predecessor order, and a security classification guide developed pursuant thereto or equivalent, or to the corresponding classification rules of another government or international organization.

Note 1 to paragraph (e): Parts, components, accessories, and attachments specially designed for spacecraft enumerated in this category but not listed in paragraph (e) are subject to the EAR.

Note 2 to paragraph (e): For the purposes of this paragraph, an article is ''space-qualified'' if it is designed, manufactured, or qualified through successful testing, for operation at altitudes greater than 100 km above the surface of the Earth. **Notes:** (1) A determination that a specific article (or commodity) (*e.g.,* by product serial number) is ''space-qualified'' by virtue of testing does not mean that other articles in the same production run or model series are ''space-qualified'' if not individually tested. (2) ''Article'' is synonymous with ''commodity,'' as defined in EAR § 772.1. (3) A specific article not designed or manufactured for use at altitudes greater than 100 km above the surface of the Earth is not ''space-qualified'' before it is successfully tested.

(f) Technical data (*see* § 120.10 of this subchapter) and defense services (*see* § 120.9 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (e) of this category and classified technical data directly related to items controlled in ECCNs 9A515, 9B515, 9C515, and 9D515 and defense services using the classified technical data. (*See* § 125.4 of this subchapter for exemptions.) (MT for technical data and defense services related to articles designated as such.)

(g)–(w) [Reserved]

(x) Commodities, software, and technical data subject to the EAR (*see* § 120.42 of this subchapter) used in or with defense articles controlled in this category.

Note to paragraph (x): Use of this paragraph is limited to license applications for defense articles controlled in this category where the purchase documentation includes commodities, software, or technical data subject to the EAR (*see* § 123.1(b) of this subchapter).

* * * * *

PART 124—AGREEMENTS, OFF-SHORE PROCUREMENT, AND OTHER DEFENSE SERVICES

■ 5. The authority citation for part 124 is revised it to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105–261; Pub. L. 111–266; Section 1261, Pub. L. 112–239; E.O. 13637, 78 FR 16129.

■ 6. In § 124.1, paragraph (a) is revised to read as follows:

§ 124.1 Manufacturing license agreements and technical assistance agreements.

(a) *Approval.* The approval of the Directorate of Defense Trade Controls must be obtained before the defense services described in § 120.9(a) of this subchapter may be furnished. In order to obtain such approval, the U.S. person must submit a proposed agreement to the Directorate of Defense Trade Controls. Such agreements are generally characterized as manufacturing license agreements, technical assistance agreements, distribution agreements, or off-shore procurement agreements, and may not enter into force without the prior written approval of the Directorate of Defense Trade Controls. Once approved, the defense services described in the agreements may generally be provided without further licensing in accordance with §§ 124.3 and 125.4(b)(2) of this subchapter. In exceptional cases, the Directorate of Defense Trade Controls, upon written request, will consider approving the provision of defense services described in § 120.9(a) of this subchapter by granting a license under part 125 of this subchapter.

* * * * *

■ 7. Section 124.2 is amended by revising the section header, removing and reserving paragraphs (a) and (b), and revising paragraph (c) introductory text to read as follows:

§ 124.2 Exemptions for training and related technical data.

* * * * *

(c) For NATO countries, Australia, Japan, and Sweden, in addition to the basic maintenance information exemption in § 125.4(b)(5) of this subchapter, no technical assistance agreement is required for maintenance training or the performance of maintenance, including the export of supporting technical data, when the following criteria can be met:

* * * * *

Dated: May 14, 2013.

Rose E. Gottemoeller,

Acting Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 2013–11985 Filed 5–23–13; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 5

[Docket No. FR–5586–P–01]

RIN 2501–AD60

Pet Ownership for the Elderly or Persons With Disabilities in Multifamily Rental Housing; Accumulation of Deposits for Costs Attributable to Pets

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: HUD regulations governing multifamily rental housing for the elderly or persons with disabilities allow for the residents of such housing to own common household pets, subject to the residents' paying a refundable pet deposit. Currently, the regulations require that owners of HUD-assisted multifamily rental housing for the elderly or persons with disabilities

collect the deposit and any increases in the deposit from the pet owner only through gradual accumulation; that is, an initial payment followed by subsequent monthly payments. This requirement does not exist for public housing agencies (PHAs) and owners of other HUD-assisted multifamily rental housing. Rather, HUD regulations provide PHAs and owners of other HUD-assisted multifamily rental housing discretion to determine whether to gradually accumulate a pet deposit and any increases to the pet deposit. This proposed rule would provide owners of HUD-assisted multifamily rental housing for the elderly or persons with disabilities, now subject to the gradual-accumulation pet deposit requirement, with the same flexibility, thereby bringing consistency to the pet deposit requirements for HUD programs and better enabling owners of such housing to handle the costs associated with pet ownership by tenants. This proposed rule only applies to policies for pets and not to service or assistance animals for persons with disabilities.

DATES: *Comment Due Date:* July 23, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the proposed rule. *No Facsimile Comments.* Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the toll-free Federal Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Marie D. Head, Deputy Assistant Secretary for Multifamily Housing Programs, Department of Housing and Urban Development, 451 7th Street SW., Room 6106, Washington, DC 20410–8000; telephone number 202–708–2495 (this is not a toll-free number). Persons with hearing or speech impairments may access this telephone number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Section 227 of the Housing and Urban-Rural Recovery Act of 1983 (12 U.S.C. 1701r–1), provides for the ownership of common household pets in HUD's public and other HUD-assisted multifamily rental housing for the elderly or persons with disabilities. Section 227(a) provides that no owner or manager of federally assisted housing for the elderly or persons with disabilities [1] may, as a condition of tenancy: (1) Prohibit or prevent any tenant from owning or having common household pets living in the dwelling accommodations or (2) restrict or discriminate against any person in connection with admission to, or continued occupancy of, covered housing because of the ownership of such pets or their presence in the dwelling accommodations. HUD's regulations implementing section 227 are codified at 24 CFR part 5, subpart C (entitled ''Pet Ownership for the Elderly or Persons with Disabilities'') (§§ 5.300 to 5.380). These regulations apply to rental housing assisted by HUD under the following programs: (1) The public housing program, (2) programs administered by the Assistant Secretary for Housing–Federal Housing Commissioner, and (3) programs for which the governing regulations are in 24 CFR Chapter VIII.

This rule only addresses HUD programs that fall within the second and third categories; specifically, the: (1) Rent Supplements (24 CFR part 200, subpart W), (2) Rental Assistance Payments (24 CFR part 236, subpart D), (3) Section 8 New Construction (24 CFR part 880), (4) Section 8 Substantial Rehabilitation (24 CFR part 881), (5) Section 8 State Housing Agencies (24 CFR part 883), (6) Section 8 Set-Aside for Rural Rental Housing Projects (24 CFR part 884), (7) Section 8 Loan Management Set-Aside and Property Disposition (24 CFR part 886), (8) Section 202 Supportive Housing for the Elderly (24 CFR part 811, subpart B), (9) Section 811 Supportive Housing for Persons with Disabilities (24 CFR part 891, subpart C), and (10) Section 811 Project Rental Assistance Demonstration Program. For purposes of brevity and convenience, rental housing assisted under these programs is collectively referred to as ''covered multifamily rental housing.''

For tenants residing in covered multifamily rental housing, § 5.318(d)(2)(iii) currently requires the gradual accumulation of the deposit by the pet owner, through an initial payment not to exceed $50 when the pet is brought onto the premises and subsequent monthly payments not to exceed $10 per month until the amount of the deposit is reached. Section 5.318(d)(2) requires HUD to set the maximum pet deposit by notice, currently set at $300.[2] Section 5.318(d)(2)(v)(A) also requires a gradual accumulation of any increase in the deposit, not to exceed $10 per month for these tenants.

Other covered multifamily rental housing is subject to § 5.318(d)(2)(iv), which provides the owner with the discretion of establishing rules that ''may provide for the gradual accumulation of the deposit by the pet owner.'' The requirements for public housing are codified at § 5.318(d)(3), and similarly provide that the pet rules adopted by a PHA ''may permit gradual

[1] The term used in this 1983 statute is ''handicapped.''

[2] *See* HUD, No. 4350.3 REV–1, Occupancy Requirements of Subsidized Multifamily Housing Programs (2009) at 6–24.

accumulation of the pet deposit by the pet owner.''

HUD's March 8, 1996, final rule (61 FR 9536) establishing the pet ownership regulations explained that the differing requirements governing deposits were based on the fact that tenants in the affected covered multifamily rental housing are, as a general rule, lower income and may have difficulty making the pet deposit. While this is still generally true, the regulatory mandate that owners gradually accumulate deposit amounts has also sometimes imposed an undue hardship for owners of covered multifamily housing. When funds are needed for repairs and replacements, fumigation, and animal care facilities shortly after a tenant brings a pet onto the premises, the accumulated pet deposit may be insufficient to pay repair and clean-up costs. Consequently, the owner may have to use the housing's Reserve for Replacement account or the tenant's security deposit to fund required repairs if a sufficient pet deposit has not been accumulated.

II. This Proposed Rule

To address this concern and distinction in HUD regulations, the proposed rule would amend the regulations to no longer mandate the gradual accumulation of pet deposits in the covered multifamily rental housing, and provide owners of such housing with the discretion to: (1) Provide for the gradual accumulation of the pet deposit, and (2) provide for the gradual accumulation of approved pet deposit increases.[3] In making this regulatory change, owners of covered multifamily rental housing would not be prohibited from providing for gradual accumulation of the deposit and increases in the pet deposit by the pet owner. The proposed rule will enable owners to determine how to collect the pet owner deposit based on the same rules that apply to other HUD-assisted rental housing; however, owners should consider the income characteristics of its tenants when setting pet deposit policies and are encouraged to continue to provide for gradual accumulation from lower-income residents where economically feasible given the costs of operating the housing project.

III. Cost and Benefits of the Proposed Rule

As discussed in this preamble, the purpose of this proposed rule is to bring consistency to the pet deposit requirements for HUD programs and better enable owners of such housing to handle the costs associated with pet ownership by tenants. While difficult to predict, HUD has determined that the discounted benefits of the proposed rule may cause negligible transfers to tenants if the owner of their dwelling chooses to opt out of the gradual payment requirement. Assuming a pet deposit in a range from $100 to $300 and a 3 or 7 percent annual discount rate, the financial impact of the rule may range from $232,000 to $9.86 million.

Currently, about 936,000 households in HUD assisted multifamily rental housing are classified as either elderly or disabled and will potentially be impacted by the change in regulation. It is very unlikely, however, that all elderly or disabled households in the concerned programs will own a pet and therefore be subject to the rule. Recognizing that about 62 percent of households in the United States own a pet, and applying that proportion to our target population, we derive an estimate of the number of affected households to be 580,000. We also make the cautious assumption that all of the 580,000 households are affected. The rule provides owners of housing the option to collect upfront fees. The total impact (cost to the tenants) will be as follows:

	Pet deposit		
Status-Quo (Current Rule with Gradual Payment)	$100	$200	$300
—Upfront Payment	50	50	50
—Monthly Payment	10	10	10
—Number of Months	5	15	25
Present value payments at 3% annual discount	99.60	197	292
Present value payments at 7% annual discount	99.20	193	283
Cost of Rule (per Household at 3%)	0.40	3	8
Cost of Rule (per Household at 7%)	0.80	7	17
Total Elderly or Disabled Household in HUD Multifamily Rental Housing that own pets	580,000	580,000	580,000
Total Potential Impact (per Household at 3%)	232,000	1,740,000	4,640,000
Total Potential Impact (per Household at 7%)	464,000	4,060,000	9,860,000

The potential benefits of the rule include a reduced burden on owners who have to cover costs associated with repairs, replacements, fumigation, and animal facilities when such costs result from pets on the premises and accrue before the entire pet deposit is accumulated and decrease the time and money spent to manage the gradual accumulation of the required pet deposit. There are also administrative costs associated with the management of pet-deposit accounts. Under current HUD regulations, there is a need to manage the gradual accumulation of the required pet deposit and the proposed rule will eliminate such a need. The implementation of this proposed rule will result in some savings, however small, for the owners if they do not have to manage the monthly payments of pet deposits.

Based on this analysis, HUD has determined that the implementation of this proposed rule will not be economically significant under Executive Order 12866[4] and OMB Circular A–4.[5]

IV. Findings and Certifications

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis 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. This proposed rule would revise HUD's regulations governing the manner in which an owner of covered multifamily rental housing may require tenants of such

[3] This proposed rule only applies to policies for pets and not to service or assistance animals for persons with disabilities. Service and assistance animals are covered by separate HUD regulations at 24 CFR 5.303.

[4] Office of Management and Budget, *Economic Analysis of Federal Regulations Under Executive Order 12866,* January 11, 1996, *http://www.whitehouse.gov/omb/inforeg/riaguide.html.*

[5] *http://www.whitehouse.gov/omb/inforeg/cirular-a4.pdf.*

housing who maintain pets to pay a pet deposit. As discussed in the preamble, owners of covered multifamily rental housing were subject to different rules concerning pet deposits than rules that applied to other HUD-assisted rental housing. This proposed rule would provide owners of such covered multifamily rental housing with the discretion to determine whether to gradually accumulate a pet deposit, thereby bringing consistency to the pet deposit requirements for HUD rental housing programs and better enabling owners to handle the costs associated with pet ownership by tenants. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Notwithstanding HUD's determination that this rule will not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Environmental Impact

This proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule would not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule does not impose any Federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Lists of Subjects in 24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs—housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

For the reasons set forth in the preamble, HUD proposes to amend 24 CFR part 5 as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

■ 1. The authority citation for 24 CFR part 5 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d), Sec. 327, Pub. L. 109–115, 119 Stat. 2936, and Sec. 607, Pub. L. 109–162, 119 Stat. 3051.

■ 2. Amend § 5.318 as follows:

■ a. Revise paragraphs (d)(2)(iii) and (iv);

■ b. Remove paragraph (d)(2)(v); and

■ c. Redesignate paragraph (d)(2)(vi) as (d)(2)(v).

The revisions read as follows:

§ 5.318 Discretionary pet rules.

* * * * *

(d) * * *

(2) * * *

(iii) The pet rules may provide for gradual accumulation of the pet deposit by the pet owner.

(iv) The project owner may (subject to the HUD-prescribed limits) provide for gradual accumulation of an increase in the amount of the pet deposit by amending the house pet rules in accordance with § 5.353.

* * * * *

Dated: May 1, 2013.

Shaun Donovan,

Secretary.

[FR Doc. 2013–12456 Filed 5–23–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 53

[REG–106499–12]

RIN 1545–BL30

Community Health Needs Assessments for Charitable Hospitals; Correction

Correction

In proposed rule document 2013–12013, appearing on pages 29628–29629 in the issue of Tuesday, May 21, 2013, make the following correction:

This document inadvertently appeared in the ''Rules and Regulations'' section of the **Federal Register** and should have appeared in the ''Proposed Rules'' section.

[FR Doc. C1–2013–12013 Filed 5–23–13; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2013–0257]

RIN 1625–AA09

Drawbridge Operation Regulation; Hudson River, Troy and Green Island, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating schedule that governs the highway bridge (Troy Green Island) across the Hudson River, mile 152.7, between Troy and Green Island, New York. The owner of the bridge, New York State Department of Transportation, requested that a twenty four hour advance notice be given for bridge openings. In addition, we are removing the regulations for the 112th Street Bridge, mile 155.4, between Troy and Cohoes which has been converted to a fixed bridge. It is expected that this change to the regulations would provide relief to the bridge owner from crewing the bridge while continuing to meet the reasonable needs of navigation as well as remove obsolete regulations from the Code of Federal Regulations.

DATES: Comments and related material must be received by the Coast Guard on or before July 23, 2013.

ADDRESSES: You may submit comments identified by docket number USCG–

2013–0257 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Mr. Joe Arca, Project Officer, First Coast Guard District Bridge Program, telephone 212–668–7165, email *joe.m.arca@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Tables of Acronyms

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

A. Public Participation and Request for Comments

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

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2013–0257), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (*http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand delivery, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number USCG–2013–0257 in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2013–0257) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit either 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. We have an agreement with the Department of Transportation to use the Docket Management Facility.

3. Privacy Act

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

4. Public Meeting

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

B. Basis and Purpose

The highway bridge (Troy Green Island), at mile 152.7, across the Hudson River, between Troy and Green Island, New York, has a vertical clearance in the closed position of 29 feet at mean high water and 34 feet at mean low water. The waterway users are predominantly seasonal recreational vessels, several tour boats and a U.S. Army Corps of Engineers vessel.

The existing drawbridge operation regulations are listed at 33 CFR 117.791(e), which require the bridge to operate as follows: From April 1 through December 15, the draw shall open on signal from 9 a.m. to 4 p.m.; except that, the draw need not open from 6 p.m. to 7 a.m., unless notice is given before 4:30 p.m. of the time the vessel is expected to pass, and need not open from 7 a.m., to 9 a.m., and 4 p.m. to 6 p.m. From December 16 through March 31, the draw need not open.

The Coast Guard received a request from the owner of the bridge, New York State Department of Transportation, to change the drawbridge operation regulations. The owner of the bridge proposes to open the bridge as follows: From April 1 through December 15, the draw shall open on signal after at least a twenty four hour notice is given and from December 16 through March 31, the draw need not open for the passage of vessel traffic.

The bridge opens approximately 40 times a year on average between April and December and there are no openings in the winter months when the waterway is normally frozen.

As a result of the above information the Coast Guard believes it is reasonable for the bridge owner to operate the bridge after a twenty four hour advance notice April 1 through December 15.

In addition, we are removing the drawbridge operation regulations for the 112th Street Bridge between Troy and Cohoes, 33 CFR 117.791(f), which was converted to a fixed bridge in 1997.

C. Discussion of Proposed Rule

The Coast Guard proposes to revise 33 CFR 117.791(e), to allow the draw to open after a twenty four hour advance notice is given from April 1 through December 15 and the draw need not open for vessel traffic from December 16 through March 31. In addition we are removing the drawbridge operation regulations for the 112th Street Bridge between Troy and Cohoes which was converted to a fixed bridge.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

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

We consider this rule as not being a significant regulatory action because the bridge will continue to open for the passage of all vessel traffic, April 1 through December 15, after a twenty four hour notice is given.

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 proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels needing to transit through the bridge.

This action will not have a significant economic impact on a substantial number of small entities for the following reasons: The bridge will continue to open for all vessel traffic after a 24 hour advance notice is given.

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

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed 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 proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

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

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

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

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical

exclusion determination are not required for this rule. We seek any comments or information that may lead to the discovery of significant environmental impact from the proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

■ 2. Revise § 33 CFR 117.791 paragraph (e) to read as follows:

§ 117.791 Hudson River.

* * * * *

(e) The draw of the highway bridge (Troy Green Island), mile 152.7, across the Hudson River between Troy and Green Island, operates as follows:

(1) From April 1 through December 15 the draw shall open on signal if at least a twenty four hour advance notice is given by calling the number posted at the bridge.

(2) From December 16 through March 31, the draw need not open for the passage of vessel traffic.

■ 3. In § 117.791, remove paragraph (f).

Dated: May 10, 2013.

V.B. Gifford, Jr.,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 2013–12394 Filed 5–23–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2013–0291]

RIN 1625–AA09

Drawbridge Operation Regulation; Taunton River, Fall River and Somerset, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating schedule that governs the Veterans Memorial Bridge across the Taunton River, mile 2.1, between Fall River and Somerset, Massachusetts. The bridge owner, Massachusetts Department of Transportation, submitted a request to reduce the hours the bridge is crewed based upon infrequent requests to open the draw. It is expected that this change to the regulations would provide relief to the bridge owner from crewing the bridge while continuing to meet the reasonable needs of navigation.

DATES: Comments and related material must be received by the Coast Guard on or before July 23, 2013.

ADDRESSES: You may submit comments identified by docket number USCG–2013–0291 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Mr. John W. McDonald, Project Officer, First Coast Guard District Bridge Program, telephone 617–223–8364, email *john.w.mcdonald@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Tables of Acronyms

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

A. Public Participation and Request for Comments

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

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2013–0291), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (*http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand delivery, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number USCG–2013–0291 in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2013–0291) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit either 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. We have an agreement with the Department of Transportation to use the Docket Management Facility.

3. Privacy Act

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

4. Public Meeting

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

B. Basis and Purpose

The Veterans Memorial Bridge at mile 2.1, across the Taunton River between Somerset and Fall River, Massachusetts, has a vertical clearance of 60 feet at mean high water and 66 feet at mean low water. The horizontal clearance is 200 feet between the bridge protective fenders. The drawbridge operation regulations are listed at 33 CFR 117.5.

The waterway users are predominantly seasonal recreational vessels.

The Veterans Memorial Bridge is a double leaf bascule highway bridge opened to traffic in 2011, at mile 2.1, upstream from the existing Brightman Street Route 6 highway bridge at mile 1.8, across the Taunton River.

The owner of the bridge, Massachusetts Department of Transportation, submitted a request to the Coast Guard to change the drawbridge operating regulations that presently require the draw to be crewed twenty four hours a day and open on signal at all times.

Under this proposed rule the draw would open on signal between 7 a.m. and 3 p.m., and from 3 p.m. through 7 a.m. the draw would open on signal after at least a two hour advance notice is given by calling the number posted at the bridge.

C. Discussion of Proposed Rule

The Coast Guard proposes to change the drawbridge operation regulations at 33 CFR 117.619 by adding a paragraph, (f), that would allow the draw to be crewed between 7 a.m. and 3 p.m., and be on a two hour on call basis at all other times.

As a result of the seasonal recreational vessel traffic and the high vertical clearance under the bridge, 60 feet at mean high water and 66 feet at mean low water, the bridge has received few requests to open during the past two years since it was opened to vehicular traffic.

Since the bridge opened it has received the following number of requests to open: 21 openings in 2011, 22 openings in 2012 and 4 openings in 2013, January through March.

Based on the above information, the Coast Guard believes it is reasonable to allow the Veterans Memorial Bridge to be crewed between 7 a.m. and 3 p.m. and be on a two hour advance notice at all other times. This decision was based on the few number requests to open the bridge the past two years and the high vertical clearance under the draw.

D. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of these statutes or executive orders.

1. Regulatory Planning and Review

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866, or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. We believe that this rule is not a significant regulatory action because the bridge will still open for all vessel traffic at all times provided the advance notice is given 3 p.m. to 7 a.m. by calling the number posted at the bridge.

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 proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels needing to transit through the bridge.

This action will not have a significant economic impact on a substantial number of small entities for the following reasons: The bridge will continue to open on signal from 7 a.m. to 3 p.m. and from 3 p.m. to 7 a.m. after a two hour advance notice is given. Additionally, the bridge has a vertical clearance of 60 feet at mean high water and 66 feet at mean low water which allows many vessels to pass through the bridge without a need for an opening.

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

3. Assistance for Small Entities

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

The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed 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 proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

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

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule. We seek any comments or information that may lead to the discovery of significant environmental impact from the proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

■ 2. In § 33 CFR 117.619, add paragraph (f) to read as follows:

§ 117.619 Taunton River.

* * * * *

(f) The draw of the Veterans Memorial Bridge, mile 2.1, across the Taunton River between Fall River and Somerset, shall operate as follows:

(1) From 7 a.m. through 3 p.m. the draw shall open on signal.

(2) From 3 p.m. through 7 a.m. the draw shall open on signal provided a two hour advance notice is given by calling the number posted at the bridge.

Dated: May 10, 2013.

V.B. Gifford, Jr.,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 2013–12397 Filed 5–23–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2010–0460; A–1–FRL–9817–2]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Reasonably Available Control Technology Update To Address Control Techniques Guidelines Issued in 2006, 2007, and 2008

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision establishes and requires Reasonably Available Control Technology (RACT) for several categories of volatile organic compound (VOC) sources. The intended effect of this action is to propose approval of these requirements into the Connecticut SIP. This action is being taken in accordance with the Clean Air Act.

DATES: Written comments must be received on or before June 24, 2013.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R01–OAR–2010–0460 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: arnold.anne@epa.gov.*
3. *Fax:* (617) 918–0047.
4. *Mail:* ''Docket Identification Number EPA–R01–OAR–2010–0460'', Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912.
5. *Hand Delivery or Courier.* Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, (mail code OEP05–2), Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R01–OAR–2010–0460. EPA's policy is that all comments

received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov,* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

In addition, the state's submittals are available for public inspection during normal business hours, by appointment at the state environmental agency: The Bureau of Air Management, Department of Energy and Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

FOR FURTHER INFORMATION CONTACT: David Mackintosh, Air Quality Planning Unit, U.S. Environmental Protection Agency, New England Regional Office, 5 Post Office Square—Suite 100, (Mail Code OEP05–02), Boston, MA 02109–3912, telephone 617–918–1584, facsimile 617–918–0584, email *mackintosh.david@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

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

I. What action is EPA proposing?
II. What is the background for this proposed action?
III. What is included in the submittals?
IV. What is EPA's evaluation of the submittals?
A. Metal Furniture Coating
B. Paper Coating
C. Miscellaneous Metal and Plastic Parts Coatings
D. Flexible Package Printing
E. Offset Lithographic Printing and Letterpress Printing
F. Large Appliance Coatings
G. Industrial Solvent Cleaning and Spray Application Equipment Cleaning
H. Consumer Products
I. Adhesives and Sealants
J. Withdrawn Provisions
K. Minor Changes and Negative Declarations
L. Conclusion
V. Proposed Action
VI. Statutory and Executive Order Reviews

I. What action is EPA proposing?

EPA is proposing to approve Connecticut's revisions to Section 22a–174–20, ''Control of organic compound emissions,'' and Connecticut's newly adopted Sections 22a–174–40, ''Consumer Products,'' and 22a–17444, ''Adhesives and Sealants,'' which address RACT for the VOC source categories covered by Control Technique Guidelines (CTGs) issued by EPA in 2006, 2007, and 2008. Connecticut's rules were submitted to EPA on February 1, 2008, November 18, 2008, April 29, 2010, and November 21, 2012. EPA is also proposing to approve the negative declarations for the CTGs for which Connecticut determined no applicable sources exist in the State of Connecticut.

II. What is the background for this action?

In 1997, EPA revised the health-based National Ambient Air Quality Standard (NAAQS) for ozone, setting it at 0.08 parts per million (ppm) averaged over an 8-hour time frame. EPA set the 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone standard was set. EPA determined that the 8-hour standard would be more protective of human health, especially with regard to children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

On April 30, 2004, pursuant to the Federal Clean Air Act (the Act, or CAA), 42 U.S.C. 7401 et seq., EPA designated portions of the country as being in nonattainment of the 1997 8-hour ozone NAAQS (69 FR 23858). Two areas in Connecticut, together encompassing the entire state, were designated nonattainment for ozone and classified as moderate: Greater Connecticut, CT; and New York-N. New Jersey-Long Island, NY–NJ–CT. Connecticut is also part of the Ozone Transport Region (OTR) under Section 184(a) of the CAA. Sections 182(b)(2) and 184 of the CAA compel states with moderate and above ozone nonattainment areas, as well as areas in the OTR respectively, to submit a SIP revision requiring the implementation of RACT for sources covered by a CTG and for all major sources. A CTG is a document issued by EPA which establishes a ''presumptive norm'' for RACT for a specific VOC source category.

Furthermore, on May 27, 2008, EPA made further revisions to the ozone NAAQS setting the 8-hour standard to 0.075 ppm (73 FR 16436). Today's proposed action does not address the requirements of the 2008 ozone NAAQS.

On October 5, 2006, EPA issued four new CTGs which states were required to address by October 5, 2007 (71 FR 58745). Then, on October 9, 2007, EPA issued three more CTGs which states were required to address by October 9, 2008 (72 FR 57215). Lastly, on October 7, 2008, EPA issued an additional four CTGs which states were required to address by October 7, 2009 (73 FR 58481).

On February 1, 2008, Connecticut submitted its consumer products regulation to EPA as part of its 8-hour Ozone Attainment Demonstration SIP revision. Then, on November 18, 2008, Connecticut submitted its adhesives and sealants regulation as part of its Annual Fine Particulate Matter ($PM_{2.5}$) Attainment Demonstration SIP revision. On April 29, 2010, Connecticut submitted a SIP revision that addressed

nine CTGs. Then on November 21, 2012, Connecticut submitted a SIP revision that addressed the remaining CTG for miscellaneous metal and plastic parts coatings. Lastly, in letters dated March 13, 2013 and April 3, 2013, Connecticut withdrew a number of provisions from the April 29, 2010 and February 1, 2008 submittals respectively.

III. What is included in the submittals?

Connecticut's SIP revisions consist of updates to VOC RACT requirements to address the eleven CTGs issued by EPA from 2006 through 2008. Connecticut submitted negative declarations for three CTGs: automobile and light-duty truck assembly coating; fiberglass boat manufacturing; and flat wood paneling coating.[1] Connecticut adopted regulations for eight CTGs: flexible package printing; industrial cleaning solvents; large appliance coatings; metal furniture coatings; miscellaneous industrial adhesives; miscellaneous metal and plastic parts coatings; offset lithographic printing and letterpress printing; and paper, film and foil coatings. Additionally, Connecticut adopted a consumer products regulation based on the 2006 Ozone Transport Commission (OTC) recommendations for this category.

IV. What is EPA's evaluation of the submittals?

A. Metal Furniture Coating

Connecticut's Section 22a–174–20(p) ''Metal Furniture Coating'' was previously approved by EPA on October 19, 2000 (65 FR 62620) and contained just one general coating limit of 0.36 kilograms of VOC per liter (kg VOC/l). The revised rule includes eight coating categories with limits specific to the drying process (baked or air dried) ranging from 0.275 kg to 0.420 kg VOC/l, consistent with the limits recommended in EPA's CTG for Metal Furniture Coatings (EPA 453/R–07–005, September 2007). While two specialty coating categories, pretreatment coatings and metallic coatings, have a higher limit (0.420 kg VOC/l baked or air dried) than the previous general limit, the new general use coating limit has been reduced from 0.36 kg to 0.275 kg VOC/l baked or air dried. As noted by Connecticut, general use coatings are applied more frequently than pretreatment and metallic coatings, thus, fewer VOCs will be emitted as a result of this regulation revision. This determination is also consistent with the EPA guidance memorandum, entitled *Approving SIP Revisions Addressing VOC RACT Requirements for Certain Coating Categories,* from Scott Mathias to Regional Air Division Directors, dated March 17, 2011. The revised rule also requires facilities to use work practices that limit VOC emissions and minimize spills during material application, storage, containment, conveyance, and mixing. In addition, the revised rule also clarifies record keeping requirements. Therefore, the revised rule satisfies the anti-back sliding requirements in Section 110(l) of the CAA.

B. Paper Coating

Connecticut's Section 22a–174–20(q) ''Paper Coating'' was previously approved by EPA on October 19, 2000 (65 FR 62620) and contained a general emissions limit of 0.35 kg VOC/l of coating. The revised regulation has been renamed ''Paper, film and foil coating'' and, while it contains the same general emissions limit, it now applies to a broader scope of activities, consistent with EPA's CTG for Paper, Film, and Foil Coatings (EPA 453/R–07–003, September 2007). Consistent with the CTG, the revised regulation also includes the following additional VOC emission requirements for facilities with a potential to emit 25 tons or more VOCs per year: An emission limit of 0.35 kilograms of VOC per kilogram of coating solids applied (except pressure sensitive tape and label); an emission limit of 0.20 kilograms of VOC per kilogram of coating solids applied (pressure sensitive tape and label only); the operation of a capture and control device with 90% efficiency; or the use of an alternative method approved by the state and EPA in accordance with the requirements of Connecticut's Section 22a–174–20(cc). Where this regulation refers to the ''daily weighted average of the VOC content of all coatings used,'' EPA interprets this to be the sum of the volume of each coating applied each day, multiplied by the VOC content of each coating applied each day; divided by the total volume of all coatings applied each day.[2] There are also updated work practices and general recordkeeping requirements for all applicable facilities. Connecticut's revised rule satisfies the anti-back sliding requirements in Section 110(l) of the CAA, since it applies to a broader scope of activities than the previously SIP-approved version of the rule.

C. Miscellaneous Metal and Plastic Parts Coatings

Connecticut's Section 22a–174–20(s), ''Miscellaneous Metal and Plastic Parts Coatings,'' was previously approved by EPA on October 19, 2000 (65 FR 62624). The revised rule expands the scope of the rule to include plastic parts, with new limits for pleasure craft metal and plastic parts coatings in new Section 22a–174–20(kk). The revised Section 22a–174–20(s) contains updated work practices, coating application methods, and recordkeeping requirements for all applicable facilities. The regulation requires coatings to be applied by one of several specified methods, but also allows the use of other coating application methods capable of achieving a transfer efficiency equivalent to, or better than, that provided by high-volume low-pressure (HVLP) spray application. The EPA CTG for Miscellaneous Metal and Plastic Parts Coatings (EPA–453/R–08–003, September 2008) defines transfer efficiency as ''the percent of coating applied to the metal furniture component or product,'' and EPA interprets references to ''transfer efficiency'' in Connecticut's regulation as bearing the same meaning as in the CTG. Additional control options permit equivalent emissions limits expressed in terms of mass of VOC per volume of solids as applied or the use of add-on controls capable of achieving an overall VOC efficiency of 90 percent.

The new coating limits generally follow the recommendations in EPA's CTG for Miscellaneous Metal and Plastic Parts Coating, with the exception of three coating categories. Connecticut adopted higher coating limits than the CTG for extreme high gloss topcoat, other substrate antifoulant coating, and antifouling sealer/tire. For these three categories, Connecticut reviewed industry data and determined that for purpose of functionality, cost, and VOC emissions, the alternative limits adopted for these three coating categories constitute RACT. Connecticut's approach is consistent with the EPA guidance memorandum, entitled *Control Technique Guidelines for Miscellaneous Metal and Plastic Part Coatings—Industry Request for Reconsideration,* from Stephen Page to Air Branch Chiefs, Regions I–X, dated June 1, 2010. The applicability threshold for plastic parts coatings was revised from 10 tons total potential emissions to 3 tons actual VOC emissions per 12-month period, before controls. Connecticut's new VOC coating limits are also lower than most of the previously SIP-approved limits.

[1] Complete citations for each CTG document are given in Section IV.

[2] See page 335 of the EPA document ''Model Volatile Organic Compound Rules for Reasonably Available Control Technology,'' June 1992.

Although some specialty coatings limits are higher than previous limits, the general use coating limit is lower and these coatings are more frequently used. In addition, the revised rule's applicability is much broader. Thus, the revised rule satisfies the anti-back sliding requirements in Section 110(l) of the CAA. This analysis is also consistent with the EPA guidance memorandum entitled *Approving SIP Revisions Addressing VOC RACT Requirements for Certain Coating Categories.*

D. Flexible Package Printing

Connecticut's newly adopted Section 22a–174–20(ff), ''Flexible Package Printing,'' is consistent with the recommendations for RACT found in EPA's CTG for Flexible Package Printing (EPA–453/R–06–003, September 2006). The regulation applies to flexible package printing press owners or operators that purchase for their printing operation 855, or more, gallons of coatings, adhesives, cleaning solvents and solvent based inks, in the aggregate, per any rolling 12-month period. These sources are required to follow work practices for material storage, spill cleanup, and containment as well as maintain records of all inks, coatings, adhesives, and cleaning solvents used. Additionally, flexible package printing presses with a potential to emit, prior to controls, 25 tons or more VOCs per year are required to control their press VOC emissions by using low VOC inks, coatings, and adhesives or a capture and control device. Where this regulation refers to the ''daily weighted average of the VOC content of the inks, coatings and adhesives used,'' EPA interprets this to be the sum of the volume of each ink, coating, and adhesive applied each day, multiplied by the VOC content of each ink, coating, and adhesive applied each day; divided by the total volume of all materials applied each day.[3]

E. Offset Lithographic Printing and Letterpress Printing

Connecticut's newly adopted Section 22a–174–20(gg), ''Offset Lithographic Printing and Letterpress Printing,'' is consistent with the recommendations for RACT found in EPA's CTG for Offset Lithographic Printing and Letterpress Printing (EPA–453/R–06–002, September 2006). The regulation applies to the owner or operator of any offset lithographic or letterpress printing press who purchases for the printing operation at least 855 gallons of cleaning solvents, fountain solution additives and solvent-based inks in aggregate per any rolling 12-month period. Applicable sources are required to limit the VOC content of inks, coatings, adhesives, and cleaning solvents or use VOC pollution control devices. These sources are also required to follow work practices for material application, storage, spill cleanup, and containment as well as maintain records of the regulated materials used.

F. Large Appliance Coatings

Connecticut's Section 22a–174–20(hh), ''Large Appliance Coatings,'' is consistent with the recommendations for RACT found in EPA's CTG for Large Appliance Coatings (EPA 453/R–07–004, September 2007). The new regulation applies to an owner or operator of any large appliance coating unit who purchases for a coating operation at least 855 gallons of coatings and cleaning solvents in the aggregate per any rolling 12-month period. The rule does not apply to the following: Stencil coatings; safety-indicating coatings; solid-film lubricants; electric-insulating and thermal-conductive coatings; touch-up coatings; repair coatings; and coatings applied with a hand-held aerosol can. Applicable sources must control VOC emissions using one of three methods: Low VOC coatings; operation of a capture and control device; or an alternative method approved by the state and EPA. The regulation also specifies methods for general work practices, coating application methods and record keeping requirements. The regulation requires coating to be applied by one of several specified methods, but also allows the use of any other coating application methods capable of achieving a transfer efficiency equivalent to, or better than, that provided by HVLP spray application. The EPA CTG for Large Appliance Coatings defines transfer efficiency as ''the percent of coating applied to the metal furniture component or product,'' and EPA interprets the Connecticut regulation as giving the term the same meaning as the CTG.

G. Industrial Solvent Cleaning and Spray Application Equipment Cleaning

Connecticut's newly adopted Section 22a–174–20(ii), ''Industrial Solvent Cleaning,'' and Section 22a–174–20(jj), ''Spray Application Equipment Cleaning,'' are consistent with the recommendations for RACT found in EPA's CTG for Industrial Cleaning Solvents (EPA–453/R–06–001, September 2006).

Subsection (ii) applies to an owner or operator of any premises who purchases for use at the premises at least 855 gallons of cleaning solvents in the aggregate per rolling 12-month period. There are multiple specialty cleaning exemptions specified in the rule. Applicable solvent cleaning VOC emissions must be controlled by one of three methods: Using solvents with a VOC content less than 50 g/l as applied; using solvents with a vapor pressure no greater than 8 mm mercury (Hg) at 20 degrees Celsius; or using a pollution control device with an overall efficiency of at least 85%. The applicable industrial solvent cleaning sources are also required to follow work practices for material storage, spill cleanup, and containment as well as maintain records of all cleaning solvents used.

Subsection (jj) addresses the cleaning of spray application equipment. A non-exempt owner or operator of any spray application equipment is required to control VOC emissions by one of the following methods: Use of an enclosed gun cleaner; use of cleaning solvents that do not exceed 50 g/l VOCs with specified application methods; or operation of an air pollution control device with at least 85% efficiency. Certain spray application equipment exceptions are specified in the rule. For all applicable equipment, facilities are required to maintain records and use work practices to reduce VOC emissions and minimize spills during material use, storage, containment, and conveyance.

H. Consumer Products

Connecticut's newly adopted Section 22a–174–40, ''Consumer Products,'' is based on the 2006 Ozone Transport Commission (OTC) Model Rule for Consumer Products. Section 22a–174–40 contains limits for more categories of consumer products than EPA's National Volatile Organic Compound Emission Standards for Consumer Products rule at 40 CFR Part 59 Subpart C (63 FR 48831; September 11, 1998). The regulation limits are also equal to, or more stringent than, those found in EPA's consumer products rule.

The consumer products listed in Section 22a–174–40 include items sold to retail consumers for household or automotive use, as well as products used in commercial and institutional settings, such as beauty shops, schools and hospitals. The regulation has VOC content limits for 102 categories. In addition to the VOC emissions limits, the regulation includes: Limits on toxic contaminants in antiperspirants and deodorants and other consumer products; requirements for charcoal lighter materials, aerosol adhesives and floor wax strippers; requirements for products containing ozone-depleting

[3] See page 335 of the EPA document ''Model Volatile Organic Compound Rules for Reasonably Available Control Technology,'' June 1992.

compounds; product labeling requirements; and record keeping, reporting and testing requirements.

I. Adhesives and Sealants

Connecticut's newly adopted Section 22a–174–44, ''Adhesives and Sealants,'' is based on the OTC Model Rule for Adhesives and Sealants. Section 22a–174–44 includes all of the approaches to controlling VOC emissions found in EPA's CTG for Miscellaneous Industrial Adhesives (EPA 453/R–08–005, September 2008): VOC content limits for adhesives and cleaning solvents; work practices; record keeping; air pollution control equipment requirements; surface preparation requirements; and spray gun cleaning requirements. Connecticut's rule is also more comprehensive than the CTG, since it establishes VOC content limits for sealants and sealant primers (in addition to adhesives as covered by the CTG), regulates sellers and manufacturers, not just appliers, of regulated adhesives, adhesive primers and sealants, and contains a VOC composite vapor pressure limit for cleaning materials. The exemptions of Section 22a–174–44 are similar to those recommended in the CTG. While there are minor differences in the named adhesive categories (and emission limits) included in the CTG and Section 22a–174–44, those differences are inconsequential compared to the broader applicability of Section 22a–174–44 noted above.

J. Withdrawn Provisions

By letter dated March 13, 2013, Connecticut withdrew a number of similar provisions from the April 29, 2010 submittal. First, with respect to the definition of ''as-applied VOC content'' in Sections 22a–174–20(ff)(1)(K), 22a–174–20(gg)(1)(O), 22a–174–20(hh)(1)(CC), 22a–174–20(ii)(1)(I), and 22a–174–20(jj)(1)(H), Connecticut withdrew the phrase ''or other method approved by the commissioner'' from each of the cited provisions. Second, with respect to the requirements to document control device efficiency and capture efficiency in Sections 22a–174–20(ff)(5)(B)(vi), 22a–174–20(gg)(7)(B)(vi), 22a–174–20(hh)(7)(B)(vi), 22a–174–20(ii)(6)(B)(vi), and 22a–174–20(jj)(6)(B)(vii), Connecticut withdrew the phrase ''or alternate method approved by the commissioner'' from each of the cited provisions. Third, Connecticut withdrew Section 22a–174–20(jj)(3)(D), which allows the use of a cleaning solvent that does not meet the VOC content limitations of the rule upon approval by the commissioner.

Additionally, by letter dated April 3, 2013, Connecticut withdrew a number of provisions from the February 8, 2008 submittal. With respect to consumer product exemptions, Connecticut withdrew Sections 22a–174–40(c)(4) through (7), which allow for variances, exemptions, and alternative control plans (ACPs). With respect to consumer product testing, Connecticut also withdrew Section 22a–174–40(f)(2)(C) through (D), which allows for alternative test methods.

EPA is not acting on the withdrawn phrases (which provide alternative methods for compliance and/or for determining or demonstrating compliance), and the federally approved SIP will not contain these phrases. However, Connecticut's withdrawal of these provisions from its SIP submission does not affect their validity under state law; it means only that they are not applicable under federal law. For alternative methods, limits, or exemptions approved under these provisions to be federally applicable, the alternative method, limit, or exception must be approved by EPA as a SIP revision. See CAA Section 110(i). Until Connecticut submits an alternative method or limit to EPA as a SIP revision and EPA approves that SIP revision, the alternative method or limit is not effective as a matter of federal law. See 61 FR 38665. Regulated entities that receive approval from Connecticut to use alternative methods or limits under these provisions should take note of this distinction between federal and state law.

K. Minor Changes and Negative Declarations

Connecticut's April 29, 2010, SIP revision also includes minor changes to the following subsections of Section 22a–174–20: (f) ''Organic solvents;'' (l) ''Metal cleaning;'' and (ee) ''Reasonably available control technology for large sources.'' These sections were revised to expand the list of referenced regulations to include the newly adopted sections discussed above. Also, on May 30, 2012, Connecticut requested the withdrawal of Section 22a–174–20(g) from the SIP given that architectural coatings are now addressed in a more comprehensive manner in section 22a–174–41, ''Architectural and Industrial Maintenance Coating,'' which has been approved by EPA (77 FR 50595, August 22, 2012).

In addition, Connecticut's April 29, 2010 SIP revision also includes negative declarations for three source categories: Flat wood paneling coating; fiberglass boat manufacturing; and automobile and light-duty truck assembly coating. To make this determination, Connecticut reviewed the inventory of sources for facilities with North American Industrial Classification System codes that correspond to the sources covered in the following CTGs: Flat Wood Paneling Coatings (EPA–453/R–06–004, September 2006); Fiberglass Boat Manufacturing Materials (EPA 453/R–08–004, September 2008); and Automobile and Light-Duty Truck Assembly Coatings (EPA 453/R–08–006, September 2008). Connecticut also interviewed its field staff, and searched telephone directories and Internet Web pages (including other state government databases) to identify and evaluate sources that might meet the applicability requirements. Connecticut ultimately determined that there are no sources covered by these CTGs in the State of Connecticut.

L. Conclusion

In summary, as noted above, EPA has reviewed Connecticut's new and revised VOC regulations and found that they are consistent with the relevant CTGs and OTC recommendations. In addition, Connecticut's process for determining the categories for which the state should make negative declarations was reasonable. Therefore, if this proposal is finalized, Connecticut will have met the CAA requirement to adopt RACT for all the 2006, 2007, and 2008 CTGs.

V. Proposed Action

EPA is proposing to approve the following changes to Connecticut's Section 22a–174–20 as meeting RACT for the relevant CTG categories: Revised subsection (p), Metal furniture coatings; revised subsection (q), Paper, film, and foil coatings; revised subsection (s), Miscellaneous metal and plastic parts coatings; new subsection (ff), Flexible package printing; new subsection (gg), Offset lithographic printing and letterpress printing; new subsection (hh), Large appliance coatings; new subsection (ii), Industrial solvent cleaning; new subsection (jj), Spray application equipment cleaning; and new subsection (kk), Pleasure craft coatings. Additionally, EPA is proposing to approve Connecticut's new Section 22a–174–40, Consumer Products, and Section 22a–174–44, Adhesives and Sealants, as meeting RACT.

EPA is not proposing any action on the portions of sections 22a–174–20(ff)(1)(K), (ff)(5)(B)(vi), (gg)(1)(O), (gg)(7)(B)(Vi), (hh)(1)(CC), (hh)(7)(B)(vi), (ii)(1)(I), (ii)(6)(B)(vi), (jj)(1)(H), (jj)(3)(D), and (jj)(6)(B)(vii), which Connecticut withdrew from its April 29, 2010 SIP submittal. Likewise, EPA is not

proposing any action on the portions of Sections 22a–174–40(c)(4) through (7) and 22a–174–40(f)(2)(C) through (D), which Connecticut withdrew from its February 1, 2008 SIP submittal.

EPA is proposing to approve minor revisions to the following subsections of Connecticut's Section 22a–174–20: (f)(9); (l)(1) and (2); (aa)(1); (cc)(2) and (3); and subsection (ee), Reasonably available control technology for large sources. EPA is also proposing to approve Connecticut's request to withdraw subsection (g) of Section 22a–174–20, Architectural coatings, from the SIP. Lastly, EPA is proposing to approve Connecticut's negative declarations for three source categories: Flat wood paneling coating; fiberglass and boat manufacturing; and automobile and light-duty truck assembly coating. Therefore, if this proposal is finalized, Connecticut will have satisfied the CAA requirement to adopt RACT for all of the 2006, 2007, and 2008 CTGs.

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this **Federal Register**, or by submitting comments electronically, by mail, or through hand delivery/courier following the directions in the **ADDRESSES** section of this **Federal Register**.

VI. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: May 2, 2013.

H. Curtis Spalding,

Regional Administrator, EPA New England.

[FR Doc. 2013–12498 Filed 5–23–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2008–0574; EPA–HQ–SFUND–2013–0196, 0197, 0198, 0200, 0201, 0202, 0203, 0204 and 0207; FRL–9814–9]

National Priorities List, Proposed Rule No. 58

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the agency'') in determining which sites warrant further investigation. These further investigations will allow the EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule proposes to add nine sites to the General Superfund section of the NPL and proposes to change the name of an NPL site.

DATES: Comments regarding any of these proposed listings must be submitted (postmarked) on or before July 23, 2013.

ADDRESSES: Identify the appropriate Docket Number from the table below.

DOCKET IDENTIFICATION NUMBERS BY SITE

Site name	City/county, state	Docket ID No.
Locust Avenue (a.k.a. B.F. Goodrich)	Rialto, CA	EPA–HQ–SFUND–2008–0574.
Beck's Lake	South Bend, IN	EPA–HQ–SFUND–2013–0196.
Garden City Ground Water Plume	Garden City, IN	EPA–HQ–SFUND–2013–0197.
Keystone Corridor Ground Water Contamination	Indianapolis, IN	EPA–HQ–SFUND–2013–0198.
Smurfit-Stone Mill	Missoula, MT	EPA–HQ–SFUND–2013–0200.

DOCKET IDENTIFICATION NUMBERS BY SITE—Continued

Site name	City/county, state	Docket ID No.
Cristex Drum	Oxford, NC	EPA–HQ–SFUND–2013–0201.
Hemphill Road TCE	Gastonia, NC	EPA–HQ–SFUND–2013–0202.
Collins & Aikman Plant (Former)	Farmington, NH	EPA–HQ–SFUND–2013–0203.
Wilcox Oil Company	Creek County, OK	EPA–HQ–SFUND–2013–0204.
Makah Reservation Warmhouse Beach Dump	Neah Bay, WA	EPA–HQ–SFUND–2013–0207.

Submit your comments, identified by the appropriate Docket number, by one of the following methods:

- *www.regulations.gov*: Follow the online instructions for submitting comments.
- *Email: superfund.docket@epa.gov.*
- *Mail:* Mail comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; (Mailcode 5305T); 1200 Pennsylvania Avenue NW., Washington, DC 20460.
- *Hand Delivery or Express Mail:* Send comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue NW., EPA West, Room 3334, Washington, DC 20004. Such deliveries are accepted only during the Docket's normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays).

Instructions: Direct your comments to the appropriate Docket number (see table above). The EPA's policy is that all comments received will be included in the public Docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system; that means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public Docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional Docket addresses and further details on their contents, see section II, ''Public Review/Public Comment,'' of the **SUPPLEMENTARY INFORMATION** portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Terry Jeng, phone: (703) 603–8852, email: *jeng.terry@epa.gov,* Site Assessment and Remedy Decisions Branch, Assessment and Remediation Division, Office of Superfund Remediation and Technology Innovation (Mailcode 5204P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

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I. Background

A. What are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances, and releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What is the NCP?

To implement CERCLA, the EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances or releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. The EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action.'' ''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases of hazardous substances, pollutants or contaminants (42 U.S.C. 9601(23)).

C. What is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide the EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by the EPA (the ''General Superfund Section''), and one of sites that are owned or operated by other federal agencies (the ''Federal Facilities Section''). With respect to sites in the Federal Facilities Section, these sites are generally being addressed by other federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody or control, although the EPA is responsible for preparing a Hazard Ranking System (''HRS'') score and determining whether the facility is placed on the NPL.

D. How are sites listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the HRS, which the EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening tool to evaluate the relative potential of uncontrolled hazardous substances, pollutants or contaminants to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), the EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure and air. As a matter of agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL. (2) Pursuant to 42 U.S.C. 9605(a)(8)(B), each state may designate a single site as its top priority to be listed on the NPL, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated by each state as the greatest danger to public health, welfare or the environment among known facilities in the state. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2). (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- The EPA determines that the release poses a significant threat to public health.
- The EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

The EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658) and generally has updated it at least annually.

E. What happens to sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions. . . .'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' The EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. Does the NPL define the boundaries of sites?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so. Indeed, the precise nature and extent of the site are typically not known at the time of listing.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant

release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. However, the NPL site is not necessarily coextensive with the boundaries of the installation or plant, and the boundaries of the installation or plant are not necessarily the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location where that contamination has come to be located, or from where that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the ''Jones Co. plant site'') in terms of the property owned by a particular party, the site, properly understood, is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to, nor confined by, the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. In addition, the site name is merely used to help identify the geographic location of the contamination, and is not meant to constitute any determination of liability at a site. For example, the name ''Jones Co. plant site,'' does not imply that the Jones Company is responsible for the contamination located on the plant site.

The EPA regulations provide that the Remedial Investigation (''RI'') ''is a process undertaken * * * to determine the nature and extent of the problem presented by the release'' as more information is developed on site contamination, and which is generally performed in an interactive fashion with the Feasibility Study (''FS'') (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, the HRS inquiry focuses on an evaluation of the threat posed and therefore the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, it can submit supporting information to the agency at any time after it receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How are sites removed from the NPL?

The EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that the EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

H. May the EPA delete portions of sites from the NPL as they are cleaned up?

In November 1995, the EPA initiated a policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and made available for productive use.

I. What is the Construction Completion List (CCL)?

The EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) the EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) the site qualifies for deletion from the NPL. For the most up-to-date information on the CCL, see the EPA's Internet site at *http://www.epa.gov/superfund/cleanup/ccl.htm.*

J. What is the Sitewide Ready for Anticipated Use measure?

The Sitewide Ready for Anticipated Use measure (formerly called Sitewide Ready-for-Reuse) represents important Superfund accomplishments and the measure reflects the high priority the EPA places on considering anticipated future land use as part of the remedy selection process. See Guidance for Implementing the Sitewide Ready-for-Reuse Measure, May 24, 2006, OSWER 9365.0–36. This measure applies to final and deleted sites where construction is complete, all cleanup goals have been achieved, and all institutional or other controls are in place. The EPA has been successful on many occasions in carrying out remedial actions that ensure protectiveness of human health and the environment for current and future land uses, in a manner that allows contaminated properties to be restored to environmental and economic vitality. For further information, please go to *http://www.epa.gov/superfund/programs/recycle/pdf/sitewide_a.pdf.*

K. What is state/tribal correspondence concerning NPL listing?

In order to maintain close coordination with states and tribes in the NPL listing decision process, the EPA's policy is to determine the position of the states and tribes regarding sites that the EPA is considering for listing. This consultation process is outlined in two memoranda that can be found at the following Web site: *http://www.epa.gov/superfund/sites/npl/hrsres/policy/govlet.pdf.* The EPA is improving the transparency of the process by which state and tribal input is solicited. The EPA will be using the Web and where appropriate more structured state and tribal correspondence that (1) explains the concerns at the site and the EPA's rationale for proceeding; (2) requests an explanation of how the state intends to address the site if placement on the NPL is not favored; and (3) emphasizes the transparent nature of the process by informing states that information on their responses will be publicly available.

A model letter and correspondence from this point forward between the EPA and states and tribes where applicable, will be added to the EPA's Web site at *http://www.epa.gov/*

superfund/sites/query/queryhtm/nplstcor.htm.

II. Public Review/Public Comment

A. May I review the documents relevant to this proposed rule?

Yes, documents that form the basis for the EPA's evaluation and scoring of the sites in this proposed rule are contained in public Dockets located both at the EPA Headquarters in Washington, DC, and in the Regional offices. These documents are also available by electronic access at *www.regulations.gov* (see instructions in the **ADDRESSES** section above).

B. How do I access the documents?

You may view the documents, by appointment only, in the Headquarters or the Regional Dockets after the publication of this proposed rule. The hours of operation for the Headquarters Docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday excluding federal holidays. Please contact the Regional Dockets for hours.

The following is the contact information for the EPA Headquarters Docket: Docket Coordinator, Headquarters, U.S. Environmental Protection Agency, CERCLA Docket Office, 1301 Constitution Avenue NW., EPA West, Room 3334, Washington, DC 20004; 202/566–0276. (Please note this is a visiting address only. Mail comments to the EPA Headquarters as detailed at the beginning of this preamble.)

The contact information for the relevant Regional Dockets is as follows:

- Joan Berggren, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, 5 Post Office Square, Suite 100, Boston, MA 02109–3912; 617/918–1417.
- Ildefonso Acosta, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4344.
- Dawn Shellenberger (ASRC), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PM52, Philadelphia, PA 19103; 215/814–5364.
- Debbie Jourdan, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street SW., Mailcode 9T25, Atlanta, GA 30303; 404/562–8862.
- Todd Quesada, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA Superfund Division Librarian/SFD Records Manager SRC–7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886–4465.
- Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Suite 1200, Mailcode 6SFTS, Dallas, TX 75202–2733; 214/665–7436.
- Michelle Quick, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Mailcode SUPRERNB, Kansas City, KS 66101; 913/551–7335.
- Sabrina Forrest, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 1595 Wynkoop Street, Mailcode 8EPR–B, Denver, CO 80202–1129; 303/312–6484.
- Karen Jurist, Region 9 (AZ, CA, HI, NV, AS, GU, MP), U.S. EPA, 75 Hawthorne Street, Mailcode SFD–9–1, San Francisco, CA 94105; 415/972–3219.
- Ken Marcy, Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 6th Avenue, Mailcode ECL–112, Seattle, WA 98101; 206/463–1349.

You may also request copies from the EPA Headquarters or the Regional Dockets. An informal request, rather than a formal written request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents. Please note that due to the difficulty of reproducing oversized maps, oversized maps may be viewed only in-person; since the EPA dockets are not equipped to either copy and mail out such maps or scan them and send them out electronically.

You may use the Docket at *www.regulations.gov* to access documents in the Headquarters Docket (see instructions included in the **ADDRESSES** section above). Please note that there are differences between the Headquarters Docket and the Regional Dockets and those differences are outlined below.

C. What documents are available for public review at the Headquarters Docket?

The Headquarters Docket for this proposed rule contains the following for the sites proposed in this rule: HRS score sheets; Documentation Records describing the information used to compute the score; information for any sites affected by particular statutory requirements or the EPA listing policies; and a list of documents referenced in the Documentation Record.

D. What documents are available for public review at the Regional Dockets?

The Regional Dockets for this proposed rule contain all of the information in the Headquarters Docket plus the actual reference documents containing the data principally relied upon and cited by the EPA in calculating or evaluating the HRS score for the sites. These reference documents are available only in the Regional Dockets.

E. How do I submit my comments?

Comments must be submitted to the EPA Headquarters as detailed at the beginning of this preamble in the **ADDRESSES** section. Please note that the mailing addresses differ according to method of delivery. There are two different addresses that depend on whether comments are sent by express mail or by postal mail.

F. What happens to my comments?

The EPA considers all comments received during the comment period. Significant comments are typically addressed in a support document that the EPA will publish concurrently with the **Federal Register** document if, and when, the site is listed on the NPL.

G. What should I consider when preparing my comments?

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific information that the EPA should consider and how it affects individual HRS factor values or other listing criteria (*Northside Sanitary Landfill* v. *Thomas,* 849 F.2d 1516 (D.C. Cir. 1988)). The EPA will not address voluminous comments that are not referenced to the HRS or other listing criteria. The EPA will not address comments unless they indicate which component of the HRS documentation record or what particular point in the EPA's stated eligibility criteria is at issue.

H. May I submit comments after the public comment period is over?

Generally, the EPA will not respond to late comments. The EPA can guarantee only that it will consider those comments postmarked by the close of the formal comment period. The EPA has a policy of generally not delaying a final listing decision solely to accommodate consideration of late comments.

I. May I view public comments submitted by others?

During the comment period, comments are placed in the Headquarters Docket and are available to the public on an ''as received'' basis. A complete set of comments will be available for viewing in the Regional Dockets approximately one week after the formal comment period closes.

All public comments, whether submitted electronically or in paper form, will be made available for public

viewing in the electronic public Docket at *www.regulations.gov* as the EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Once in the public Dockets system, select ''search,'' then key in the appropriate Docket ID number.

J. May I submit comments regarding sites not currently proposed to the NPL?

In certain instances, interested parties have written to the EPA concerning sites that were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if still appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to the period of formal proposal and comment will not generally be included in the Docket.

III. Contents of this proposed rule

A. Proposed Additions to the NPL

In today's proposed rule, the EPA is proposing to add nine sites to the NPL, all in the General Superfund section. All of the sites in this proposed rulemaking are being proposed based on HRS scores of 28.50 or above.

The sites are presented in the table below.

GENERAL SUPERFUND SECTION

State	Site name	City/county
IN	Beck's Lake	South Bend.
IN	Garden City Ground Water Plume	Garden City.
IN	Keystone Corridor Ground Water Contamination	Indianapolis.
MT	Smurfit-Stone Mill	Missoula.
NC	Cristex Drum	Oxford.
NC	Hemphill Road TCE	Gastonia.
NH	Collins & Aikman Plant (Former)	Farmington.
OK	Wilcox Oil Company	Creek County.
WA	Makah Reservation Warmhouse Beach Dump	Neah Bay.

B. Proposed Site Name Change

The EPA is proposing to change the name of the B.F. Goodrich site in Rialto, California, which was added to the NPL on September 23, 2009 (74 FR 48412). The EPA is proposing to change the name to Locust Avenue at the request of a settling work party. With the limited purpose of the NPL, as stated in *RSR Corp.* v. *EPA,* 102 F.3d 1266 (D.C. Cir. 1997), when naming a site, EPA may choose a name that reflects ''the location or nature of the problems at a site and that are readily and easily associated with the site by the general public.'' The proposed name informs the public of the geographic location of the site. Comments may be submitted to docket number EPA–HQ–SFUND–2008–0574.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

1. What is Executive Order 12866?

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the agency must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety or state, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities or the principles set forth in the Executive Order.

2. Is this proposed rule subject to Executive Order 12866 review?

No. The listing of sites on the NPL does not impose any obligations on any entities. The listing does not set standards or a regulatory regime and imposes no liability or costs. Any liability under CERCLA exists irrespective of whether a site is listed. It has been determined that this action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

1. What is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9.

2. Does the Paperwork Reduction Act apply to this proposed rule?

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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 the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

1. What is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations and small governmental jurisdictions). 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. SBREFA amended the Regulatory Flexibility Act to require federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

2. How has the EPA complied with the regulatory flexibility act?

This proposed rule listing sites on the NPL, if promulgated, would not impose any obligations on any group, including small entities. This proposed rule, if promulgated, also would establish no standards or requirements that any small entity must meet, and would impose no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking. Thus, this proposed rule, if promulgated, would not impose any requirements on any small entities. For the foregoing reasons, I certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

1. What is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures by state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before the EPA promulgates a rule where a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates and informing, educating and advising small governments on compliance with the regulatory requirements.

2. Does UMRA apply to this proposed rule?

This proposed rule does not contain a federal mandate that may result in expenditures of $100 million or more for state, local and tribal governments, in the aggregate, or the private sector in any one year. Proposing a site on the NPL does not itself impose any costs. Proposal does not mean that the EPA necessarily will undertake remedial action. Nor does proposal require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of proposing a site to be placed on the NPL. Thus, this rule is not subject to the requirements of section 202 and 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. As is mentioned above, site proposal does not impose any costs and would not require any action of a small government.

E. Executive Order 13132: Federalism

1. What is Executive Order 13132?

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.''

2. Does Executive Order 13132 apply to this proposed rule?

This proposed rule 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, because it does not contain any requirements applicable to states or other levels of government. Thus, the requirements of the Executive Order do not apply to this proposed rule.

The EPA believes, however, that this proposed rule may be of significant interest to state governments. In the spirit of Executive Order 13132, and consistent with the EPA policy to promote communications between the EPA and state and local governments, the EPA therefore consulted with state officials and/or representatives of state governments early in the process of developing the rule to permit them to have meaningful and timely input into its development. All sites included in this proposed rule were referred to the EPA by states for listing. For all sites in this rule, the EPA received letters of support either from the governor or a state official who was delegated the authority by the governor to speak on their behalf regarding NPL listing decisions.

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

1. What is Executive Order 13175?

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires the

EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the federal government and the Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.''

2. Does Executive Order 13175 apply to this proposed rule?

This action does not have tribal implications, as specified in Executive Order 13175. Proposing a site to the NPL does not impose any costs on a tribe or require a tribe to take remedial action. Thus, Executive Order 13175 does not apply to this proposed rule.

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

1. What is Executive Order 13045?

Executive Order 13045: ''Protection of Children From Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

2. Does Executive Order 13045 apply to this proposed rule?

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the agency does not have reason to believe the environmental health or safety risks addressed by this proposed rule present a disproportionate risk to children.

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

1. What is Executive Order 13211?

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' (66 FR 28355, May 22, 2001) requires federal agencies to prepare a ''Statement of Energy Effects'' when undertaking certain regulatory actions. A Statement of Energy Effects describes the adverse effects of a ''significant energy action'' on energy supply, distribution and use, reasonable alternatives to the action and the expected effects of the alternatives on energy supply, distribution and use.

2. Does Executive Order 13211 apply to this proposed rule?

This action is not a ''significant energy action'' as defined in Executive Order 13211, because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. Further, the agency has concluded that this rule is not likely to have any adverse energy impacts because proposing a site to the NPL does not require an entity to conduct any action that would require energy use, let alone that which would significantly affect energy supply, distribution or usage. Thus, Executive Order 13211 does not apply to this action.

I. National Technology Transfer and Advancement Act

1. What is the National Technology Transfer and Advancement Act?

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

2. Does the National Technology Transfer and Advancement Act apply to this proposed rule?

No. This proposed rulemaking does not involve technical standards. Therefore, the EPA did not consider the use of any voluntary consensus standards.

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

1. What is Executive Order 12898?

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

2. Does Executive Order 12898 apply to this proposed rule?

The EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. As this rule does not impose any enforceable duty upon state, tribal or local governments, this rule will neither increase nor decrease environmental protection.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: May 17, 2013.

Barry N. Breen,

Principal Deputy Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 2013–12326 Filed 5–23–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 488 and 489

[CMS–3255–N]

Medicare and Medicaid Programs; Survey, Certification and Enforcement Procedures; Extension of Comment Period

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule; extension of the comment period.

SUMMARY: This notice extends the comment period for the Survey, Certification and Enforcement Procedures proposed rule, which was published in the April 5, 2013 **Federal Register** (78 FR 20564 through 20581). In the proposed rule, we proposed to revise the survey, certification, and enforcement procedures related to CMS oversight of national accreditation organizations (AOs). These revisions would implement certain provisions under the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA). The proposed revisions would also clarify and strengthen our oversight of AOs that apply for, and are granted, recognition and approval of an accreditation program in accordance with the Social Security Act. The comment period for the proposed rule, which would have ended on June 4, 2013, is extended to July 5, 2013.

DATES: The comment period for the proposed rule published in the April 5, 2013 **Federal Register** (78 FR 20564 through 20581) is extended to July 5, 2013.

ADDRESSES: In commenting, please refer to file code CMS–3255–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3255–P, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3255–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses: A. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by following the instructions at the end of the ''Collection of Information Requirements'' section in this document.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Cindy Melanson, (410) 786–0310; Patricia Chmielewski, (410) 786–6899; or Marilyn Dahl, (410) 786–8665.

SUPPLEMENTARY INFORMATION: In the April 5, 2013 **Federal Register** (78 FR 20564 through 20581), we published the Survey, Certification and Enforcement Procedures proposed rule that proposed to revise the survey, certification, and enforcement procedures related to CMS oversight of national accreditation organizations (AOs). These revisions would implement certain provisions under MIPPA. The proposed revisions would also clarify and strengthen our oversight of AOs that apply for, and are granted, recognition and approval of an accreditation program in accordance with the Social Security Act.

Because of the scope of the requested information and inquiries received from several industry and professional organizations/associations regarding the need for additional time to respond to our request, we are extending the comment period until July 5, 2013.

Dated: May 17, 2013.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2013–12462 Filed 5–23–13; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[GN Docket No. 12–268; DA 13–1157]

Wireless Telecommunications Bureau Seeks To Supplement the Record on the 600 MHz Band Plan

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Commission's Wireless Telecommunications Bureau seeks further comment on how certain band plan approaches can best accommodate market variation, particularly in markets where available spectrum is constrained. Although the Commission continues to consider all band plan proposals in the record, this document seeks additional comment on certain variations of the ''Down from 51'' band plan framework in order to develop a more robust record on these concepts.

DATES: Submit comments on or before June 14, 2013. Submit reply comments on or before June 28, 2013.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554. You may submit comments, identified by GN Docket No. 12–268, DA 13–1157, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable

accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Paul Malmud at 202–418–0006, or via email at *Paul.Malmud@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's supplemental public notice on the 600 MHz Band Plan, GN Docket No. 12–268, DA 13–1157, released on May 17, 2013. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The complete text may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, facsimile (202) 488–5563, TTY (202) 488–5562, or via email at *fcc@bcpiweb.com.* The complete text is also available on the Commission's Web site at *http://hraunfoss.fcc.gov/edocs_public/attachment/DA 13–1157A1doc.* Alternative formats (computer diskette, large print, audio cassette, and Braille) are available by contacting Brian Millin at (202) 418–7426, TTY (202) 418–7365, or via email to *bmillin@fcc.gov.*

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- For ECFS filers, generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of the proceeding, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking numbers. Parties may also submit an electronic comment by Internet email. To get filing instructions for email comments, commenters should send an email to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in reply.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.
- Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, or via email to *fcc@bcpiweb.com.*
- *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).
- *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

Summary

I. Introduction

1. In *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions* 77 FR 69934 November 21, 2012 (*NPRM*), the Commission sought public comment on creating a 600 MHz wireless band plan from the spectrum made available for flexible use through the broadcast television incentive auction. The Commission identified five key policy goals that would provide the framework for adopting a wireless band plan: Utility, certainty, interchangeability, quantity and interoperability. The majority of commenters support many features of the proposed band plan framework that aim to achieve these goals, but express a broader range of views on how and where to configure the uplink and downlink blocks in the band plan. To evaluate and quantify the technical tradeoffs associated with configuring the uplink and downlink bands, the Commission hosted a public workshop. At the workshop, stakeholders discussed a variety of technical aspects to consider in creating a 600 MHz wireless band plan, including mobile antenna issues, harmonics interference, intermodulation, and high power services in the duplex gap.

2. As discussed in the workshop, many stakeholders support the ''Down from 51'' band plan proposal—or a variation of it—in which the Commission would clear broadcast television channels starting at channel 51 and expand downward: The uplink band would begin at channel 51 (698 MHz), followed by a duplex gap, and then the downlink band. The workshop made clear that support for a Down from 51 band plan framework is primarily based on concerns over high power services in the duplex gap and antenna design issues.

3. The Down from 51 proposals in the record generally limit the amount of market variation that can be achieved, however. Specifically, most of these proposals are targeted at repurposing a specific amount of paired spectrum nationwide, and provide limited options for how to offer less spectrum in constrained markets, or additional spectrum in individual markets, and only under certain scenarios. In the *NPRM,* the Commission expressed a strong interest in establishing a band

plan framework that is flexible enough to accommodate market variation, *i.e.,* offering varying amounts of spectrum in different geographic locations, depending on the spectrum available. Further, although the majority of commenters argue that the Commission should prioritize offering paired spectrum blocks over unpaired blocks, some variations of the Down from 51 band plan limit the amount of paired spectrum that can be offered. Under the policy framework set forth by the Commission, the Down from 51 approaches in the record appear to favor certainty of the operating environment over the utility of providing the maximum amount of spectrum through flexibility to offer a greater quantity of spectrum in geographic areas where more spectrum is available.

4. In the *NPRM,* the Commission sought comment on a number of band plan proposals. Emphasizing its goals of balancing flexibility with certainty while maximizing the amount of spectrum we can make available for wireless broadband services in each geographic area, the Commission recognized that other band plans are possible that may achieve the Commission's goals. Consequently, the Commission sought comment on the band plan approaches described in the *NPRM,* any variations on those approaches, and also invited commenters to propose their own band plans. To advance the Commission's goal of maintaining flexibility to offer different amounts of spectrum in different geographic markets, we seek further comment on how certain Down from 51 band plan approaches can best address the potential for market variation, particularly in markets where available spectrum is constrained. Although the Commission continues to consider all band plan proposals in the record, we seek additional comment on certain variations of the Down from 51 band plan, as described below, to develop a more robust record on these concepts. We invite commenters to discuss the relative merits of all of the band plan proposals and their variations in the record. Further, we also seek comment on which band plan other countries would be most likely to adopt to allow for global harmonization of the 600 MHz spectrum.

II. "Down From 51 Reversed" Band Plan Variation

5. We seek comment on a variation of the Down from 51 band plan in which we reverse the configuration of the uplink and downlink blocks ("Down from 51 Reversed"). Under a Down from 51 Reversed band plan, the Commission would clear broadcast television channels starting at channel 51 and expand downward: the downlink band would begin after a guard band at channel 51 (698 MHz), followed by a duplex gap, and then the uplink band. The uplink band could extend past channel 37, either nationwide or in certain markets, depending on the amount of repurposed spectrum.

6. As discussed in the *NPRM,* the Commission proposed a structure to keep the downlink spectrum band consistent nationwide while allowing variations in the amount of uplink spectrum available in any geographic area to promote interoperability and accommodate market variation. By reversing the uplink and downlink bands, the Down from 51 Reversed band plan framework can maintain a uniform downlink band nationwide and allow for market variation in the amount of uplink spectrum offered without placing high power services in the duplex gap.

7. We seek comment on the Down from 51 Reversed band plan variation. Are there any special considerations or rules that would be necessary in implementing this approach? We also seek comment on technical issues associated with the Down from 51 Reversed band plan. Specifically, we request comment on how this band plan approach would affect the ability of wireless broadband providers to utilize the 600 MHz band effectively, particularly in terms of network and device design. Further, we seek comment on whether the Down from 51 Reversed approach would provide greater flexibility with respect to market variation than other Down from 51 band plan proposals. We ask commenters to discuss the tradeoffs associated with accommodating market variation under the Down from 51 Reversed band plan and the other band plan proposals in the record.

8. *Guard Bands.* Like other band plan proposals, in a Down from 51 Reversed band plan, we must implement guard bands to ensure all spectrum blocks are as technically and functionally interchangeable as possible. Specifically, we would need to implement a guard band at the top of the 600 MHz wireless band between the 600 MHz downlink band and the lower 700 MHz uplink band to protect these services from interfering with one another. Similarly, we would need to implement a guard band at the lower end of the 600 MHz wireless band between the 600 MHz uplink band and broadcast television stations. We seek comment on the appropriate size of the guard bands under this proposal.

9. *Channel 37.* Under a Down from 51 Reversed band plan, it is possible that 600 MHz wireless operations could be adjacent to radio astronomy (RA) and wireless medical telemetry services (WMTS) operations in channel 37, conceivably on both sides, if the 600 MHz uplink band extends below channel 37. Would the Down from 51 Reversed band plan require additional measures to protect existing channel 37 operations? If so, how would these measures affect the ability of wireless providers to utilize the adjacent spectrum? We also seek comment on a proposal to apply the spectral mask for TV white space devices (47 CFR 15.709(c)(4)) to prevent interference and protect existing channel 37 WMTS operations from interference if mobile uplink operations (rather than wireless downlink operations) are on both sides of channel 37. Further, in the event that the Commission can repurpose more than 84 megahertz of spectrum, yielding an uplink band that would extend below channel 37, wireless uplink operations will be both above and below channel 37. If this occurs, the duplex spacing for paired blocks with uplink blocks below channel 37 would be greater than for paired blocks with uplink blocks above channel 37 because wireless operations cannot operate on channel 37. We seek comment on the effects of this variable duplex spacing, and how this affects network and/or device design. We seek comment on other issues relating to existing channel 37 operations under the Down from 51 Reversed band plan approach.

III. Down From 51 With TV In the Duplex Gap In Constrained Markets

10. We also seek comment on how the Commission should address constrained markets where less spectrum is available if it adopts a version of the Down from 51 band plan that has been more generally discussed in the record and the workshop, with the 600 MHz uplink band beginning at channel 51, adjacent to the 700 MHz band uplink band. Specifically, should the Commission place television stations in the duplex gap in more constrained markets? Although we recognize that some commenters have concerns about allowing high power services to operate in the duplex gap, is this less problematic if it occurs only in certain markets? As compared to a Down from 51 Reversed band plan, which alternative would allow the Commission to offer as many paired spectrum blocks as possible? Which band plan approach is preferable if the Commission decides to accommodate market variation?

IV. Down From 51 TDD Approach

11. In addition, we seek further comment on using a Down from 51 band plan framework with unpaired TDD blocks (''Down from 51 TDD''). Under a Down from 51 TDD band plan, the band would begin after a guard band at channel 51 (698 MHz) and expand downward, followed by a guard band between wireless operations and broadcast television operations at the lower edge of the 600 MHz wireless band. As in the other Down from 51 band plan proposals, the band could extend past channel 37, either nationwide or in certain markets, depending on the amount of repurposed spectrum, which may also require the Commission to protect existing channel 37 operations.

12. Although the Down from 51 TDD band plan would require guard bands at both ends of the 600 MHz wireless band, no duplex gap is necessary. Further, the Down from 51 TDD band plan would allow for market variation without placing television stations in the duplex gap. Although a TDD band plan could not support market variation through variable uplink, it could support market variation through an alternative approach that aligns the amount of repurposed spectrum in constrained markets with the expected filter configurations.

13. We seek additional comment on this Down from 51 TDD band plan. Specifically, we seek comment on the tradeoffs associated with implementing the Down from 51 TDD band plan as compared to the other Down from 51 band plan variations that also accommodate market variation. Which band plan provides the most flexibility while maintaining the best certainty about the operating environment?

V. Procedural Matters

14. *Ex Parte Presentations—Permit-But-Disclose Proceeding:* This matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the ex parte rules. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required. Other requirements pertaining to oral and written presentations are set forth in § 1.1206(b) of the rules.

15. *Initial Regulatory Flexibility Analysis:* The *NPRM* in this proceeding included an Initial Regulatory Flexibility Analysis (IRFA) pursuant to 5 U.S.C. 603, exploring the potential impact of the Commission's proposal on small entities. The matters discussed in this notice do not modify in any way the IRFA we previously issued.

Federal Communications Commission.

Ruth Milkman,

Chief. Wireless Telecommunications Bureau.

[FR Doc. 2013–12484 Filed 5–23–13; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 369

[Docket No. FMCSA–2012–0020]

RIN–2126–AB48

Rescission of Quarterly Financial Reporting Requirements

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: FMCSA proposes to eliminate the quarterly financial reporting requirements for certain for-hire motor carriers of property (Form QFR) and for-hire motor carriers of passengers (Form MP–1). This paperwork burden can be removed without an adverse impact on safety or the Agency´s ability to maintain effective commercial regulatory oversight over the for-hire trucking and passenger-carrying industries.

DATES: You may submit comments by July 23, 2013.

ADDRESSES: You may submit comments identified by docket number FMCSA–2012–0020 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposal, email or call Ms. Vivian Oliver, Office of Research and Information Technology, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590; Telephone 202–366–2974; email *Vivian.Oliver@dot.gov.*

SUPPLEMENTARY INFORMATION:

Public Participation and Comments

If you would like to participate in this rulemaking, you may submit comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (FMCSA–2012–0020), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and insert ''FMCSA–2012–0020'' in the ''Search'' box, and then click the ''Search'' button to the right of the white box. Click on the top ''Comment Now'' box which appears next to the notice. Fill in your contact information, as desired and your comment, uploading documents if appropriate. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½; by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period and may change this proposed rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* and insert ''FMCSA–2012–0020'' in the ''Search'' box and then click on ''Search.'' Click on the ''Open Docket Folder'' link and all the information for the notice, and

the list of comments will appear with a link to each one. Click on the comment you would like to read.

Privacy Act

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

Executive Summary

Purpose of the Proposal

This action is in response to a recommendation received by the public in response to Executive Order 13563, ''Improving Regulation and Regulatory Review,'' which required FMCSA, among other things, to prepare plans for reviewing existing rules. One person argued that the financial reporting requirements transferred from the Interstate Commerce Commission (ICC) to FMCSA provide no discernible benefits to the government or motor carrier industry.

Summary of the Major Provision

The proposal would eliminate the quarterly financial reporting requirements for certain for-hire motor carriers of property and for-hire motor carriers of passengers. This paperwork burden can be removed without an adverse impact on safety or the Agency´s ability to maintain effective commercial regulatory oversight over the for-hire trucking and passenger-carrying industries.

Costs and Benefits

FMCSA estimates that eliminating these reporting requirements would reduce the burden to industry by about 200 hours and $9,900 annually. Table ES–1 displays the average annual net costs and benefits that we are proposing.

TABLE ES—1 ESTIMATED ANNUAL COSTS AND BENEFITS FOR IMPLEMENTING THE PROPOSAL

[2013 Dollars rounded]

	Annual Impact
Benefits	$9,900
Costs	0
Net Benefits	9,900

Background

Annual Financial Reporting Requirements

Section 14123 of title 49 of the United States Code (U.S.C.) requires certain for-hire motor carriers of property and household goods to file annual financial reports. The annual reporting program was implemented on December 24, 1938 (3 FR 3158), and it was subsequently transferred from the Interstate Commerce Commission (ICC) to the U.S. Department of Transportation's (DOT) Bureau of Transportation Statistics (BTS) on January 1, 1996. The Secretary of DOT delegated to BTS the responsibility for the program on December 17, 1996 (61 FR 68162). Annual financial reports are filed on Form M (for-hire property carriers, including household goods carriers) and Form MP–1 (for-hire passenger carriers). Responsibility for collection of the reports was transferred from BTS to FMCSA on August 17, 2004 (69 FR 51009), and the regulations were redesignated as 49 CFR part 369 on August 10, 2006 (71 FR 45740). FMCSA has continued to collect carriers' annual reports and to furnish copies of the reports requested under the Freedom of Information Act.

Quarterly Financial Reporting

Section 14123(a)(2) of 49 U.S.C. allows, but does not require, the Agency to require for-hire property and passenger carriers to file quarterly financial reports. These requirements are included in 49 CFR part 369 and apply to Class I (average annual gross transportation operating revenues of $10 million or more) and Class II (average annual gross transportation operating revenues of $3 million dollars or more, but less than $10 million) for-hire motor carriers of property. The requirements also apply to Class I (average annual gross transportation operating revenues of $5 million or more) for-hire motor carriers of passengers.

E.O. 13563 Improving Regulation and Regulatory Review

On January 18, 2011, the President issued Executive Order (E.O.) 13563, ''Improving Regulation and Regulatory Review,'' 76 FR 3821 (Jan. 21, 2011), which required agencies, among other things, to prepare plans for reviewing existing rules. On February 16, 2011, DOT published a notice requesting comments on its regulatory review plan (76 FR 8940). A public meeting on this issue was held on March 14, 2011. DOT placed all of the comments it received in docket DOT–OST–2011–0025, along with a transcript of the March 14 meeting. DOT received 102 comments, many offering multiple suggestions. One person argued that the financial reporting requirements transferred from the ICC to FMCSA provide no discernible benefits to the government or motor carrier industry.

Direct Final Rule

On June 27, 2012, FMCSA published a direct final rule that would have eliminated the quarterly financial reporting requirements for certain for-hire motor carriers of property (Form QFR) and for-hire motor carriers of passengers (Form MP–1 Quarterly) if no adverse comments were received by July 27, 2012 (77 FR 38211). One entity, SJ Consulting Group, submitted adverse comments and stated that it uses the quarterly financial information to advise motor carriers, shippers, and persons interested in buying motor carriers. It argued that the quarterly reports provide useful insight into the U.S. trucking industry, such as operating statistics that are not available from other public sources, particularly for private carriers. Although SJ Consulting conceded that some data on general demand and pricing trends are available from other sources, it argued that quarterly data on the profitability of carriers are essential in providing safe and timely service to shippers, estimating future growth rates, and assessing opportunities for profitable investment in the trucking industry. SJ Consulting has used Form QFR reports for these purposes for many years. FMCSA considered this an adverse comment which caused the Agency to therefore withdraw the direct final rule on August 27, 2012 (77 FR 51705).

Although FMCSA considered SJ Consulting's comment adverse for the direct final rule, it continues to believe the quarterly financial reporting requirements for certain for-hire motor carriers of property (Form QFR) and for-hire motor carriers of passengers (Form MP–1 Quarterly) can be eliminated without an adverse impact on safety. SJ Consulting and others that have used the quarterly report will still be able to use the annual Form M and Form MP–1 reports which are not being rescinded in this proposed rule. SJ Consulting can still advise motor carriers, shippers, and persons interested in buying for-hire motor carriers of freight using 112 annual reports through Form M's and Form MP–1's operating statistics and data on general demand, pricing, and profitability to estimate future growth rates, and to assess opportunities for profitable investment in the for-hire truck and motorcoach industries. The Agency also continues to believe

removal of the quarterly financial reporting requirements will have no impact on the Agency's ability to maintain effective commercial regulatory oversight over the for-hire trucking and passenger-carrying industries.

The information submitted to FMCSA does not help the Agency with any decisions the Agency needs to make with regard to raising the safety bar to enter the motor carrier industry, maintaining high standards to remain in the industry, and removing unsafe operators. The implementation of these three core principles is not contingent upon financial reporting data. The information collected does not currently support any Agency regulatory function, nor does it have practical utility for the Agency or for those carriers who must comply with the reporting requirement.

Discussion of the Proposal

For the reasons discussed in the Background section, above, FMCSA proposes to amend 49 CFR part 369 by eliminating the quarterly reporting requirement under 49 CFR 369.1 and 369.4. In addition, FMCSA would make other conforming technical amendments to 49 CFR 369.8, 369.9, and 369.11. This proposal does not affect the annual reporting requirements, which still must be prepared and filed as required by statute (49 U.S.C. 14123(a)(1)).

Regulatory Analyses

When developing this NPRM, FMCSA considered numerous statutes and executive orders related to rulemaking. The Agency's analyses are summarized below.

Regulatory Planning and Review

Under E.O. 12866 (58 FR 51735, Oct. 4, 1993) as supplemented by E.O. 13563 (76 FR 3821, Jan. 18, 2011), FMCSA must determine whether a regulatory action is ''significant'' and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the E.O. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O.

This rulemaking is not a significant regulatory action under section 3(f) of E.O. 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. This rulemaking will not have a significant economic impact. In fact, elimination of the reporting requirement will, if anything, have a beneficial economic impact on the motor carrier industry through reduced reporting costs. Consequently, the OMB has not reviewed it under that Order.

Small Entities

Under the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, Title II, 110 Stat. 857), when an agency issues a rulemaking proposal, the RFA requires the agency to ''prepare and make available for public comment an initial regulatory flexibility analysis'' that will ''describe the impact of the proposed rule on small entities'' (5 U.S.C. sec. 603(a)).

FMCSA has determined that the impact on entities affected by the proposed rule will not be significant. In fact, the existing burden from quarterly reporting will be eliminated. FMCSA expects the impact of the proposed rule will be a reduction in the paperwork burden for for-hire motor carriers. FMCSA asserts that the economic impact of the reduction in paperwork, if any, will be minimal and entirely beneficial to small for-hire motor carriers. As can be seen below under section C., Paperwork Reduction Act, FMCSA estimates eliminating these reporting requirements reduces the burden to the for-hire motor carrier industry by about 200 hours and $9,900 annually.

The courts have held that ''a regulatory flexibility analysis is required when an agency determines that the rule will have a significant economic impact on a substantial number of small entities that are subject to the requirements of the rule.'' [1] The RFA does not require FMCSA to consider the effect of this proposal on entities that are not subject to the rule.[2] Although SJ Consulting Group filed an adverse comment to the FMCSA's June 27, 2012, direct final rule, it is not a for-hire motor carrier and, therefore, not subject to the current financial reporting rule. Consequently, FMCSA has determined that this proposed rule will not have an impact on a substantial number of small entities that are subject to the requirements of the rule.

Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities regulated by FMCSA. This proposed rule directly affects 112 for-hire motor carriers that prepare and file quarterly financial reports under per 49 CFR part 369. FMCSA estimates that approximately 10 percent of these 112 for-hire motor carriers are small entities with average annual gross transportation operating revenues of no more than $23.5 million. The current requirement to file quarterly financial reports applies only to for-hire motor carriers of property with average annual gross transportation operating revenues of $3 million dollars or more, and $5 million or more for passenger carriers.

Accordingly, the Administrator of the FMCSA hereby certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. FMCSA invites comment from members of the public who believe there will be a significant impact on a substantial number of small for-hire motor carriers.

Paperwork Reduction Act

This rulemaking eliminates two quarterly reporting requirements that are currently reported to OMB under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520).

Quarterly Report for 110 Property Carriers

Form QFR Quarterly for property carriers, authorized by OMB under information collection 2126–0033, is two pages long and takes approximately 27 minutes for each of the approximately 110 carriers to complete. This report is filed 4 times per year, so the total burden-hour impact per filer per year is $4 \times 27/60 = 1.8$ hours. Multiplying this figure by the 110 carriers that file quarterly reports yields a total burden estimate of 198 hours.

FMCSA assumes that completion and submission of Form QFR is performed by an accountant designated by the

[1] *Mid-Tex Electric Cooperative, Inc.* v. *Federal Energy Regulatory Commission (FERC),* 773 F.2d 327, 342 (D.C. Cir. 1985).

[2] *Id.* See also ''A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act,'' Small Business Administration (2010), retrieved February 13, 2013, from *http://archive.sba.gov/advo/laws/rfaguide.pdf.*

business entity. The median salary of an accountant in the truck transportation industry is $25.90 per hour (BLS, May 2010).[3] Two adjustments are made to this hourly compensation estimate. First, employee benefits are estimated at 50.0 percent of the employee wage.[4] Second, employee wage and benefits are increased by 27 percent to include relevant firm overhead.[5] Applying the estimated 50.0 percent factor for employee benefits and 27 percent for overhead results in $49.34 in hourly compensation for the accountant ($25.90 × (1 + 0.50) × (1 + 0.27) = $49.34). The total annual salary cost burden associated with the filings is $9,770 rounded up ($49.34 × 198 hours = $9,769.32).

Quarterly Report for 2 Passenger Carriers

The Class I passenger carrier financial quarterly survey (Form MP–1 Quarterly), which is two pages long and takes about 18 minutes to complete for the estimated 2 participating carriers, is authorized by OMB under information collection 2126–0031. Since this report is also filed 4 times per year, the total burden hours associated with the requirement are 4 x 18/60 x 2 = 2.4 hours.

FMCSA believes the completion and submission of Form MP–1 Quarterly is typically performed by a business and financial operations expert designated by the business entity because of the level of detail in the financial reports. The median salary of a business and financial operations expert in the interurban and rural bus transportation industry is $26.41 per hour (BLS, May 2010).[6] Two adjustments are made to this hourly estimate. First, employee benefits are estimated at 50.0 percent of the employee wage.[7] Second, employee wage and benefits are increased by 27 percent to include relevant firm overhead.[8] Applying the estimated 50.0 percent factor for employee benefits and 27 percent for overhead results in $50.31 in hourly compensation for the business and financial operations expert ($26.41 × (1 + 0.50) × (1 + 0.27) = $50.31). The total annual salary cost burden associated with the filings is $121 ($50.31 × 2.4 hours = $120.74, rounded to the nearest dollar).

Collectively, eliminating these reporting requirements reduces the burden to industry by 200.4 hours and $9,891 annually, rounded to 200 hours and $9,900, respectively.

The PRA requires that each agency ''shall certify . . . that each collection of information . . . is necessary for the proper performance of the functions of the agency, including that the information has practical utility'' (44 U.S.C. 3506(c)(3)(A); 5 CFR 1320.5(d)(1)(iii)). FMCSA can no longer certify that the quarterly requirements are ''necessary for the proper performance of the functions of the agency.'' Therefore, FMCSA is proposing to discontinue the quarterly reporting requirements.

Federalism

A rule has federalism implications under E.O. 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on the States. FMCSA has analyzed this rulemaking under that Order and has determined that it does not have federalism implications.

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 $143.1 million (which is the value of $100,000,000 in 2010 after adjusting for inflation) or more in any 1 year. This rulemaking would not result in such an expenditure.

Taking of Private Property

This rulemaking will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

FMCSA analyzed this NPRM under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This NPRM is not economically significant and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Energy Effects

FMCSA analyzed this NPRM under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under E.O. 12866 and will not have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

Environment

The Agency analyzed this NPRM for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*) and determined under our environmental procedures Order 5610.1, published March 1, 2004 (69 FR 9680), that this action is excluded from further environmental documentation under two categorical exclusions (CEs). These are found in Appendix 2, paragraph 4, which covers data and information gathering, and Appendix 2, paragraph 6(y)(2) concerning reports provided by motor carriers. The action involves no extraordinary circumstances that would have any effect on the quality of the environment. Thus, the action does not require an environmental assessment or an environmental impact statement. The Categorical Exclusion Determination is available for inspection or copying in

[3] Bureau of Labor Statistics, ''Occupational Employment Survey,'' May 2010, retrieved December 15, 2011, from *http://www.bls.gov/oes/current/naics3_484000.htm.* North American Industry Classification System (NAICS) 484000, Truck Transportation, Standard Occupational Classification (SOC) 13–2011, Accountants and Auditors.

[4] FMCSA estimates this 50 percent employee benefit rate by using the private industry average wage ($16.03 per hour) and benefit information ($8.01 per hour) for production, transportation, and moving material workers. Benefits thus amount to 50.0 percent of wages (0.500 = $8.01/$16.03). From ''Employer Costs for Employee Compensation—September 2010,'' retrieved August 23, 2011, from *http://www.bls.gov/news.release/pdf/ecec.pdf.*

[5] Berwick, Farooq. ''Truck Costing Model for Transportation Managers.'' Upper Great Plains Transportation Institute, North Dakota State University (2003), retrieved January 9, 2013, from *http://ntl.bts.gov/lib/24000/24200/24223/24223.pdf.*

[6] Bureau of Labor Statistics, ''Occupational Employment Survey,'' May 2010, retrieved December 15, 2011, from *http://www.bls.gov/oes/current/naics4_485200.htm.* North American Industry Classification System (NAICS) 485200, Interurban and Rural Bus Transportation, Standard Occupational Classification (SOC) 13–2000, Business and Financial Operations Occupations.

[7] FMCSA estimates this 50 percent employee benefit rate by using the private industry average wage ($16.03 per hour) and benefit information ($8.01 per hour) for production, transportation, and moving material workers. See footnote 5, above.

[8] Berwick ''Truck Costing Model for Transportation Managers.''

the regulations.gov Web site listed under **ADDRESSES**.

FMCSA also analyzed this NPRM under the Clean Air Act, as amended (CAA), section 176(c), as amended (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it does not result in any potential increase in emissions that are above the general conformity rule's *de minimis* emission threshold levels (40 CFR 93.153(c)(2)). This action merely eliminates a reporting requirement.

Additionally, FMCSA evaluated the effects of this rule in accordance with Executive Order 12898 and determined that there are no environmental justice issues associated with its provisions nor any collective environmental impacts resulting from its promulgation. Environmental justice issues would be raised if there were ''disproportionate'' and ''high and adverse impact'' on minority or low-income populations. This NPRM is exempt from analysis under the National Environmental Policy Act due to a categorical exclusion. This proposal simply eliminates a paperwork requirement and would not result in high and adverse environmental impacts.

List of Subjects in 49 CFR Part 369

Motor carriers, Reporting and recordkeeping requirements.

In consideration of the foregoing, FMCSA proposes to amend part 369 in 49 CFR chapter III, subchapter B, as follows:

PART 369 [AMENDED]

■ 1. The authority citation for part 369 continues to read as follows.

Authority: 49 U.S.C. 14123; 49 CFR 1.87.

■ 2. Amend § 369.1, by removing paragraph (b) and redesignating paragraph (c) as paragraph (b) and revising it to read as follows.

§ 369.1 Annual reports of motor carriers of property, motor carriers of household goods, and dual property carriers.

* * * * *

(b) *Where to file report.* Carriers must file the annual report with the Federal Motor Carrier Safety Administration at the address in § 369.6. You can obtain blank copies of the report form from the Federal Motor Carrier Safety Administration Web site *http://www.fmcsa.dot.gov/forms/reporting/mcs_info.htm#fos.*

■ 3. Revise § 369.4 to read as follows.

§ 369.4 Annual reports of Class I carriers of passengers.

(a) All Class I motor carriers of passengers shall complete and file Motor Carrier Annual Report Form MP–1 for Motor Carriers of Passengers (Form MP–1).

(b) *Accounting period.* (1) Motor Carrier Annual Report Form MP–1 shall be used to file annual selected motor carrier data.

(2) The annual accounting period shall be based either (i) on the 31st day of December in each year, or (ii) an accounting year of thirteen 4-week periods ending at the close of the last 7 days of each calendar year.

(3) A carrier electing to adopt an accounting year of thirteen 4-week periods shall file with the FMCSA a statement showing the day on which its accounting year will close. A subsequent change in the accounting period may not be made except by authority of the FMCSA.

(c) The annual report shall be filed on or before March 31 of the year following the year to which it relates. The annual report shall be filed in duplicate with the Federal Motor Carrier Safety Administration at the address in § 369.6. Copies of Form MP–1 may be obtained from the FMCSA.

■ 4. Amend § 369.8 by revising paragraphs (a) and (d) to read as follows.

§ 369.8 Requests for exemptions from filing.

(a) *General.* This section governs requests for exemptions from filing of the report required under § 369.1 of this part.

* * * * *

(d) *When requests are due.* The timing of a request for an exemption from filing is the same as the timing for a request for an exemption from public release contained in § 369.9(d). For Annual Form M, both the report and the request are due by March 31.

* * * * *

■ 5. Amend § 369.9 by removing paragraph (d)(4) and revising paragraphs (a) and (e)(4) to read as follows.

§ 369.9 Requests for exemptions from public release.

(a) General. This section governs requests for exemptions from filing of the report required under § 369.1 of this part.

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(e) * * *

(4) FMCSA will grant or deny each request no later than 90 days after the request's due date as defined in paragraph (d) of this section. The decision by FMCSA shall be administratively final. For Annual Form M, both the report and the request are due by March 31, and the decision is due by June 30.

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§ 369.11 [Removed]

■ 6. Remove § 369.11.

Issued under the authority delegated in 49 CFR 1.87 on: May 13, 2013.

Anne S. Ferro,

Administrator.

[FR Doc. 2013–12339 Filed 5–23–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R4–ES–2013–0015; 4500030113]

RIN 1018–AZ47

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Leavenworthia exigua var. laciniata (Kentucky Glade Cress)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to designate critical habitat for *Leavenworthia exigua* var. *laciniata* (Kentucky glade cress). The effect of these regulations, if finalized, would be to protect *Leavenworthia exigua* var. *laciniata's* critical habitat under the Act.

DATES: We will accept comments received or postmarked on or before July 23, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by July 8, 2013.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R4–ES–2013–0015, which is the docket number for this rulemaking. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R4–ES–2013–0015; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will not accept email or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Lee Andrews, Field Supervisor, U.S. Fish and Wildlife Service, Kentucky Ecological Services Field Office, J.C. Watts Federal Building, 330 W. Broadway Rm. 265, Frankfort, KY 40601, by telephone 502–695–0468 or by facsimile 502–695–1024. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, if we intend to list a species as endangered or threatened throughout all or a significant portion of its range, we are required to promptly publish a proposal in the **Federal Register** and make a determination on our proposal within 1 year. Critical habitat shall be designated, to the maximum extent prudent and determinable, for any species determined to be an endangered or threatened species under the Act. Designations and revisions of critical habitat can be completed only by issuing a rule. Elsewhere in today's **Federal Register**, we propose to list *Leavenworthia exigua* var. *laciniata* as a threatened species under the Act.

This rule consists of: A proposed critical habitat designation for *Leavenworthia exigua* var. *laciniata* under the Act.

The basis for our action. Under the Act, to the maximum extent prudent and determinable, we must designate critical habitat for the species concurrently with listing the species as endangered or threatened. The species is being proposed for listing as threatened, and, therefore, we also propose to designate 2,053 acres (830 ha) as critical habitat in Bullitt and Jefferson Counties, Kentucky.

We will seek peer review. We are seeking comments from knowledgeable individuals with scientific expertise to review our analysis of the best available science and its application, and to provide any additional scientific information to improve this proposed rule. Because we will consider all comments and information received during the comment period, our final designation may differ from this proposal.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from the public, other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act, including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(2) Specific information on:

(a) The amount and distribution of *Leavenworthia exigua* var. *laciniata* and its habitat,

(b) What may constitute ''physical or biological features essential to the conservation of the species,'' within the geographical range currently occupied by the species;

(c) Where these features are currently found;

(d) Whether any of these features may require special management considerations or protection;

(e) What areas, that were occupied at the time of listing (or are currently occupied) and that contain features essential to the conservation of the species, should be included in the designation and why; and

(f) What areas not occupied at the time of listing are essential for the conservation of the species and why.

(3) Land use designations and current or planned activities in the areas occupied by the species or proposed to be designated as critical habitat, and possible impacts of these activities on this species and proposed critical habitat;

(4) Information on the projected and reasonably likely impacts of climate change on *L. exigua* var. *laciniata* and proposed critical habitat;

(5) Any foreseeable economic, national security, or other relevant impacts that may result from designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas from the proposed designation that are subject to these impacts;

(6) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments;

(7) The likelihood of adverse social reactions to the designation of critical habitat and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(2) of the Act directs that designations of critical habitat for a listed species must be made ''on the basis of the best scientific and commercial data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.* Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Kentucky Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

All previous Federal actions are described in the proposal to list *Leavenworthia exigua* var. *laciniata* as a threatened species under the Act published elsewhere in today's **Federal Register**.

Background

It is our intent to discuss below only those topics directly relevant to the designation of critical habitat for *L. exigua* var. *laciniata* in this proposed rule. For information related to the listing of the species, see the proposed rule to list the species as threatened, published elsewhere in today's **Federal Register**.

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features:

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it is listed are included in a critical habitat designation if they contain physical or biological features (1) 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 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 the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) the prohibitions of section 9 of the Act if actions occurring in these areas may affect the species. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will

continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and its implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist:

(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or

(2) such designation of critical habitat would not be beneficial to the species.

There is currently no imminent threat of take attributed to collection or vandalism under Factor B (see *Factor B: Overutilization for Commercial, Recreational, Scientific, or Educational Purposes* of our proposed listing rule published elsewhere in today's **Federal Register**) for this species, and identification and mapping of critical habitat is not expected to initiate any such threat. In the absence of a finding that the designation of critical habitat would increase threats to a species, if there are any benefits to a critical habitat designation, then a prudent finding is warranted. Here, the potential benefits of designation include: (1) Triggering consultation under section 7 of the Act in new areas for actions in which there may be a Federal nexus where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential features and areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species. Therefore, because we have determined that the designation of critical habitat will not likely increase the degree of threat to the species and may provide some measure of benefit, we find that designation of critical habitat is prudent for *L. exigua* var. *laciniata.*

Critical Habitat Determinability

Having determined that designation is prudent, under section 4(a)(3) of the Act we must find whether critical habitat for *L. exigua* var. *laciniata* is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Information sufficient to perform required analyses of the impacts of the designation is lacking, or

(ii) The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

We reviewed the available information pertaining to the biological needs of the species and habitat characteristics where these species are located. This and other information represent the best scientific data available and lead us to conclude that the designation of critical habitat is determinable for *L. exigua* var. *laciniata.*

Physical or Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographic area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring, germination or seed dispersal; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographic, and ecological distributions of a species.

We derive the specific physical and biological features required for *L. exigua* var. *laciniata* from studies of this species' habitat, ecology, and life history as described below. We have determined that the following physical and biological features are essential for *L. exigua* var. *laciniata:*

Space for Individual and Population Growth and for Normal Behavior

L. exigua var. *laciniata* is typically found in cedar glades (Baskin and Baskin 1981, p. 243), which are described by Baskin and Baskin (1999, p. 206) as ''open areas of rock pavement, gravel, flagstone, and/or shallow soil in which occur natural, long-persisting (edaphic climax) plant communities dominated by angiosperms and/or cryptogams.'' *L. exigua* var. *laciniata* is also known from gladelike areas such as overgrazed pastures, eroded shallow soil areas with exposed bedrock, and areas where the soil has been scraped off the underlying bedrock (Evans and Hannan 1990, p. 8). These disturbed areas are gladelike in the shallowness or near-absence of their soils, saturation, and/or inundation during the wet periods of late fall, winter, and early spring and then frequently dry below the permanent wilting point during the summer (Baskin and Baskin 2003, p. 101). These conditions likely prevent species that would shade or compete with *L. exigua* var. *laciniata* from establishing in these areas.

While the individual rock exposure or outcrop areas will vary in size and may be small and scattered throughout the glade(s) or gladelike areas, they will ideally occur in groups to comprise a glade (or gladelike) complex. Habitat destruction, modification and fragmentation within the narrow range of *L. exigua* var. *laciniata* make it difficult to determine the optimal size or density of glade habitats needed to support the long-term survival of the species. Pine Creek Barrens Preserve (owned by The Nature Conservancy) contains the only remaining A-ranked population of *L. exigua* var. *laciniata,* described as having thousands of plants scattered over 25–30 acres. Similarly, the B-ranked Rocky Run was described in 1990 as containing thousands of plants scattered over 2 miles. Many of the poor (D) ranked populations occur within areas as small as a few square meters (KSNPC 2012, pp. 1–108). While the long-term viability of these populations is considered poor, monitoring efforts have shown that for the short term, some *L. exigua* var. *laciniata* populations are able to persist (i.e., grow and reproduce) on these small and fragmented sites.

Based on the information above, we identify cedar glades and gladelike areas underlain by Silurian dolomite or dolomitic limestone as an essential physical or biological feature for the species.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

The specific water needs of *L. exigua* var. *laciniata* are unknown; however, the sites it occupies are extremely wet

from late winter to early spring and quickly become dry in late May and June. This hydrologic regime is critical for the plant's survival in that it provides sufficient moisture for the taxon's life cycle (germination in fall, plant growth from fall to early spring, and seed production in the spring). Additionally, the droughty conditions during the typical growing season prevent the establishment of plants that could shade or outcompete *L. exigua* var. *laciniata.*

L. exigua var. *laciniata* is shade intolerant. Open glade habitats appear to provide the most favorable conditions for this species (Evans and Hannan 1990, p. 14). Baskin and Baskin (1988, p. 834) noted that most endemics occurring on rock outcrops (such as *L. exigua* var. *laciniata*) are restricted to the open and well-lighted areas of the outcrops as opposed to similar but more shaded areas near the surrounding forest.

L. exigua var. *laciniata* seems more dependent upon the lack of soil and the proximity of rock near or at the surface rather than a specific type of soil (Evans and Hannan 1990, p. 8). It occurs primarily in open, gravelly soils around rock outcrops in an area of the Caneyville-Crider soil association (Whitaker and Waters 1986, p. 16). Baskin and Baskin (1981, p. 245) identified shallow soils (1–5 cm) over limestone or dolomite to be characteristic habitat of *L. exigua* var. *laciniata.*

Based on this information, we identify unshaded and shallow soils that are extremely wet from late winter to early spring and quickly become dry in late May and June to be an essential physical or biological feature for this species.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring, Germination, or Seed Dispersal

Like all annuals, *L. exigua* var. *laciniata* reproduces sexually through seed production. Successful reproduction of *L. exigua* var. *laciniata* requires sufficient moisture for germination, growth, flowering, and seed production. Pollination of *L. exigua* var. *laciniata* can be by insects or self-pollination (Rollins 1963, p. 47). Seeds may fall to the ground, be transported by animals, or carried by precipitation sheet flow to new sites.

The seeds of *L. exigua* var. *laciniata* germinate in the fall, with plants surviving through the winter as rosettes that flower in early spring. Seeds are typically dispersed in mid- to late-May (Evans and Hannan 1990, p. 11). After the seeds ripen, the silique (pod) soon splits open. Seeds may immediately fall out or remain on the plant for several days. The extent to which this plant can expand to new sites is unknown.

Lloyd (1965, p. 92) noted that seeds from *Leavenworthia* lack adaptations that would allow for dispersal by wind or animals. Sheet flow likely provides local dispersion for seeds lying on the ground (Lloyd 1965, pp. 92–93; Evans and Hannan 1990, p. 11). In reviewing aerial photography and topographic mapping of known *L. exigua* var. *laciniata* occurrences, it appears that populations often follow suitable habitat as it extends along topographic contours or within drainage patterns. Areas of bare ground are essential in the dispersal and germination of seeds. The cyclical moisture availability on the thin soils of glades and other habitats acts to limit the number of plant species that can tolerate these extremes (Evans and Hannan 1990, pp. 9–10).

L. exigua var. *laciniata* seeds have been shown to retain viability for at least 3 years under greenhouse conditions (Baskin and Baskin 1981, p. 247). A strong seed bank is expected to be important for the continued existence of *L. exigua* var. *laciniata,* especially following a year when conditions are unfavorable for reproduction (e.g., damage (natural or manmade) to plants prior to seed set). Accordingly, *L. exigua* var. *laciniata* habitat must be protected from activities that would damage or destroy the seed bank.

Based on the information above, we identify glade and gladelike habitats with intact hydrology and an undisturbed seed bank to be a physical or biological feature for *L. exigua* var. *laciniata* essential to the conservation of this species. These areas are critical for seed dispersal and germination.

Habitats Protected From Disturbance or Representative of the Historical, Geographical, and Ecological Distribution of the Species

Disturbance in the form of development (and associated infrastructure) is a major factor in the loss and degradation of habitat for *L. exigua* var. *laciniata.* Development can directly eliminate or fragment essential habitat and indirectly cause changes to the habitat (e.g., through erosion, shading, introduction of invasive plants—all of which may cause declines in distribution or in numbers of plants per occurrence). Protected habitats are, therefore, of crucial importance for the growth and dispersal of *L. exigua* var. *laciniata.* These areas are critical to protecting *L. exigua* var. *laciniata* populations and habitat from impacts such as sedimentation, erosion, and competition from nonnative or invasive plants.

The natural areas supporting *L. exigua* var. *laciniata* are cedar glades, which Baskin and Baskin (2003, p. 101) describe as flat to gently sloping, open areas of shallow soils and/or calcareous rock (pavement, gravel, flagstone) that support an edaphic climax plant community dominated by nonwoody species. These areas are often associated with eastern red-cedar thickets (Jones 2005, p. 33) and/or scrubby red-cedar-hardwood forests (Baskin and Baskin 1999, p. 102). These associated areas and other, adjacent, undeveloped ground provide important buffer protection from disturbance.

Leavenworthia spp. has a patchy distribution within the exposed rock outcrops and shallow soil areas of cedar glade habitats and gladelike areas (Lloyd 1965, p. 87). *L. exigua* var. *laciniata* is an endemic species restricted to a very specific habitat type with a patchy distribution across the landscape separated by large areas of habitat unsuitable for *L. exigua* var. *laciniata.* Although these cedar glades also contain areas of deeper soil where other, associated vegetation grows, these areas of deeper soil are essential components of the glade and critical for maintaining habitat suitable for occupation by *L. exigua var. laciniata.*

Based on a review of aerial imagery, habitat areas that appear to provide sufficient protection generally have the hillside (creek to topographic break) and adjacent contour surrounding the glade areas in vegetated (primarily wooded) habitat. Buffer areas of this magnitude protect *L. exigua* var. *laciniata* populations and habitat from adjacent development and habitat change. Although these areas are not directly occupied by *L. exigua var. laciniata,* they are essential to the growth and dispersal of the species within areas of suitable habitat.

Therefore, based on the information above, we identify vegetated areas surrounding glades and gladelike habitats that protect the hydrology, soils, and seed bank to be a physical or biological feature for this species.

Primary Constituent Elements for *L. exigua* var. *laciniata*

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of *L. exigua* var. *laciniata* in areas occupied at the time of listing, focusing on the features' primary constituent elements. We consider primary constituent elements to be the specific elements of physical or biological features that, when laid out

in the appropriate quantity and spatial arrangement to provide for a species' life-history processes, are essential to the conservation of the species.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determined that the primary constituent elements specific to *L. exigua* var. *laciniata* are:

(1) Cedar glades and gladelike areas within the range of *L. exigua* var. *laciniata* which include:

(a) Areas of rock outcrop, gravel, flagstone of Silurian dolomite or dolomitic limestone, and/or shallow (1–5 cm), calcareous soils;

(b) Intact cyclic hydrologic regime involving saturation and/or inundation of the area in winter and early spring, then drying quickly in the summer;

(c) Full or nearly full sunlight; and

(d) An undisturbed seed bank.

(2) Vegetated land around glades and gladelike areas that extends up and down slope and ends at natural (e.g., stream, topographic contours) or manmade breaks (e.g. roads).

Special Management Considerations or Protection

When designating critical habitat, we assessed whether the specific areas within the geographic area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection. We believe each area included in these designations requires special management and protections as described in our unit descriptions.

We need to consider special management considerations or protection for the features essential to the conservation of the species within each critical habitat area. The special management considerations or protections will depend on threats to the essential features of the critical habitat area. For example, major threats to the PCEs in the areas identified as proposed critical habitat for *L. exigua* var. *laciniata* include: Residential and commercial development on private land; construction and maintenance of roads and utility lines, incompatible agricultural or grazing practices; off-road vehicle (ORV) or horseback riding; encroachment by nonnative plants or forage species; and forest encroachment due to fire suppression. These threats are in addition to random effects of droughts, floods, or other natural phenomena.

Management activities that could address these threats include (but are not limited to): (1) Avoiding cedar glades (or suitable gladelike habitats) when planning the location of buildings, lawns, roads (including horse or ORV trails), or utilities; (2) avoiding aboveground construction and/or excavations in locations that would interfere with natural water movement to suitable habitat sites; (3) protecting and restoring as many glade complexes as possible; (4) research supporting the development of management recommendations for grazing and other agricultural practices; (5) technical or financial assistance to landowners that may help in the design and implementation of management actions that protect the plant and its habitat; (6) avoiding lawn grass or tree plantings near glades; and (7) habitat management, such as brush removal, prescribed fire, and/or eradication of lawn grasses to maintain an intact native glade vegetation community.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. We 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 consider whether designating additional areas outside of those currently occupied is necessary to ensure the conservation of the species. Currently, we are not proposing to designate any areas outside the geographic area occupied by the species because occupied areas are sufficient for the conservation of the species, and we have no evidence that this taxon ever existed beyond its current range.

Sites were considered occupied if the Kentucky State Nature Preserves Commission (KSNPC) Element Occurrence Report (KSNPC 2012, pp. 1–108) considered an element occurrence to be an extant population at the time of the proposed listing rule.

We also reviewed available information that pertains to habitat requirements of *Leavenworthia exigua* var. *laciniata.* The sources of information include, but are not limited to:

1. Data used to prepare the proposed listing package;

2. Peer-reviewed articles, various agency reports, and the Kentucky State Nature Preserves Natural Heritage Program database;

3. Information from species experts;

4. Regional Geographic Information System (GIS) data (such as species occurrence data, topography, aerial imagery, and land ownership maps) for area calculations and mapping.

Areas proposed for critical habitat designation were selected based on the quality of the element occurrence(s), condition of the habitat, and distribution within the species' range. Typically, selected areas contain good quality or better occurrences (A, B, or C-ranked) and natural habitat, as identified by KSNPC in the Natural Heritage Report (2012, pp. 1–108). However, some lower quality occurrences, with restoration potential, are included to ensure that critical habitat is being designated across the species' range and to avoid a potential reduction of the distribution of *L. exigua* var. *laciniata.* The glade habitat upon which the species depends is often easily viewed using aerial photography. Additionally, aerial photography provides an overview of the land use surrounding the glades. Topographic maps provide contours and drainage patterns that were used to help identify potential areas for growth and expansion of the species. A combination of these tools, in a GIS interface, allowed for the determination of the critical habitat boundaries.

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features for *Leavenworthia exigua* var. *laciniata.* The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

Summary

In conclusion, we are proposing for designation as critical habitat specific areas that we have determined are occupied at the time of listing and contain sufficient elements of the physical or biological features essential for the conservation of *L. exigua* var. *laciniata.* We determined that no additional areas are considered essential

for the conservation of the species because the proposed occupied areas provide sufficient habitat to conserve the species. The proposed units contained all of the identified elements of physical or biological features and support multiple life-history processes.

Proposed Critical Habitat Designation

We are proposing the following six units, consisting of 18 subunits, as critical habitat for *L. exigua* var. *laciniata:* (1) Unit 1: McNeely Lake, (2) Unit 2: Old Mans Run, (3) Unit 3: Mount Washington, (4) Unit 4: Cedar Creek, (5) Unit 5: Cox Creek, (6) Unit 6: Rocky Run. All units and subunits are currently occupied. They constitute our best assessment of areas that meet the definition of critical habitat for *L. exigua* var. *laciniata* under the Act. These subunits represent 18 of the 61 extant occurrences of *L. exigua* var. *laciniata.* Each unit contains all of the primary constituent elements of the physical or biological features essential to the conservation of the Kentucky glade cress. Table 1 includes the ownership information and size of unit/subunits we are proposing as critical habitat.

TABLE 1—PROPOSED CRITICAL HABITAT UNITS FOR *L. exigua* var. *laciniata.* [AREA ESTIMATES REFLECT ALL LAND WITHIN CRITICAL HABITAT UNIT BOUNDARIES]

Critical habitat unit	Sub unit	Land ownership by type	Size of unit in acres (hectares)
1		Louisville/Jefferson County Metro Government	18 (7)
2	2A	Private	102 (41)
2	2B	Private	870 (352)
2	2C	Private	42 (17)
3	3A	Private	25 (10)
3	3B	Private	7 (3)
3	3C	Private	10 (4)
4	4A	Private	91 (37)
4	4B	KSNPC; Private; Private with KSNPC easement	69 (28)
4	4C	Private	83 (34)
4	4D	Private	46 (19)
4	4E	Private	102 (41)
4	4F	Private	120 (49)
4	4G	Private	20 (8)
4	4H	Private	16 (6)
5	5A	Private	8 (3)
5	5B	Private	50 (20)
6		Private	374 (151)
Total			2,053 (830)

Note: Area sizes may not sum due to rounding.

Below, we present brief descriptions of all units, and reasons why they meet the definition of critical habitat for *L. exigua* var. *laciniata.*

Unit 1: McNeely Lake, Jefferson and Bullitt Counties, Kentucky

Unit 1 consists of 18 ac (7 ha) within McNeely Lake Park in Jefferson County, Kentucky. This critical habitat unit is under county government ownership. This critical habitat unit occurs at the northwestern edge of the species' range where there is little remaining habitat and few occurrences and is important to the distribution of the species. Habitat degradation (e.g., erosion, invasive species) is impacting the species' ability to persist within this unit; however, the landowner has received funding and is working with the Service and KSPNC to develop a management plan for the site and to implement habitat improvement practices. These planned activities are expected to improve population numbers and viability at this important site. This unit helps to maintain the geographical range of the species and provides opportunity for population growth. Within proposed Unit 1, the Kentucky glade cress and its habitat may require special management considerations or protection to address potential adverse effects associated with encroachment by nonnative plants or forage species, and forest encroachment due to fire suppression.

Unit 2, Subunits A, B, and C: Old Mans Run, Jefferson and Bullitt Counties, Kentucky

Unit 2 consists of three subunits totaling 1,014 ac (410 ha) in Bullitt and Jefferson Counties, Kentucky. It is located just south of the Jefferson/Bullitt County line and extends north of Old Mans Run. This critical habitat unit includes four element occurrences. Subunit B represents the best remaining populations and habitat for *L. exigua* var. *laciniata* in Jefferson County. Subunits A and C are important areas at the northern extent of the species' range. These three subunits represent the northeastern extent of the population's range and increase population redundancy within the species' range. Within proposed Unit 2, *L. exigua* var. *laciniata* and its habitat may require special management considerations or protection to address potential adverse effects associated with development on private land, incompatible agricultural or grazing practices, ORV or horseback riding, competition from lawn grasses, and forest encroachment.

Subunit 2A is 102 ac (41 ha) in size and is located west of US 150 and northwest of Floyds Fork. It is in private ownership. While all PCEs are present within this subunit, it contains few native plant associates for *L. exigua* var. *laciniata,* and the increased competition from lawn grasses may decrease the ability of *L. exigua* var. *laciniata* to persist. This area is important for maintaining the northern distribution of *L. exigua* var. *laciniata.*

Subunit 2B is 870 ac (352 ha) in size and is located east of US 150 and extends north and south of Old Mans Run. It is in private ownership. This is the largest of the proposed subunits and contains the two highest ranked (1–B and 1–C) occurrences in Jefferson County. It represents the best remaining habitat in this portion of the range and

may contain more than half of the total *L. exigua* var. *laciniata* population based on a 2011 survey by KSNPC, which estimated more than 20,000 individuals at 4 sites within this subunit. At this site, competition from lawn grasses impacts *L. exigua* var. *laciniata* and may decrease its ability to persist.

Subunit 2C is 42 ac (17 ha) in size and is located west of US 150 and east of Floyds Fork, extending into both Bullitt and Jefferson Counties. It is in private ownership. This subunit is primarily pasture, and habitat for *L. exigua* var. *laciniata* is impacted by competition from lawn grasses. Restoration of this area to improve habitat for *L. exigua* var. *laciniata* is important for maintaining the northern distribution of the species.

Unit 3, Subunits A, B and C: Mount Washington, Bullitt County, Kentucky

Unit 3 consists of 42 ac (17 ha) and includes three subunits in Bullitt County, Kentucky, primarily within or adjacent to the city limits of Mount Washington. This critical habitat unit includes three element occurrences and provides an important link between the northern and southern portions of the species' range. Within proposed Unit 3, the Kentucky glade cress and its habitat may require special management considerations or protection to address potential adverse effects associated with development on private land, incompatible agricultural or grazing practices, ORV or horseback riding, competition from lawn grasses, and forest encroachment due to fire suppression.

Subunit 3A is 25 ac (10 ha) in size and is located northeast of Mount Washington. It is in private ownership. Habitat for *L. exigua* var. *laciniata* within this subunit is degraded and would improve with management. It represents important habitat on the eastern extent of the species' range. At this subunit, habitat conversion and off-road vehicle usage impact *L. exigua* var. *laciniata* habitat and may decrease the species' ability to persist at this site.

Subunit 3B is 7 ac (3 ha) in size and is located east of Hubbard Lane and south of Keeneland Drive. It is in private ownership. The glade habitat has been degraded by adjacent land use and would benefit from improved management. The site represents an important link between other proposed subunits.

Subunit 3C is 10 ac (4 ha) in size and is located east of US 150 and south of Highway 44E. It is in private ownership. The site represents an important and high quality cedar glade in an area of ongoing, intensive development. Land use surrounding the glade remnant appears stable and the glade contains several native plant species associated with *L. exigua* var. *laciniata.*

Unit 4, Subunits A, B, C, D, E, F, G, and H: Cedar Creek, Bullitt County, Kentucky

Unit 4 consists of 547 ac (221 ha) and includes eight subunits, all in Bullitt County, Kentucky. This proposed unit is located south of the Salt River and northeast of Cedar Grove and seems to represent the core of the remaining high-quality habitat for *L. exigua* var. *laciniata.* It includes eight element occurrences. In addition to being a stronghold for the species, these subunits are generally within close proximity (less than 0.5 miles (0.8 km)) to each other and represent the best opportunity for genetic exchange between occurrences.

Within Unit 4, *L. exigua* var. *laciniata* and its habitat may require special management considerations or protection to address potential adverse effects associated with development on private land, incompatible agricultural or grazing practices, ORV or horseback riding, competition from lawn grasses, and forest encroachment due to fire suppression.

Subunit 4A is 91 ac (37 ha) in size and is located south of Cedar Creek and west of Pine Creek Trail. This subunit is owned by The Nature Conservancy and encompasses most of the Pine Creek Barrens Preserve. This excellent-quality glade represents the only remaining ''A'' rank occurrence for *L. exigua* var. *laciniata.*

Subunit 4B is 69 ac (28 ha) in size and is located along an unnamed tributary to Cedar Creek, and south of KY 1442. This good-quality glade includes the Apple Valley Glade State Nature Preserve (SNP), owned by KSNPC (approximately 30 percent of subunit), as well as private land, including some under permanent conservation easement (approximately 41 percent of subunit) to protect *L. exigua* var. *laciniata.* Approximately 29 percent of this subunit is under private ownership without any protections for *L. exigua* var. *laciniata.*

Subunit 4C is 82 ac (33 ha) in size and located north of Cedar Creek and south of Apple Valley SNP. It is in private ownership. This subunit contains high-quality glades with a community of native plants present.

Subunit 4D is 46 ac (18 ha) in size and is located north of Cedar Creek and south of Victory Church. It is in private ownership. This site has been degraded and would benefit from improved management. Native plants associated with *L. exigua* var. *laciniata* occur within this subunit, but competition from lawn grasses, as well as forest encroachment due to fire suppression, impacts *L. exigua* var. *laciniata* and may decrease its ability to persist.

Subunit 4E is 102 ac (41 ha) in size and is located southeast of Subunit D and across Cedar Creek. It is in private ownership. It contains a large number of *L. exigua* var. *laciniata* (several thousand), but the habitat has been degraded by adjacent land use and would benefit from improved management. Competition from lawn grasses, as well as forest encroachment due to fire suppression, affects *L. exigua* var. *laciniata* and may decrease its ability to persist.

Subunit 4F is 120 ac (49 ha) in size and is south of the confluence of Cedar Creek and Greens Branch. It is in private ownership. This is a degraded glade that still contains native plants associated with *L. exigua* var. *laciniata.* The site is disturbed by existing and surrounding land uses as well as utility line maintenance, and ORV use, which may decrease the species' ability to persist.

Subunit 4G is 20 ac (8 ha) in size and is located along either site of KY 480 near White Run Road. It is in private ownership. This site contains a large number of plants; however, improved habitat conditions are needed for long-term viability of the *L. exigua* var. *laciniata* occurrence. Impacts to *L. exigua* var. *laciniata,* which may decrease its ability to persist at this site, include: Incompatible agricultural or grazing practices, ORV riding, competition from lawn grasses, as well as forest encroachment due to fire suppression.

Subunit 4H is 16 ac (6 ha) in size and is located 0.95 miles southeast of the KY 480/KY 1604 intersection. It is in private ownership. Within this subunit, several patches of good habitat for *L. exigua* var. *laciniata* remain as well as a good diversity of native plant associates. However, competition from lawn grasses, as well as forest encroachment due to fire suppression, affects *L. exigua* var. *laciniata* and may decrease its ability to persist.

Unit 5, Subunits A and B: Cox Creek, Bullitt County, Kentucky

Unit 5 consists of 58 ac (23 ha) and includes two subunits, both in Bullitt County, Kentucky. It includes two element occurrences, representing the most easterly occurrences south of the Salt River. These subunits are important for maintaining the distribution and genetic diversity of the species.

Within proposed Unit 5, *L. exigua* var. *laciniata* and its habitat may require special management considerations or

protection to address potential adverse effects associated with illegal waste dumps, development on private land, incompatible agricultural or grazing practices, ORV or horseback riding, competition from lawn grasses, and forest encroachment due to fire suppression.

Subunit 5A is 8 ac (3 ha) in size and is located east of Cox Creek and west of KY 1442. It is in private ownership. This site is threatened by ORV use and would benefit from improved management and habitat restoration.

Subunit 5B is 50 ac (20 ha) in size and is located west of Cox Creek near the Bullitt/Spencer County line. It is in private ownership. Incompatible agricultural practices and ORV use impacts *L. exigua* var. *laciniata* and may decrease its ability to persist. The native flora is mostly intact, and *L. exigua* var. *laciniata* would benefit from improved management and habitat restoration.

Unit 6: Rocky Run, Bullitt County, Kentucky

Unit 6 consists of 374 ac (151 ha) in Bullitt County, Kentucky. This critical habitat unit includes habitat that is under private ownership, including one 16-acre Registered Natural Area. It includes one element occurrence. This unit appears to represent the largest intact glade habitat remaining within the range of the species. Within proposed Unit 6, *L. exigua* var. *laciniata* and its habitat may require special management considerations or protection to address potential adverse effects associated with development on private land, incompatible agricultural or grazing practices, competition from lawn grasses, and forest encroachment due to fire suppression.

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,* 245 F.3d 434 (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 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 United States 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 *Leavenworthia exigua* var. *laciniata.* As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for *L. exigua* var. *laciniata.* These activities include, but are not limited to:

(1) Actions within or near critical habitat that would result in the loss of bare or open ground. Such activities could include, but are not limited to: development; road maintenance, widening or construction; and utility line construction or maintenance. These activities could eliminate or reduce the habitat necessary for growth, reproduction, and/or expansion of *L. exigua* var. *laciniata.*

(2) Actions within or near critical habitat that would modify the hydrologic regime that allows for the shallow soils to be very wet in late winter to early spring and dry quickly. Such activities could include, but are not limited to: development; road maintenance, widening, or construction; and utility line construction or maintenance. These activities could alter habitat conditions to the point of eliminating the site conditions required for growth, reproduction, and/or expansion of *L. exigua* var. *laciniata.*

(3) Actions within or near critical habitat that would remove or alter vegetation and allow erosion, sedimentation, shading or the introduction or expansion of invasive species. Such activities could include, but are not limited to: land clearing; silviculture; fertilizer, herbicide, or insecticide applications; development; road maintenance, widening, or construction; and utility line construction or maintenance. These activities could alter habitat conditions to the point of eliminating the site conditions required for growth, reproduction, and/or expansion of *L. exigua* var. *laciniata.*

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographic areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

There are no Department of Defense lands with a completed INRMP within the proposed critical habitat designation.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise his discretion to exclude the area only if such exclusion would not result in the extinction of the species.

Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we are preparing an analysis of the economic impacts of the proposed critical habitat designation and related factors.

We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://www.regulations.gov,* or by contacting the Kentucky Ecological Services Field Office directly (see **FOR FURTHER INFORMATION CONTACT** section). During the development of a final designation, we will consider economic impacts, public comments, and other new information, and areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense where a national security impact might exist. In preparing this proposal, we have determined that no lands within the proposed designation of critical habitat for *L. exigua* var. *laciniata* are owned or managed by the Department of Defense, and, therefore, we anticipate no impact on national security. Consequently, the Secretary does not propose to exercise his discretion to exclude any areas from the final designation based on impacts on national security.

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.

In preparing this proposal, we have determined that there are currently no HCPs or other management plans for *L. exigua* var. *laciniata,* and the proposed designation does not include any tribal lands or trust resources. We anticipate no impact on tribal lands, partnerships, or HCPs from this proposed critical habitat designation. Accordingly, the Secretary does not propose to exercise his discretion to exclude any areas from the final designation based on other relevant impacts.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during this public comment period on our specific assumptions and conclusions in this proposed designation of critical habitat.

We will consider all comments and information received during this comment period on this proposed rule during our preparation of a final determination. Accordingly, the final decision may differ from this proposal.

Public Hearings

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in the **ADDRESSES** section. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C 801 *et seq.*), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include such businesses as manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and forestry and logging operations with fewer than 500 employees and annual business less than $7 million. To determine whether small entities may be affected, we will consider the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Importantly, the incremental impacts of a rule must be both significant and substantial to prevent certification of the rule under the RFA and to require the preparation of an initial regulatory flexibility analysis. If a substantial number of small entities are affected by the proposed critical habitat designation, but the per-entity economic impact is not significant, the Service may certify. Likewise, if the per-entity economic impact is likely to be significant, but the number of affected entities is not substantial, the Service may also certify.

Under the RFA, as amended, and following recent court decisions, Federal agencies are required only to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself, and not the potential impacts to indirectly affected entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the Agency is not likely to adversely modify critical habitat. Therefore, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Under these circumstances, it is our position that only Federal action agencies will be directly regulated by this designation. Therefore, because Federal agencies are not small entities, the Service may certify that the proposed critical habitat rule will not have a significant economic impact on a substantial number of small entities.

We acknowledge, however, that in some cases, third-party proponents of

the action subject to permitting or funding may participate in a section 7 consultation, and thus may be indirectly affected. We believe it is good policy to assess these impacts if we have sufficient data before us to complete the necessary analysis, whether or not this analysis is strictly required by the RFA. While this regulation does not directly regulate these entities, in our draft economic analysis we will conduct a brief evaluation of the potential number of third parties participating in consultations on an annual basis in order to ensure a more complete examination of the incremental effects of this proposed rule in the context of the RFA.

In conclusion, we believe that, based on our interpretation of directly regulated entities under the RFA and relevant case law, this designation of critical habitat will directly regulate only Federal agencies, which are not by definition small business entities. Therefore, we certify that, if promulgated, this designation of critical habitat would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required. However, though not necessarily required by the RFA, in our draft economic analysis for this proposal we will consider and evaluate the potential effects to third parties that may be involved with consultations with Federal action agencies related to this action.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. We do not expect the designation of this proposed critical habitat to significantly affect energy supplies, distribution, or use because these areas are not presently used for energy production, and we are not aware of any future plans in this regard. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments because the designation of critical habitat imposes no obligations on State or local governments. Therefore, a Small Government Agency Plan is not required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment if appropriate.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for *L. exigua* var. *laciniata* in a takings implications assessment. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. The takings implications assessment concludes that this designation of critical habitat for *L. exigua* var. *laciniata* does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this proposed rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in Kentucky. The designation of critical habitat in areas currently occupied by the *L. exigua* var. *laciniata* may impose nominal additional regulatory restrictions to those currently in place and, therefore, may have little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments because the areas that contain the physical or biological features essential to the conservation of the species are more clearly defined, and the elements of the features of the habitat necessary to the conservation of

the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the elements of physical or biological features essential to the conservation of *L. exigua* var. *laciniata* within the designated areas to assist the public in understanding the habitat needs of the species.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. We determined that there are no tribal lands that were occupied by *L. exigua* var. *laciniata* at the time of listing that contain the features essential for conservation of the species, and no tribal lands unoccupied by *L. exigua* var. *laciniata* that are essential for the conservation of the species. Therefore, we are not proposing to designate critical habitat for *L. exigua* var. *laciniata* on tribal lands.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the Kentucky Ecological Services Field Office. (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this package are the staff members of the Kentucky Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245; unless otherwise noted.

■ 2. In § 17.96, amend paragraph (a) by adding an entry for ''*Leavenworthia exigua* var. *lacinata* (Kentucky glade cress),'' in alphabetical order under Family Brassicaceae to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Brassicaceae: *Leavenworthia exigua* var. *lacinata* (Kentucky glade cress)

(1) Critical habitat units are depicted for Bullitt and Jefferson Counties, Kentucky, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of *L. exigua* var. *laciniata* consist of these components:

(i) Cedar glades and gladelike areas within the range of *L. exigua* var. *laciniata* that include:

(A) Areas of rock outcrop, gravel, flagstone of Silurian dolomite or dolomitic limestone, and/or shallow (1–5 cm), calcareous soils;

(B) Intact cyclic hydrologic regime involving saturation and/or inundation of the area in winter and early spring, then drying quickly in the summer;

(C) Full or nearly full sunlight; and

(D) An undisturbed seed bank.

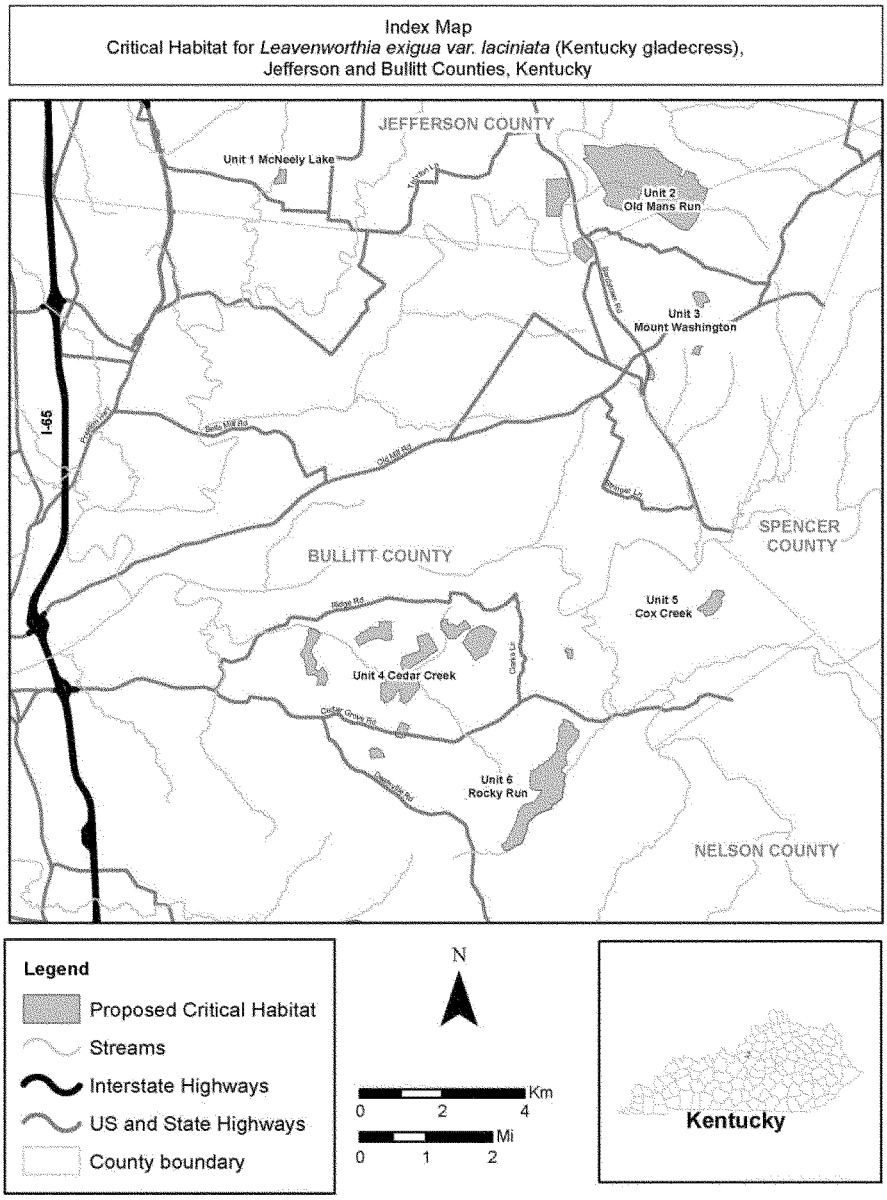
(ii) Vegetated land around glades and gladelike areas that extends up and down slope and ends at natural (e.g., stream, topographic contours) or manmade breaks (e.g., roads).

(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 the effective date of this rule.

(4) *Critical habitat map units.* Data layers defining map units were created using a base of aerial photographs (USDA National Agricultural Imagery Program; NAIP 2010), and USA Topo Maps (National Geographic Society 2011). Critical habitat units were then mapped using Universal Transverse Mercator (UTM) Zone 16 North American Datum (NAD) 1983 coordinates.

(5) ***Note:*** Index map follows:

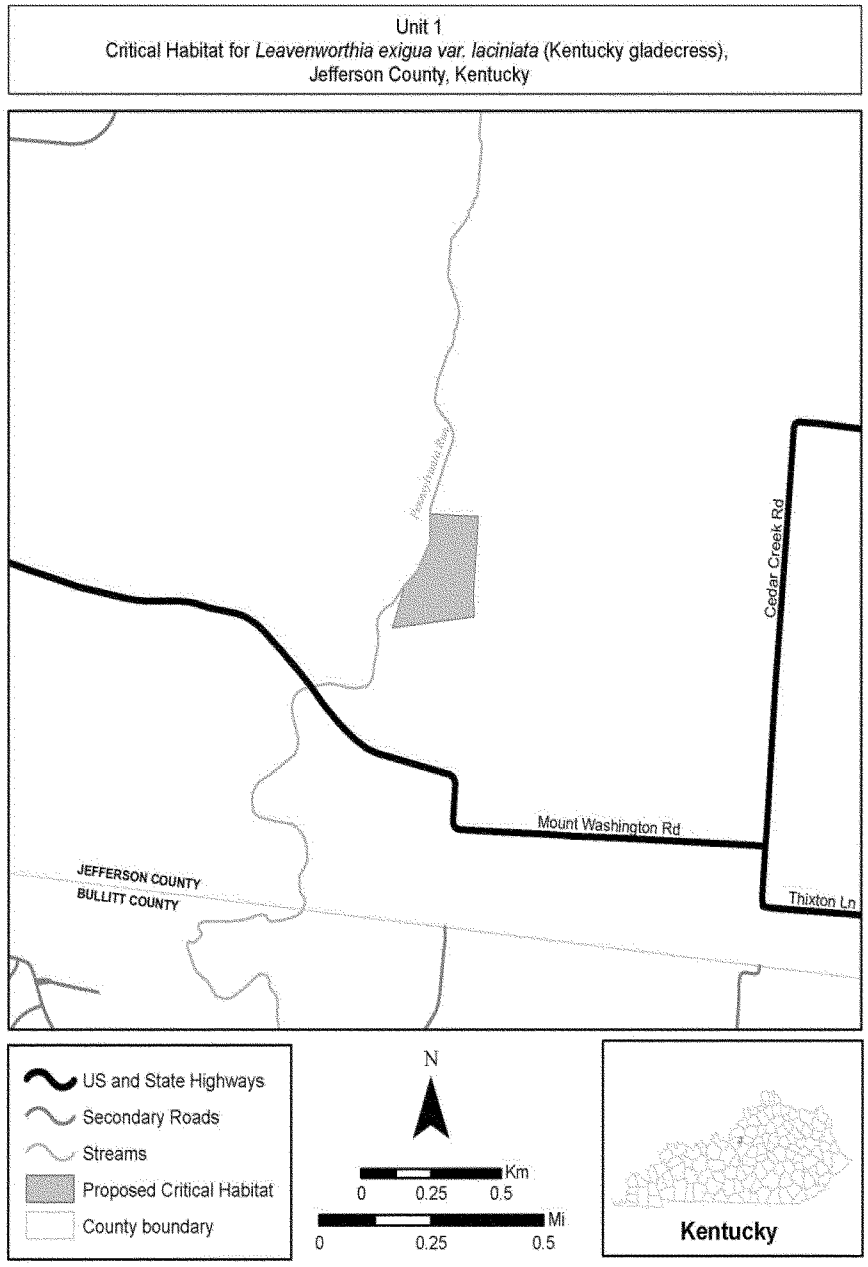
BILLING CODE 4310–55–P



(6) Unit 1, McNeely Lake: Critical habitat for *L. exigua* var. *laciniata,* Jefferson County, Kentucky.

(i) Unit 1 includes 18 ac (7 ha).

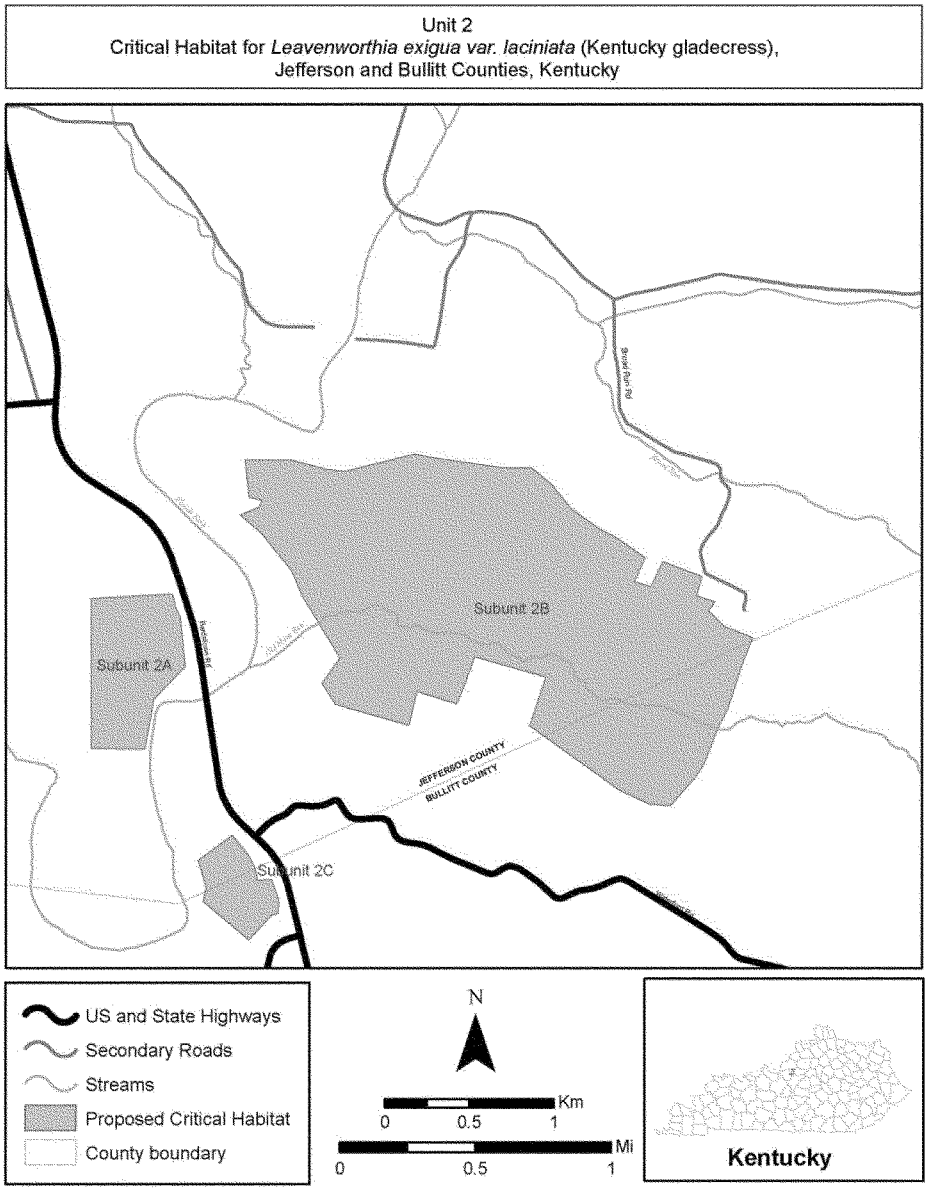
(ii) ***Note:*** A map of Unit 1 follows:



(7) Unit 2, Old Mans Run: Critical habitat for *L. exigua* var. *laciniata,* Jefferson County, Kentucky.

(i) Unit 2 includes 1,014 ac (410 ha): Subunit A includes 102 acres (41 ha); Subunit B includes 870 acres (352 ha); Subunit C includes 42 ac (17 ha).

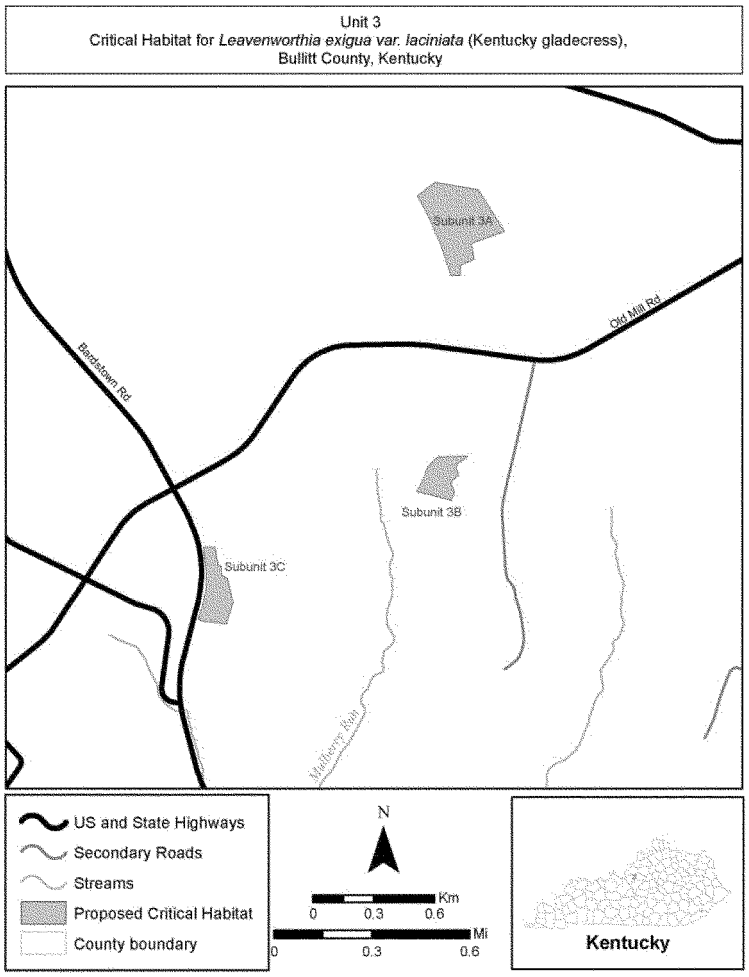
(ii) ***Note:*** A map of Unit 2 follows:



(8) Unit 3: Mount Washington: Critical habitat for *L. exigua* var. *laciniata,* Bullitt County, Kentucky.

(i) Unit 3 contains 130 ac (53 ha): Subunit A contains 25 ac (10 ha); Subunit B contains 7 ac (3 ha); Subunit C contains 10 ac (4 ha);.

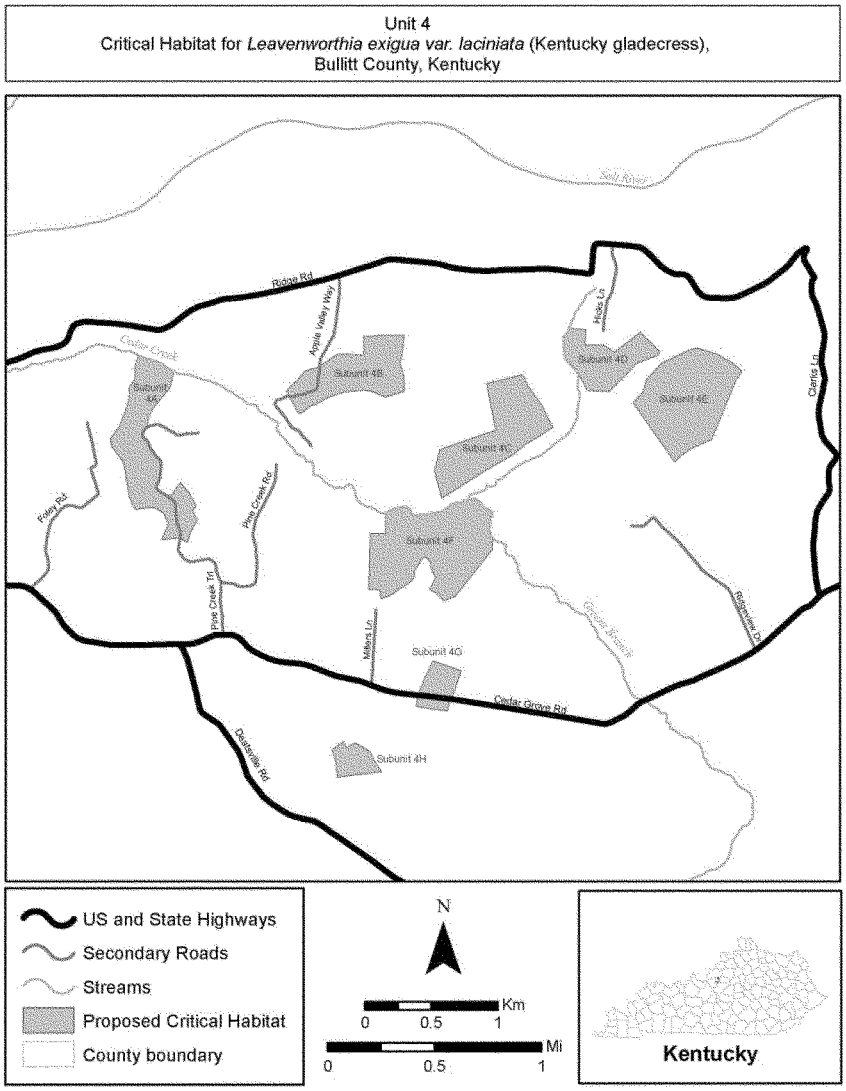
(ii) ***Note:*** A map of Unit 3 follows:



(9) Unit 4 Cedar Creek: Critical habitat for *L. exigua* var. *laciniata,* Bullitt County, Kentucky.

(i) Unit 4 contains 546 ac (221 ha): Subunit A contains 91 ac (37 ha); Subunit B contains 69 ac (28 ha); Subunit C contains 83 ac (33 ha); Subunit D contains 46 ac (18 ha); Subunit E contains 102 ac (41 ha); Subunit F contains 120 ac (49 ha); Subunit G contains 20 ac (8 ha); Subunit H contains 16 ac (6 ha).

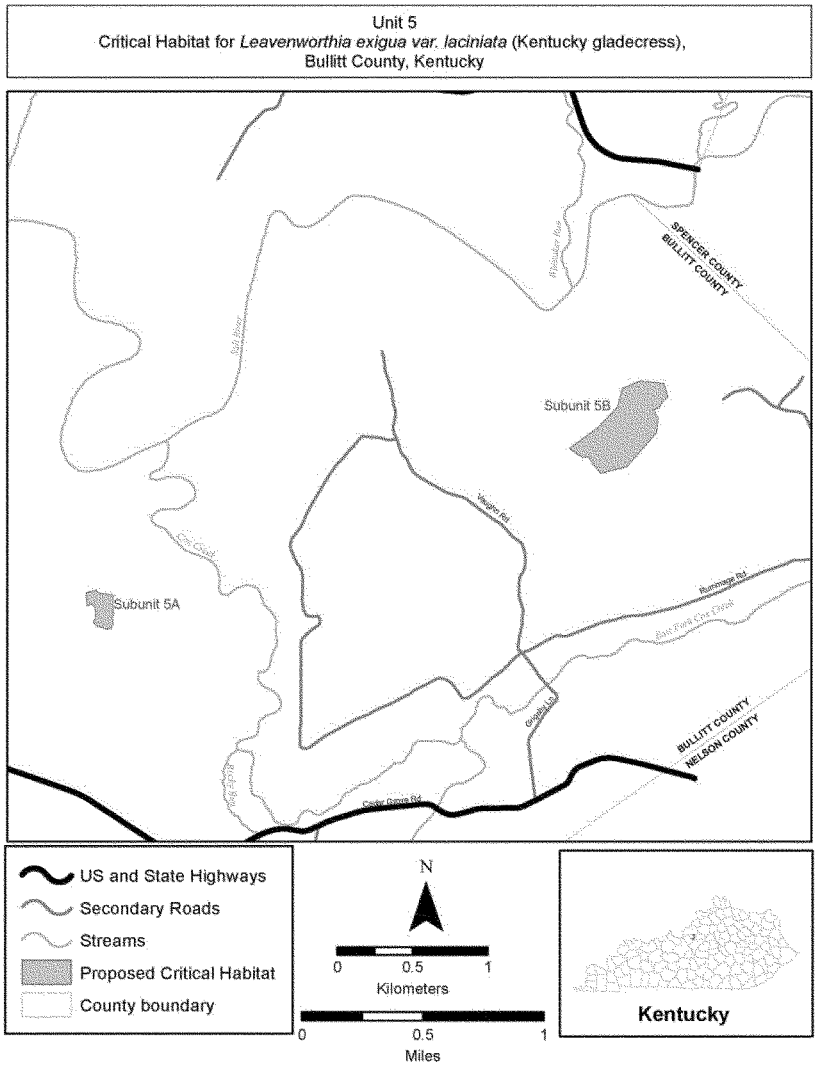
(ii) ***Note:*** A map of Unit 4 follows:



(10) Unit 5, Cox Creek: Critical habitat for *L. exigua* var. *laciniata,* Bullitt County, Kentucky.

(i) Subunit 5 contains 58 ac (23 ha): Subunit A contains 8 ac (3 ha); Subunit B contains 50 ac (20 ha).

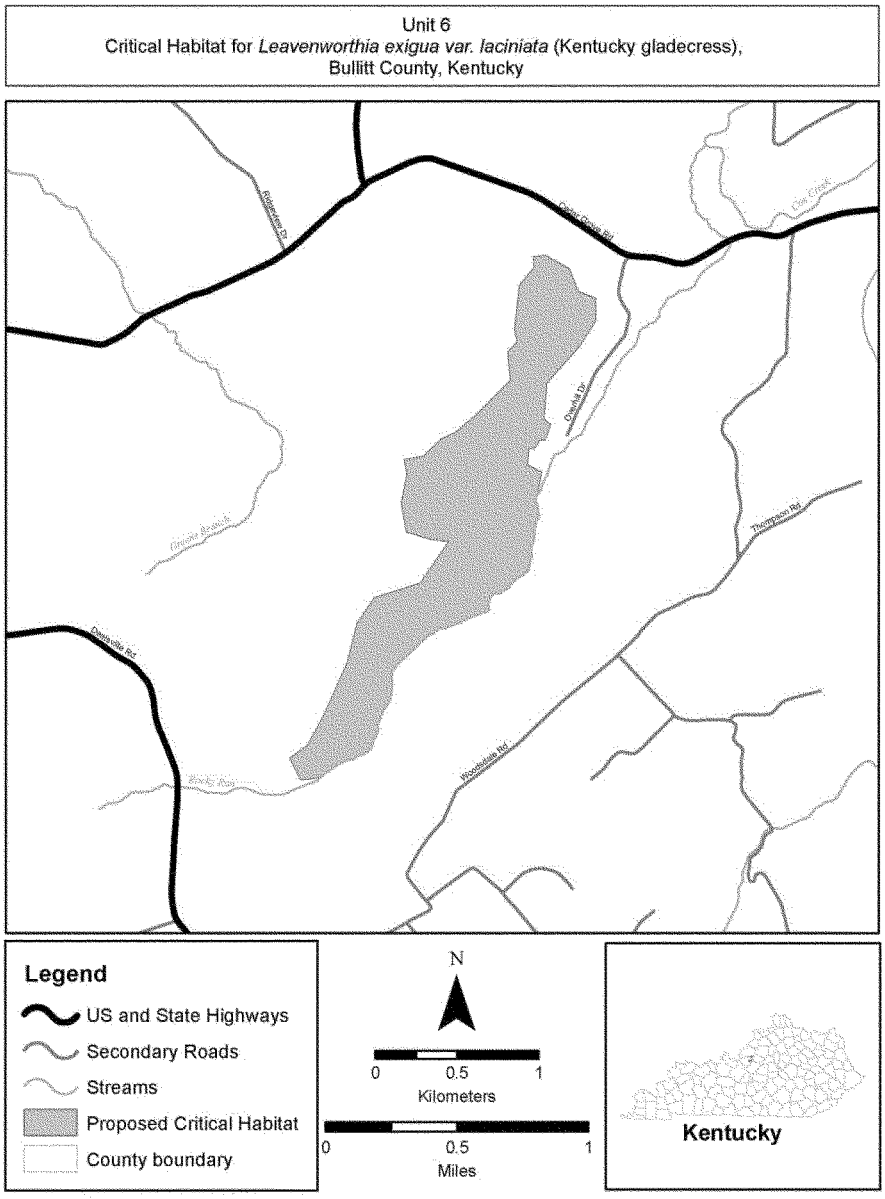
(ii) ***Note:*** A map of Unit 5 follows:



(11) Unit 6, Rocky Run: Critical Habitat for *L. exigua* var. *laciniata,* Bullitt County, Kentucky.

(i) Unit 6 contains 374 ac (151 ha).

(ii) ***Note:*** A map of Unit 6 follows:



Dated: May 14, 2013.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–12102 Filed 5–23–13; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R4–ES–2013–0069; 4500030113]

RIN 1018–AY73

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for Leavenworthia exigua var. laciniata (Kentucky Glade Cress)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to list *Leavenworthia exigua* var. *laciniata* (Kentucky glade cress), as threatened under the Endangered Species Act of 1973, as amended (Act). The effect of this regulation, if finalized, would be to conserve *Leavenworthia exigua* var. *laciniata* under the Act.

DATES: We will accept comments received or postmarked on or before July 23, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by July 8, 2013.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box,

enter Docket No. FWS–R4–ES–2013–0069, which is the docket number for this rulemaking. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R4–ES–2013–0069; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will not accept email or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Lee Andrews, Field Supervisor, U.S. Fish and Wildlife Service, Kentucky Ecological Services Field Office, J.C. Watts Federal Building, 330 W. Broadway Rm. 265, Frankfort, KY 40601, by telephone 502–695–0468 or by facsimile 502–695–1024. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, if we intend to list a species as endangered or threatened throughout all or a significant portion of its range, we are required to promptly publish a proposal in the **Federal Register** and make a determination on our proposal within 1 year. Critical habitat shall be designated, to the maximum extent prudent and determinable, for any species determined to be an endangered or threatened species under the Act. Listing a species as an endangered or threatened species and designations and revisions of critical habitat can only be completed by issuing a rule. Elsewhere in today's **Federal Register**, we propose to designate critical habitat for *Leavenworthia exigua* var. *laciniata* under the Act.

This rule consists of: A proposed rule to list *Leavenworthia exigua* var. *laciniata* (Kentucky glade cress) as threatened. *Leavenworthia exigua* var. *laciniata* is a candidate species for which we have on file sufficient information on biological vulnerability and threats to support preparation of a listing proposal, but for which development of a listing regulation has been precluded by other higher priority listing activities. This rule reassesses all available information regarding status of and threats to *Leavenworthia exigua* var. *laciniata.*

The basis for our action. Under the Act, we can determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence.

We have determined that the species is threatened by Factors A and E:

- The loss and degradation of glade habitats supporting *L. exigua* var. *laciniata.* Activities or factors negatively impacting *L. exigua* var. *laciniata* include: development, roads, utilities, conversion to lawns, horseback riding, off-road vehicle use, and changes in grazing practices and forest encroachment.
- Other natural or manmade factors, including narrow range, low genetic diversity, and small population size.

We will seek peer review. We are seeking comments from knowledgeable individuals with scientific expertise to review our analysis of the best available science and application of that science and to provide any additional scientific information to improve this proposed rule. Because we will consider all comments and information received during the comment period, our final determinations may differ from this proposal.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from the public, other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) *Leavenworthia exigua* var. *laciniata's* biology, range, and population trends, including:

(a) Habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat or both.

(2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and existing regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.

(5) Any information on the biological or ecological requirements of the species and ongoing conservation measures for the species and its habitat.

(6) Information on the projected and reasonably likely impacts of climate change on *L. exigua* var. *laciniata.*

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

We will post all hardcopy submissions on *http://www.regulations.gov.* Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Kentucky Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

We identified *L. exigua* var. *laciniata* as a Category 1 species in a notice of review published in the **Federal Register** on July 1, 1975 (40 FR 27824). It remained a Category 1 species in subsequent notices including December 15, 1980 (45 FR 82480–82569), November 28, 1983 (48 FR 53640–53670), September 27, 1985 (50 FR 39526–39584), February 21, 1990 (55 FR 6184–6229) and September 30, 1993 (58 FR 51144–511920). Category 1 species were those taxa for which the Service had substantial information on file on the biological vulnerability and threats to support the appropriateness of proposing to list the taxa as threatened or endangered. However, the large number of category 1 species created a backlog for the development and publication of the proposed rules. Assigning categories to species was discontinued in 1996, and subsequently only species for which the Service had sufficient information on biological vulnerability and threats to support issuance of a proposed rule were regarded as candidate species (61 FR 7596). These candidate species were also assigned listing priority numbers (LPNs) based on immediacy and the magnitude of threat, as well as their taxonomic status. *Leavenworthia exigua* var. *laciniata* was first identified as a candidate species in the **Federal Register** on November 9, 2009 (74 FR 57804–57878) with an LPN of 3. It retained that LPN in 2010 (75 FR 69222–69294; November 10, 2010) and 2011 (76 FR 66370–66439; October 26, 2011) **Federal Register** notices of candidate review.

Elsewhere in today's **Federal Register**, we propose to designate critical habitat for *L. exigua* var. *laciniata* under the Act.

Status Assessment for *L. exigua* var. *laciniata*

Background

In this section of the proposed rule, we discuss only those topics directly relevant to the listing of *L. exigua* var. *laciniata* as threatened.

Species Information

L. exigua var. *laciniata* is an annual member of the mustard family (*Brassicaceae*) known only from two counties in Kentucky. Plants are about 5 to 10 cm (1.97 to 3.94 in) in height with early leaves that are simple with a slender petiole (central stalk of the leaf) and mature leaves that are sharply lobed (appear as disconnected pieces along the main leaf vein), somewhat squarish at the ends and arranged as a rosette (circular cluster of leaves) (Evans and Hannan 1990, p. 5). The flowers are small (3 to 6 mm (0.12 to 0.24 in)), white to lilac in color with four petals, green rather than lavender sepals (the outer of two floral leaves that make up the flower), and leafless stems. Leaves typically disappear by the time the plant is in fruit (Evans and Hannan 1990, p. 6). The fruit is flat and pod-shaped.

Taxonomy and Species Description

R. C. Rollins (1963, p. 75) described *L. exigua* var. *laciniata* as a new taxon in his monograph of the genus *Leavenworthia.* Rollins (1963, pp. 51, 75) stated that the rather extensive populations of *L. exigua* located in Bullitt County, Kentucky, exhibited certain distinguishing characteristics compared to populations in Tennessee, northern Alabama, and northern Georgia. The Kentucky plants, which he described as *L. exigua* var. *laciniata,* had longer styles (usually slender and elongate extension of the ovary), green instead of lavender sepals, and more sharply divided leaves than the typical *L. exigua* var. *exigua.* Kral (1983, pp. 10–18) supported Rollins' recognition of the taxon as a distinct variety. Kartesz (1991, p. 449) recognized the taxon by including it in his vascular flora checklist for the United States.

Habitat

L. exigua var. *laciniata* appears to be adapted to environments with shallow soils interspersed with flat-bedded, Silurian dolomite and dolomitic limestones, which is an uncommon geological formation in Kentucky (Rollins 1963, p. 5; Evans and Hannan 1990, pp. 8–9). The soil on these horizontally bedded limestone areas is often only a few inches in depth or may be completely lacking in some areas (Rollins 1963, p. 5). Because of the thin soils and underlying limestones, these habitats, called cedar or limestone glades, are extremely wet from late winter to early spring and quickly become dry in May and June. The natural habitat for *L. exigua* var. *laciniata* is these cedar glades (Baskin and Baskin 1981, p. 243), but the taxon is also known from overgrazed pastures, eroded shallow soil areas with exposed bedrock, and areas where the soil has been scraped off the underlying bedrock (Evans and Hannan 1990, p. 8). *L. exigua* var. *laciniata* does not appear to compete well with other vegetation and is shade intolerant (Evans and Hannan 1990, p. 14).

Baskin and Baskin noted in 1985 (p. 378) that there were few, if any, undisturbed glades remaining in the southeastern United States and that most of these glades had been used for pasture at some point. This is true for the range of *L. exigua* var. *laciniata* (D. White, pers. obs., 2012). Like other *Leavenworthia* spp. (Baskin and Baskin 1985, p. 378), *L. exigua* var. *laciniata* occurs in highly disturbed glades as well as lightly disturbed glades (KSNPC 2012, pp. 1–108). Many of these highly degraded glades are part of larger pasture areas. As the disturbance to the glade increases, so does the number of species of winter annuals (Baskin and Baskin 1985, p. 378). Within the range of *L. exigua* var. *laciniata* some of these highly degraded glades are now part of residential and commercial lawns (KSNPC 2012, pp. 1–108; pers. obs.).

The taxon is not restricted to any specific soil type (Evans and Hannan 1990, p. 8). It appears to be more dependent upon lack of soil (and plant competition) and proximity of rock near or at the surface. It occurs primarily in open gravelly soils around rock outcrops in an area of the Caneyville-Crider soil association (Whitaker and Waters 1986, p. 16). Within this soil association, *L. exigua* var. *laciniata* occurs on the following mapped soil types: Caneyville-rock outcrop complex, 6 to 40 percent slope; Caneyville silt loam, 6 to 12 percent slope, eroded; Caneyville-Beasley-rock outcrop complex, 12 to 30 percent slope; Faywood-Beasley-rock outcrop complex, 25 to 60 percent slope; and Beasley silty clay loam, 6 to 12 percent slopes, severely eroded (Whitaker and Waters 1986, pp. 26–27, 29–31, 40–41; Evans and Hannan 1990, p. 8). Where *L. exigua* var. *laciniata* occurs on soils without bedrock near the surface, the soil is usually eroded to severely eroded with 25 to 100 percent of the original surface gone (Evans and Hannan 1990, p. 8).

Biology

The life cycle is nearly identical for all members of the genus *Leavenworthia* (Baskin and Baskin 1981, p. 246; Solbrig 1971, p. 155). All are winter annuals, endemic to cedar glades or glade-like habitats (Baskin and Baskin 1985, p. 377). For *L. exigua* var. *laciniata,* seed germination occurs in September and October (Baskin and Baskin 1981, p. 246). Baskin and Baskin (1971, p. 33; 1972, p. 1716) found that freshly harvested *Leavenworthia* spp. seeds were dormant at any temperature and that, once dormancy was broken, germination was prevented by high temperatures, regardless of moisture levels. This characteristic seems to protect *Leavenworthia* spp. from germination following short summer showers that temporarily moisten the glade habitats (Baskin and Baskin 1985, p. 381) and allows it to avoid the hot, dry summer (Baskin and Baskin 1972, p. 1720). All seeds may not germinate each fall, allowing seed reserves to accumulate (Baskin and Baskin 1981, p. 246). A study by Baskin and Baskin (1981, p. 247) found collected *L. exigua* var. *laciniata* seeds germinated in a greenhouse over four autumns, although at drastically reduced numbers after the first year (4,907 in 1976, 190 in 1977, 156 in 1978, and 71 in 1979).

L. exigua var. *laciniata* persist through the winter as rosettes, and flowering begins in late February to early March (Baskin and Baskin 1981, p. 246; Evans and Hannan 1990, p. 11). Seeds are set and plants die in April and May as the glade habitats dry out (Baskin and Baskin 1985, pp. 378–379; Solbrig 1971, p. 155). At maturity, most of these seeds are dormant and will not germinate following dispersal, even if the soils are moist (Baskin and Baskin 1985, p. 379). During the summer these seeds undergo physical changes known as after-ripening and move from dormancy to conditional dormancy and, finally, become nondormant for fall germination (Baskin and Baskin 1985, p. 379).

The cyclical moisture availability on the thin soils of glades and other habitats acts to limit the number of plant species that can tolerate these extremes. Consequently, very few other plants occur on undisturbed glades (Evans and Hannan 1990, pp. 9–10). Common associates of *L. exigua* var. *laciniata* include *Northoscordum bivalve* (false garlic), *Scutellaria parvula* (little skullcap), *Sporobolus vaginiflorus* (poverty dropseed), *Viola septemloba* var. *egglestonii* (cedar glade violet), and *Houstonia canadensis* (Canadian bluets) (Baskin and Baskin 1981, p. 245; Evans and Hannan 1990, p. 10). In areas where the glades have been disturbed, native and introduced weedy species (annual and perennial) have invaded glades from nearby roads, fields, and waste areas (Baskin and Baskin 1985, p. 375).

Areas surrounding glade openings tend to have deeper soils that support plants with prairie/barren affinities like *Schizochyrium scoparium* (little bluestem), *Lithospermum canescens* (hoary pocoon), *Viola pedata* (birdfoot violet), *Echinacea pallida* (pale purple coneflower), and *Liatris aspera* (tall gayfeather) (White 2004, p. 1).

Historical Range/Distribution

L. exigua var. *laciniata* is a Kentucky endemic and is known from only northeastern Bullitt County and extreme southeastern Jefferson County (Evans and Hannah 1990, p. 6; Jones 2005, p. 294; White 2004, p. 1). Populations of *L. exigua* var. *laciniata* are disjunct (separated) from populations of the other two varieties of *L. exigua* that occur in Alabama, Georgia, and Tennessee (Rollins 1963, p. 5, NatureServe Explorer 2012, p. 1).

Information regarding the historical (prior to 1990) range and distribution of *L. exigua* var. *laciniata* is largely lacking. The original description by Rollins (1963, p. 75) notes a single specimen collected in a cedar glade in Bullitt County and references an earlier specimen collected in 1954 by H. A. Korfhage from an open field in Bullitt County. No other historical information regarding this taxon is available. The species is known from 84 occurrences including historical and current locations.

Long-term, quantitative monitoring data are unavailable for this taxon, but the Kentucky State Nature Preserves Commission (KSNPC) has recorded qualitative estimates of occurrence size and quality at 3- to 5-year intervals. These evaluations are used to rank each occurrence with respect to size and viability, condition of the habitat, and degree of threat. As an annual species, plant numbers of *L. exigua* var. *laciniata* can naturally fluctuate greatly from year to year based on a variety of factors such as seed production in past years, germination rates, and environmental conditions (temperature, rainfall) (Bush and Lancaster 2005, p. 1). As such, habitat conditions often had a greater influence on the evaluation of habitat viability than population numbers (Deb White, pers. comm., 2012). Element occurrences have been ranked into the following categories: A (excellent estimated viability), B (good estimated viability), C (fair estimated viability), D (poor estimated viability), O or F (field surveys failed to relocate the plants at the site), or X (occurrence is considered extirpated). An element occurrence (EO) is the basic conservation unit used by KSNPC in assessing species for the Natural Heritage Program. Nature Serve defines an EO as ''an area of land and/or water where a species or ecological community is or was present'' (NatureServe 2004, p. 1). The terms element occurrence and occurrence are used interchangeably throughout this document.

Evans and Hannan (1990, pp. 9, 19–20) conducted the first rangewide survey for the taxon and documented a total of 71 historical and extant occurrences in Bullitt and Jefferson Counties. At that time, approximately 70 percent (42/60) of the extant occurrences were ranked as A, B, or C in quality (Evans and Hannan 1990, pp. 24–94). White (1994, pp. 2–7) reevaluated the status of the taxon in April 1994 by visiting the occurrences documented by Evans and Hannan (1990, pp. 19–20) and providing updated ranks and descriptions of habitat conditions. White (1994, p. 4) recorded a decline in rank quality at 41 percent of the occurrences, with some of the occurrences decreasing by two levels of rank quality. Sixty-eight percent of these sites were degraded directly by human-related activities (*e.g.,* house construction, lawn development, changes in grazing practices). Over 60 percent of the occurrences had quality ranks of ''D'' or were considered extirpated (White 1994, p. 4).

The last rangewide survey was completed by KSNPC at 50 known occurrences, in April and early May of 2004 (White 2004, pp. 1–3). The number of plants and their condition (including flowering and fruiting) and general site conditions were recorded at the known occurrences. The results of these surveys were compared to results of previous surveys conducted in 1990 (Evans and Hannan 1990, pp. 19–20) and 1994 (White 1994, pp. 2–7) for the subset of occurrences (49) that were visited in all 3 years.

Of the 49 occurrences surveyed in all 3 years, 37 (76 percent) had decreased in quality between 1990 and 2004. This decrease in quality was commonly due to a reduction in the number of plants and an accompanying decline in habitat quality as the character of the area changed from rural to residential. Of those 37 occurrences that declined, more than 30 percent (16 of 37) were extirpated or unable to be relocated. Table 1 below illustrates the decline in these 49 occurrences and their viability over this 14-year period. In 1990, 69

percent of these occurrences were considered to have a viability of fair or better. In 1994, this amount had dropped to 49 percent; and in 2004 it was down to only 14 percent. These evaluated 49 occurrences represent approximately 60 percent (49 of 81) of the total population known in 2004. Since that time three additional occurrences have been identified, bringing the total known occurrences (historical and extant) to 84.

TABLE 1—COMPARISON OF STATUS RANKS FOR 49 OCCURRENCES OF *Leavenworthia exigua* var. *lacianata*

Rank	Viability	1990	1994	2004
A	Excellent.	4	3	0
B	Good	8	3	3
C	Fair	22	18	4
D	Poor	13	22	26
F	Not Located	0	0	7
X	Extirpated.	2	3	9
Total		49	49	49

Current Range/Distribution

Based on our data, the species is currently limited to 61 extant occurrences. A total of 23 historical occurrences are considered extirpated or were not located by KSNPC during the most recent surveys (KSNPC 2012, pp. 1–108). Of the 61 extant occurrences, 43 are of poor quality (D-rank; 70 percent). Approximately half of these poor-quality occurrences are located on residential lawns, with few, if any, native plants. These lawn occurrences are not believed to be sustainable, due to competition from lawn grasses and lawn maintenance and improvement activities. Threats associated with lawns are further discussed under Factor A. A summary of current occurrence ranks for all known sites is listed in Table 2 below.

Over the last 20 years, KSNPC has systematically used aerial photography to identify potential *L. exigua* var. *laciniata* glade habitat in areas of Laurel and other suitable types of limestone bedrock with the intent of identifying new populations within the known range and exploring potential areas to expand the known habitat. Very little potential habitat fitting these parameters has not been surveyed. Also, this part of the State is heavily explored because it is so populated and accessible; therefore, discovering any additional limestone glades, the only habitat known for this species, in another part of the region is very unlikely (D. White, pers. comm., 2012).

TABLE 2—2012 STATUS RANKS FOR *L. exigua* var. *laciniata*

Rank	Viability	Number Occurrences
A	Excellent	1
B	Good	4
C	Fair	13
D	Poor	43
F	Not Located	7
X	Extirpated	16
Total		84

Land Ownership

The majority of land on which *L. exigua* var. *laciniata* occurs is privately owned, although some significant occurrences are located on public land. The taxon does occur within two protected areas in eastern Bullitt County: Pine Creek Barrens Preserve, a 110 acre (44.5 ha) property owned and managed by the Kentucky Chapter of The Nature Conservancy (TNC), and Apple Valley Glades Conservation Area, with 46 acres (18.6 ha) owned by KSNPC and another 45 acres (18.2 ha) protected under a permanent conservation easement held by KSNPC.

Additionally, significant private landownerships within the range of *L. exigua* var. *laciniata* should be noted. Rocky Run Glade Registered Natural Area is a 25-acre (10.1 ha) privately owned tract of land in eastern Bullitt County. Also, the Future Fund Land Trust and its associated endowment were established to create an extensive ''[Fredrick Law] Olmsted-like'' greenway and park system along Floyds Fork in Jefferson County. The Future Fund Land Trust and its associated endowment own nearly 500 acres (202.3 ha) within the known range of *L. exigua* var. *laciniata,* including parcels with all or portions of three known occurrences.

Another private, nonprofit group, 21st Century Parks, is also working along the Floyds Fork corridor and owns several parcels with the taxon's range totaling almost 600 acres (242.8 ha) and containing part or all of two occurrences.

Finally, a publicly owned occurrence is located within McNeely Lake Park, a site in southern Jefferson County owned by Louisville Metro Parks.

TABLE 3—SIGNIFICANT LANDOWNERSHIP INFORMATION FOR OCCURRENCES OF *L. exigua* var. *laciniata*

[From Kentucky State Nature Preserves Commission 2012]

Site	Landowner	Current viability rank	Most recent population assessment (year)
Pine Creek Barrens	The Nature Conservancy	A	6,023 plants (2011).
Apple Valley Glade	KSNPC; Private w/conservation easement	B	3,192 plants (2011).
McNeely Lake Park	Louisville Metro Parks	D	no estimate (2007).
Rocky Run	Private	B	no estimate (2008).
Floyds Fork area (two occurrences)	Future Fund Land	B D	over 20,000 plants (2011). thousands of plants (2011).
Floyds Fork area	21st Century Parks	C	325 plants (2011).

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. Listing may be warranted based on any of the above threat factors, singly or in combination. Each of these factors is discussed below.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Habitat destruction and modification have been the primary cause of population declines and extirpations of the *L. exigua* var. *laciniata* (KSPNC 2012, pp. 1–108) occurrences. Filling and/or grading of glade habitat for residential and commercial construction has resulted in or contributed to the loss of at least seven known populations (KSPNC 2012, pp. 1–108). Conversion of glade areas to landscaped settings such as golf courses and residential lawns by filling, grading, and seeding of lawn grasses has impacted an additional five occurrences. Nearly a third of the extant occurrences are of low quality and occur in managed (e.g., residential, commercial, and agricultural) landscapes. Many of the extant occurrences are threatened by encroaching lawn grasses and nonnative plants that compete with *L. exigua* var. *laciniata* for space and nutrients (D. White, pers. comm., 2012). Winter annuals, such as *Leavenworthia* spp., are documented to be poor competitors (Rollins 1963, p. 17, Kral 1983, p. 2; Baskin and Baskin 1988, p. 835). Shading from shrubs and trees makes habitats unsuitable for *L. exigua* var. *laciniata,* which is shade-intolerant (Baskin and Baskin 1988, p. 837). Recreational activities such as horseback riding and off-road vehicle (ORV) use can change water flow patterns and damage fragile glade habitats. Construction and maintenance of linear infrastructure such as roads and utility lines can also destroy or degrade glade cress habitat. These factors will be discussed in more detail below.

Development

Development was recognized by Kral (1983, p. 10) as a primary threat to *Leavenworthia* spp., and this is true for *L. exigua* var. *laciniata.* The entire range of *L. exigua* var. *laciniata* has recently undergone rapid residential and commercial development as the greater Louisville metropolitan area expanded southward into southern Jefferson and northeastern Bullitt Counties. Census data available from 1960 to 2010 show that the population growth in Bullitt County greatly exceeds that of the state and of neighboring Jefferson County (SSDAN 2012, pp. 1–3) (see Table 4 below).

TABLE 4—POPULATION TRENDS OF KENTUCKY, BULLITT COUNTY, KY, AND JEFFERSON COUNTY, KY

	Percent population growth				
	1960–1970 (percent)	1970–1980 (percent)	1980–1990 (percent)	1990–2000 (percent)	2000–2010 (percent)
Kentucky	5.94	13.73	0.67	9.67	7.36
Bullitt County	65.90	66.14	9.74	28.74	21.36
Jefferson County	13.77	−1.45	−2.93	4.31	6.85

Residential

New residential developments have been and are expected to continue to be constructed throughout the taxon's range, along with associated roads and utilities construction. As shown in Table 4, from 2000 to 2010, Bullitt County's population increased by 21.4 percent, a significant increase compared to Kentucky's overall average growth rate of 7.4 percent (SSDAN 2012, pp. 1–3). The population growth of Jefferson County seems to have stabilized over the last 20 years SSDAN 2012, pp. 1–3), but much of the land in southern Jefferson County that contained suitable glade cress habitat has already been converted to residential, agricultural, and commercial land uses, as seen by viewing the 2006 National Land Cover Dataset (Fry *et al.* 2011).

The burst of the housing bubble in 2007 seems to have slowed the residential expansion within Bullitt County. Residential building permits (single and multifamily) averaged only 253 between 2008 and 2011, while that average during the peak of the housing bubble (2004–2006) was 698 building permits per year (U.S. Census Bureau 2012, pp. 1–12). However, although residential development has slowed, we expect it will continue as the population continues to grow.

Commercial

The recent residential development in Bullitt County, specifically the Shepherdsville area south of Louisville, has been spurred by similar growth in the manufacturing and support service industries, which support 45 percent of the industrial employment in Bullitt County (KY Cabinet for Economic Development 2012, p. 1). The close proximity to the Louisville International Airport and United Postal Service (UPS) all-point international hub has made Bullitt County a prime location for manufacturing and support service firms. Since 2000, the number of these firms within Shepherdsville grew from 5 to 18 and includes large distribution centers for companies such as Alliance Entertainment, Gordon Food Services, Zappos, and others (KY Cabinet for Economic Development 2012, pp. 1–2). Four of these 13 new firms established in Bullitt County in 2008 or later, after the burst of the housing bubble.

Residential and commercial development activities can impact *L. exigua* var. *laciniata* during construction by destroying or modifying suitable habitat. At least 5 of the 16 extirpated *L. exigua* var. *laciniata* occurrences were eliminated during construction of homes or facilities. Even if the structure is not constructed on top of *L. exigua* var. *laciniata* or its habitat, grading and filling to level the site and soil compaction from the construction equipment can destroy or modify its habitat. Activities ancillary to residential and commercial construction such as roads, utilities, and lawn creation can also result in the destruction and modification of habitat for *L. exigua* var. *laciniata.* These other activities will be discussed in more detail below.

Roads

Many of the 61 extant *L. exigua* var. *laciniata* occurrences are found in close proximity to roads (KSPNC 2012, pp. 1–108). In the northern part of the range, most of the roads are small, local, and lead to residential areas. However, in the southwestern part of the range, near the community of Cedar Grove, many occurrences are located near larger state roads such as KY 1442 and KY 480.

A review of the Six-Year Highway Plan for Kentucky (KYTC 2006, pp. 19, 20, 69–92) and the associated web-based mapping tool (available at *http://maps.kytc.ky.gov/SYP/*) found 12 active projects within the range of *L. exigua* var. *laciniata,* ranging from new construction to bridge replacements. Four of these projects are for work on existing road sections where there are extant (1) or historic (3) *L. exigua* var. *laciniata* records near the road. There is

one new section of road planned through McNeely Lake Park where the alignment has not been finalized but the study area contains an extant population.

The majority of known roadside *L. exigua* var. *laciniata* occurrences are of poor quality with few individual plants and competition from nonnative species such as fescue (KSPNC 2012, pp. 1–108). While the obvious threat to *L. exigua* var. *laciniata* from road construction is destruction of habitat, impacts associated with habitat degradation when a road is constructed or maintained adjacent *to L. exigua* var. *laciniata* are less clear. Road rights-of-way are often planted with dense-growing, nonnative species such as fescue (KYTC 2012, p. 212–2)), that can outcompete *L. exigua* var. *laciniata.* Additionally, the soil erosion and changes in water runoff patterns associated with construction can alter soil and moisture conditions, making habitat unsuitable. Mowing in early spring as *L. exigua* var. *laciniata* is fruiting or before seed has reached maturity could crush plants before the seeds mature or cause seeds to fall prematurely, negatively impacting reproduction and next year's population. As a winter annual, *L. exigua* var. *laciniata* may also be susceptible to impacts associated with winter road maintenance activities such as snow plowing and application of salt or brine.

Utility Lines

Consultation with the Service on proposed utility work offers the opportunity to avoid or minimize utility impacts on the *L. exigua* var. *laciniata.* Construction and maintenance of utility lines (e.g., water, gas, electric, and sewer) can destroy or modify *L. exigua* var. *laciniata* habitat. Construction of new utility lines or maintenance of underground lines will most likely destroy habitat through excavation and backfilling of the glade area. Similarly, construction of substations or well pads can destroy habitat through the facility construction process. Additionally, herbaceous replanting of the ground disturbed during construction is commonly done with nonnative species such as fescue (J. Garland, pers. obs., 2012), which may compete with *L. exigua* var. *laciniata* for resources. Threats associated with fescue will be discussed under the subsection of ''Lawns'' below.

Vegetation management activities such as mowing and herbicide application for management of the utility right-of-way can also modify and degrade habitat for *L. exigua* var. *laciniata.* However, most of these vegetation management activities occur in the late spring and summer when *L. exigua* var. *laciniata* is dormant. Right-of-way management could benefit *L. exigua* var. *laciniata* by maintaining open habitat and reducing competition from plants that would be impacted by summer mowing and herbicide applications. Four known occurrences of *L. exigua* var. *laciniata* occur within utility rights-of-way, including one C-ranked, two D-ranked, and one F-ranked occurrences as identified above in Tables 1 and 2.

In 2010, the Service became aware of a sewer line project in southeastern Jefferson County (Louisville Metropolitan Sewer District (MSD) Broad Run interceptor). The proposed project corridor was adjacent to at least one known occurrence of *L. exigua* var. *laciniata,* and the project corridor appeared to contain other suitable habitat for the species. A field review of the project corridor by the Service, KSNPC, Palmer Engineering, and Louisville MSD was completed in April 2010 to determine if the species occupied the corridor or if suitable habitat was present. During the field review, the Service and KSNPC confirmed the presence of the species within the proposed sewer line corridor. Habitats for *L. exigua* var. *laciniata* were delineated in the field and mapped by Palmer Engineering. Louisville MSD agreed to relocate a portion of the sewer line to avoid adverse effects to these areas. In March 2011, the U.S. Army Corps of Engineers (USACE), Louisville District contacted the Service's Kentucky Field Office regarding potential adverse effects on the species within the project corridor. Silt fencing designed to protect *L. exigua* var. *laciniata* habitats had failed in at least two areas during construction, allowing sediment to leave the construction site and impact the species habitats. The USACE directed Louisville MSD to correct the failed silt fence within 48 hours, and corrective measures were taken. The site was visited by the Service in early April 2011; the silt fence had been repaired, and it appeared that *L. exigua* var. *laciniata* had not been harmed by the silt fence failure. No followup surveys have been completed to assess the long-term impacts to this population. Although direct effects were avoided in this example, it demonstrates how indirect impacts could occur due to proximity of the action to the *L. exigua* var. *laciniata* plants.

Lawns

Conversion of natural habitat to lawns is likely the single greatest threat to *L. exigua* var. *laciniata* and its habitat. For every structure (residential, commercial, or other) that is built, an area much larger than the structure's footprint is modified to provide a lawn area for that property. These areas are maintained with activities such as mowing or herbicide application that alters the habitat and could damage *L. exigua* var. *laciniata* plants. Most areas converted to lawns, that have extant or historic *L. exigua* var. *laciniata* records, have been seeded to tall fescue, a common yard grass in Kentucky. Areas of bare ground where *L. exigua* var. *laciniata* occurs are known to be filled with topsoil or other materials to allow for a uniform landscape (D. White, pers. comm., 2012). Lawn maintenance activities such as mowing and herbicide application encourage dense mats or fescue roots and eliminate competing species (USDA NRCS 2001, p. 1).

Tall fescue is considered the most widely adapted turf grass used in Kentucky. It competes well with weeds and develops a dense sod (Powell, Jr. 2000, p. 2). While these features make tall fescue desirable to landowners, it can become weedy or invasive, displacing native vegetation such as *L. exigua* var. *laciniata* (USDA NRCS 2001, p. 3). In places where they occur together, tall fescue competes with *L. exigua* var. *laciniata* for water and nutrients and reduces the amount of stable, suitable habitat available for plant growth and seed dispersal (Kral 1963, p. 2; Baskin and Baskin 1988, p. 836; D. White, pers. comm., 2012).

Another threat to *L. exigua var. laciniata* is *Poa annua* (annual bluegrass), a weedy species common in lawns. Rollins (1963; p.17) found that invading weeds (primarily *Poa annua*) killed 30 well-established *L. crassa* var. *crass* and *L. alabamica* var. *alabamica* plants in less than 2 months in the portion of the test plot that was left alone, without any weeding. More than 300 *Leavenworthia* individuals were documented to grow normally over the rest of the plot where weeding occurred.

Twenty-two of the 61 extant *L. exigua* var. *laciniata* occurrences are in lawns or other landscaped habitats. All of these 22 lawn occurrences are assessed as a D-rank based on habitat quality and/or population numbers. The lack of native plant associates and the presence of nonnative lawn species, against which *L. exigua* var. *laciniata* is a poor competitor (Rollins 1963, p. 17; Baskin and Baskin 1985, p. 387), contribute heavily to the poor viability assessed

these populations. Additionally, 17 of the 22 lawn occurrences have a low number of individuals assessed (100 or few plants) with 15 of these occurrences having fewer than 50 plants during their most recent assessments (KSNPC 2012, pp. 1–108). Of the 16 extirpated occurrences, the loss of four of these occurrences is attributed to habitat conversion to lawns or other landscaped habitats (KSNPC 2012, pp. 1–108).

Agriculture/Grazing

Analysis of the known range of *L. exigua* var. *laciniata* found that approximately 22 percent of the total land area is in hay or pasture (USFWS 2012, p. 1). In addition to being a popular lawn species, tall fescue is also a popular hay/pasture grass in Kentucky (NRCS USDA 2001, p. 1). Impacts to *L. exigua* var. *laciniata* associated with the conversion of natural glade or gladelike habitat to fescue or other forage species is very similar to those discussed in the section on lawns. Grazing or haying of the pasture may help maintain the glade habitat, if it persists, by stunting the growth or invasion of woody species and maintaining the open herbaceous nature of the habitat.

However, grazing or haying may have negative impacts on *L. exigua* var. *laciniata* occurrences, if it occurs prior to seed set. Disturbance to the plants could cause mortality, and compaction of the soil from overgrazing could cause erosion or change soil moisture (USFWS 2009, p. 2). High-intensity grazing can also have negative impacts on both plants and the glade habitat by increasing soil compaction and erosion rates or excessive trampling (USFWS 2009, p. 2). Removing cattle from a habitat where grazing activities have helped to maintain the open habitat may result in an increase in forage grasses that may outcompete *L. exigua* var. *laciniata* and alter suitable habitat. We are not aware of any studies that have looked at the timing and intensity of agricultural activities and their effects on *L. exigua* var. *laciniata.* However, changes in grazing activities (both more and less) are considered threats to at least two known occurrences (KSNPC 2012, pp. 1–108).

Forest Encroachment

The dolomitic limestone glade habitat, with which *L. exigua* var. *laciniata* is associated, has a natural community of herbaceous, or nonwoody, plants. These open areas are maintained by their shallow soils (Baskin and Baskin 1978, p. 184; Barnes and Evan 2007, p. 12). Glades are often associated with barrens, which are believed to have been created and maintained by fire (Baskins, *et al.* 1994, p. 238). Suppression of fire around the glade results in the accumulation of organic matter in and around the glade. The buildup results in increased soils depth and allows for the growth of trees and other plants that require deeper soils than typically found in and around the glades. Forest encroachment, whether due to lack of fire or other sources, threatens *L. exigua* var. *laciniata* by increasing shade, to which *L. exigua* var. *laciniata* is intolerant, and potentially changing the soil structure by adding organic materials.

KSNPC has recommended cedar removal and/or prescribed fire as a management activity to promote *L. exigua* var. *laciniata* at more than 10 extant occurrences. Evans and Hannan (1990, p. 15) also recommended tree removal and prescribed fire as an important habitat management technique for *L. exigua* var. *laciniata.* Based on our knowledge of known L. *exigua* var. *laciniata* occurrences, only four sites (Pine Creek Barrens, Rocky Run, Apple Valley, and McNeely Lake) have been or are being managed to control forest encroachment around glades containing *L. exigua* var. *laciniata.*

Off-Road Vehicle Use and Horseback Riding

Although there are no established trails or designated areas specifically for riding horses or off-road vehicles within the range of the species, evidence of these activities is apparent at several extant and historic *L. exigua* var. *laciniata* sites (KSNPC 2012, pp. 1–108). A site visit to Pine Creek Barrens in April 2012 found evidence of unauthorized horse access. Glade habitat where *L. exigua* var. *laciniata* is known to occur at this site had fewer plants than in previous years (Garland, pers. obs., 2012). At least four *L. exigua* var. *laciniata* sites appear to have been impacted by ORV usage (KSNPC 2012, pp. 1–108).

The habitat requirements of *L. exigua* var. *laciniata* are very specific with shallow soils and high moisture content in the winter and earlier spring, drying out by early summer. Frequent use by ORVs can result in soil compaction, increased weed invasion (both native and nonnative), wind and water erosion, altered water flow patterns, and decreased soil moisture (Stokowski & LaPointe 2000, pp. 14–15). Changes to the habitat from ORV use can result in a loss of suitability. Soil and wind erosion can remove soils needed for plant growth and seed dispersal. If the glade habitat is the recipient of the eroded material, the increase in soil depth can alter the habitat such that it is more suitable for species previously excluded from the habitat that will compete with *L. exigua* var. *laciniata* for water and nutrients, or sunlight.

Climate Change

Our analyses under the Endangered Species Act include consideration of ongoing and projected changes in climate. The terms ''climate'' and ''climate change'' are defined by the Intergovernmental Panel on Climate Change (IPCC). ''Climate'' refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2007, p. 78). The term ''climate change'' thus refers to a change in the mean or variability of one or more measures of climate (e.g., temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007, p. 78). Various types of changes in climate can have direct or indirect effects on species. These effects may be positive, neutral, or negative, and they may change over time, depending on the species and other relevant considerations, such as the effects of interactions of climate with other variables (e.g., habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19). In our analyses, we use our expert judgment to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

As is the case with all stressors that we assess, even if we conclude that a species is currently affected or is likely to be affected in a negative way by one or more climate-related impacts, it does not necessarily follow that the species meets the definition of an ''endangered species'' or a ''threatened species'' under the Act. If a species is listed as endangered or threatened, knowledge regarding the vulnerability of the species to, and known or anticipated impacts from, climate-associated changes in environmental conditions can be used to help devise appropriate strategies for its recovery.

We lack firm predictions for future patterns of precipitation and temperature that are specific to Kentucky. While it appears reasonable to assume that climate change will occur within the range of *L. exigua* var. *laciniata,* at this time we do not have information to indicate specifically how climate change may affect the species or its habitat. However, since the species is a habitat specialist, it seems unlikely

that this species will be flexible in terms of shifting to new habitats if the glades become unsuitable. Also, if conditions shift in favor of nonnatives, the species will likely be negatively affected.

Conservation Efforts To Reduce the Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

In 1986, the owner of Rocky Run Glade entered into a written agreement with KSNPC not to alter the registered area and to allow KSNPC agents to enter the area for scientific observation, research or education, in exchange for the Registered Natural Area designation. The agreement will remain in effect until terminated by either the landowner or KSNPC with 30-days' notice. While the agreement recognizes the conservation mindset of the property owner, it offers no long-term protection to the species due to its nonbinding nature. However, the agreement has been in place for more than 20 years, and we have no reason to believe it will be terminated.

Habitat management activities can also reduce threats to the species associated with habitat modification from invasive species and forest encroachment. Some habitat management occurs on the previously mentioned conservation areas (Apple Valley Glade, Pine Creek Barrens and Rocky Run); however, we are unaware of any monitoring efforts that would indicate whether or not these efforts are successful. Additionally, we are not aware of any agreements or assurances that would ensure that these measures would be continued into the future. We have requested additional information on this subject in the ''Information Requested'' portion of this rule.

Jefferson Metro Parks, which manages McNeely Lake Park for the Jefferson County Metro Government, has received flexible funding from the Service to develop a management plan for the *L. exigua* var. *laciniata* occurrence within the park and to implement habitat improvement measures such as invasive species and woody plant removal in the areas surrounding *L. exigua* var. *laciniata.* This work has not yet been initiated.

Summary of Factor A

Comprehensively, the loss and degradation of habitat represents the greatest threat to *L. exigua* var. *laciniata.* Destruction and degradation of glades through development, roads, utilities, and conversion to lawns has resulted in fewer occurrences of *L. exigua* var. *laciniata* and reduced the quality of many of the remaining occurrences. Additional impacts of this nature are expected to continue far into the future as the human population within the range of *L. exigua* var. *laciniata* continues to grow. While the rate of development and associated activities will probably not reach the highs seen during the housing market bubble of the mid-2000s, it is expected to continue at a rate above the state average. As the Louisville metropolitan area continues to expand, undeveloped portions of southern Jefferson and northeastern Bullitt Counties will continue to be attractive to developers and, consequently, residential and commercial development and its ancillary activities will continue. Documented impacts from horseback riding, ORV use, and changes in grazing practices have resulted in the loss or degradation of several *L. exigua* var. *laciniata* occurrences. These activities are expected to continue in the future but to an unknown extent. Forest encroachment is expected to continue in areas without active management. A few voluntary conservation measures are in place on private, state and local government owned properties that reduce threats to specific *L. exigua* var. *laciniata* occurrences, but to date, none have resulted in any measurements of success or assurances that these activities will continue into the future. Climate change has the potential to impact this species, but to what extent we cannot predict.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Due to the small size and limited distribution of the few remaining populations, *L. exigua* var. *laciniata* is potentially vulnerable to overutilization. A study by Baskins and Baskins (1981, pp. 246–247) involved the collection of seeds, plants and three soil blocks containing *L. exigua* var. *laciniata* seeds from two sites in Bullitt County in 1976. However, this study did not assess the impacts of these collections on the populations of *L. exigua* var. *laciniata* at the collection sites. We are unaware of any scientific studies in recent years that involved any collection of *L. exigua* var. *laciniata.*

The KSNPC has recently been collecting seed from *L. exigua* var. *laciniata* sites in order to preserve genetic materials from sites that are considered to have poor viability and also for sites where habitat is sufficient to expand or supplement the existing populations. In 2012, seed was collected and planted at a nature preserve to expand the population into adjacent suitable habitat and supplement the seed source available for establishment. Seed was collected at two other sites; both areas where the suitable habitat is marginal. One of these sites is a roadside and another is in an area increasingly dominated by fescue. About 50 seeds were collected from each site at the end of the period for seed dispersal for this species. This constitutes a very small portion of the seed produced at these sites. This seed is being stored at the KSNPC until a suitable recovery site is identified or arrangement with a long-term storage facility is made.

These few current and historic collections are not believed to have a significant impact on *L. exigua* var. *laciniata.* The Service will coordinate with any agency or university studying *L. exigua* var. *laciniata* to ensure that future collections will not significantly contribute to the decline of the species. We have no information to suggest that *L. exigua* var. *laciniata* is collected for commercial, recreational, or educational purposes, and we have no reason to believe that this factor will become a threat to the species in the future.

Factor C. Disease or Predation

We have identified no available information regarding disease in *L. exigua* var. *laciniata.* Furthermore, we have identified no information regarding animal (wild or domestic) predation on *L. exigua* var. *laciniata.* Field observations by the KSNPC during extensive surveys of this species indicate that neither disease nor predation is a factor contributing to the decline of the species at this time (Evans and Hannan 1990, p. 12; White, pers. comm., 2012).

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Section 4(b)(1)(A) of the Act requires the Service to take into account ''those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species. . . .'' In relation to Factor D, we interpret this language to require the Service to consider relevant Federal, State, and tribal laws, regulations, and other such mechanisms that may minimize any of the threats we describe in threat analyses under the other four factors, or otherwise enhance conservation of the species. We give the strongest weight to statutes and their implementing regulations and to management direction that stems from those laws and regulations, such as State governmental actions enforced under a State statute or constitution or Federal action under statute.

Having evaluated the significance of the threats as mitigated by any such conservation efforts, we review existing State and Federal regulatory mechanisms to determine whether or not they effectively reduce or remove threats to *L. exigua* var. *laciniata.*

The Kentucky Rare Plants Recognition Act, Kentucky Revised Statutes (KRS) Chapter 146 Section 600–619, directs the KSNPC to identify plants native to Kentucky that are in danger of extirpation within Kentucky and report every 4 years to the Governor and General Assembly on the conditions and needs of these threatened or endangered plants. This list of endangered or threatened plants in Kentucky is found in the Kentucky Administrative Regulations Title 400 Chapter 3:040. The statute (KRS 146:600–619) recognizes the need to develop and maintain information regarding distribution, population, habitat needs, limiting factors, other biological data, and requirements for the survival of plants native to Kentucky. This statute does not include any regulatory prohibitions of activities or direct protections for any species included in the list. It is expressly stated in KRS 146.615 that this list of threatened or endangered plants shall not obstruct or hinder any development or use of public or private land. Furthermore, the intent of this statute is not to ameliorate the threats identified for the species but it does provide information on the species.

We are not aware of any other State or Federal statutes or regulations that would provide protections to *L. exigua* var. *laciniata.*

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Narrow Range

L. exigua var. *laciniata* is a narrow endemic known to occur only in northeastern Bullitt County and extreme southeastern Jefferson County (Evans and Hannah 1990, p. 6; Jones 2005, p. 294; White 2004, p. 1). A mapping of known occurrences shows this taxon to be restricted to an area less than 100 square miles. Within this area, *L. exigua* var. *laciniata* is restricted to the small patches of suitable habitat associated with shallow soils that are interspersed with flat-bedded Silurian dolomite and dolomitic limestones. This narrow range places *L. exigua* var. *laciniata* at a higher risk for extinction from habitat loss or degradation associated with localized events (manmade or natural), change in land use, or industry than a species that occurs across a broader landscape.

Small Population Size

Annual plants often have widely fluctuating populations and may or may not have abundant seed banks (Bush and Lancaster 2004, p. 1). However, a given year's plant population strongly influences the seed bank for that site. A review of recent population estimates for the extant populations found that 33 of 61 sites had 100 or fewer individuals at the time of their last survey. Additionally, the majority of these populations have shown a decline throughout the period in which KSNPC has been conducting status surveys (roughly 1990 to 2012) (KSNPC 2012, pp. 1–108).

Small populations can be prone to extirpation, especially if a series of drought years greatly reduces seed production and depletes the soil seed bank. Small populations can also be prone to extirpation from single adverse natural or manmade events. Low numbers of plants, confined to very small areas, can be totally eradicated by actions such as installation of utility lines, road construction, or development. The majority of the extant occurrences of *L. exigua* var. *laciniata* are small, covering only a few square meters (KSNPC 2012, pp. 1–108).

Small population size also increases the risk of total loss of populations due to contact with herbicides or shading and leaf litter accumulation from forest encroachment, because these threats are likely to affect the entirety of any given occurrence. Sustained drought may reduce the reproductive effort of a population. Reduced reproductive effort affects the seed bank, which represents the reproductive capacity of each glade cress population. Although no studies have examined the long-term viability of *L. exigua* var. *laciniata* seed, Baskin and Baskin (1981, p. 247) found that more than 90 percent of the total germination took place in the first growing season.

In addition to increasing vulnerability to direct threats, small population size can result in a decrease in genetic diversity due to genetic drift (the random change in genetic variation in each generation), and inbreeding (mating of related individuals) (Antonovics 1976, p. 238; Ellstram and Elam 1993, pp. 218–219).

Low Genetic Diversity

L. exigua var. *laciniata* has the ability to self or cross pollinate (Rollins 1963, p. 17). The degree to which either form of pollination is used over the other is not known. However, we believe that *L. exigua* var. *laciniata* primarily self-pollinates due to the biological changes associated with self-compatibility in *Leavenworthia* species. Such changes include, but are not limited to, reduction in flower size, a shift from odiferous to nonodiferous flowers and flowering during a period when insect activity is minimal (Rollins 1963, pp. 41–43).

Research by Liu *et al.* (1998, p. 298) on other *Leavenworthia* species (*L. uniflora, L. crassa and L. stylosa*) found that self-compatible species (species that self or cross pollinate) had lower genetic diversity than the species that were not self-compatible. An earlier laboratory study on *L. uniflora* and *L. crassa* by Charlesworth *et al.* (1994, p. 211) found that the offspring from self-pollination had lower survival and fertility than those offspring produced by cross-pollination.

Summary of Factor E

L. exigua var. *laciniata* is subject to several ongoing natural and manmade factors, which could affect its continued existence. The species has a narrow range, occurring in only small portions of two counties. Within this range, *L. exigua* var. *laciniata* is restricted to cedar glades and similar shallow-soiled areas that occur sporadically across the range. More than half of the remaining occurrences had low (fewer than 100 individuals) population counts at the time of the most recent survey. Additionally, the presumed low genetic diversity within individual occurrences of *L. exigua* var. *laciniata* could place those occurrences at a high risk of extirpation as their capacity for adaptation to change is reduced.

Determination

The most significant threats to the species are described under Factors A (the present or threatened destruction, modification, or curtailment of its habitat or range) and E (other natural or manmade factors affecting its continued existence). Based on the Factor A analysis, we conclude that the loss and degradation of habitat represents the greatest threat to *L. exigua* var. *laciniata.* Destruction and degradation of glades through development, roads, utilities, and conversion to lawns has resulted in fewer occurrences of *L. exigua* var. *laciniata* and reduced the quality of many of the remaining occurrences. Additional impacts of this nature are expected to continue for the foreseeable future as the human population within the range of *L. exigua* var. *laciniata* continues to grow. While the rate of development and associated activities will probably not reach the highs seen during the housing market bubble of the

mid-2000s, it is expected to continue at a rate above the State average. As the Louisville metropolitan area continues to expand, undeveloped portions of southern Jefferson and northeastern Bullitt counties will continue to be attractive to developers and, consequently, residential and commercial development and its ancillary activities will continue. Expansion of lawn grasses will continue to threaten *L. exigua* var. *laciniata* regardless of development rates as they encroach on glades and gladelike areas lacking in habitat management activities that would exclude them. As a poor competitor, inhabiting areas of shallow soil and droughty conditions during the growing season, this species is particularly vulnerable to habitat degradation from nonnative and woody species.

Documented impacts from horseback riding and ORV use have resulted in the loss or degradation of several *L. exigua* var. *laciniata* occurrences. These activities in close proximity to *L. exigua* var. *laciniata* populations are expected to continue in the future and can result in a significant threat to the species. Based on our review of the best available information, we conclude that agricultural activities such as habitat conversion to pasture and changes in grazing intensity constitute a significant threat to *L. exigua* var. *laciniata.* Additionally, the lack of prescribed fire on the open ground surrounding most of the glades containing *L. exigua* var. *laciniata,* and the documented threat associated with forest encroachment, leads us to conclude that forest encroachment is a significant threat to *L. exigua* var. *laciniata.*

The Factor E analysis demonstrated that *L. exigua* var. *laciniata* is subject to several ongoing natural and manmade threats. The species has a narrow range, occurring in only small portions of two counties. Within this range, *L. exigua* var. *laciniata* is restricted to cedar glades and similar shallow-soiled areas which occur sporadically across the range. More than half of the remaining occurrences had low (fewer than 100 individuals) population counts at the time of the most recent survey. Additionally, the presumed low genetic diversity within individual occurrences of *L. exigua* var. *laciniata* could place those occurrences at a high risk as their capacity for adaptation to change is reduced. These threats occur across the taxon's range and are ongoing and, therefore, imminent. The reduced ability to adapt to changing conditions combined with the habitat modification and destruction described in Factor A leads us to conclude that the severity of these threats is high.

Therefore, based on our review of the best available scientific and commercial information, we conclude that the narrow range, low genetic diversity, and small population size, as described in the Factor E analysis, both alone and in conjunction with the threats described under Factor A, constitutes a significant threat to *L. exigua* var. *laciniata.* We were unable to identify any factors, including (but not limited to) management actions, regulatory mechanisms, or protective agreements, that appear to mitigate or reduce these threats.

We propose to list the species as threatened, rather than endangered, due to the relatively high current number of extant populations (61). Although threats to the taxon are ongoing, often severe, and occurring across the range, the possibility that all occurrences would be equally impacted in the foreseeable future so as to cause extinction is unlikely. Therefore, on the basis of the best available scientific and commercial information, we propose listing *L. exigua* var. *laciniata* as threatened in accordance with sections 3(6) and 4(a)(1) of the Act.

Significant Portion of the Range

The Act defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as any species ''that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.'' A major part of the analysis of ''significant portion of the range'' requires considering whether the threats to the species are geographically concentrated in any way. If the threats are essentially uniform throughout the species' range, then no portion is likely to warrant further consideration.

We have carefully considered all scientific and commercial information available regarding the past, present, and future threats to *L. exigua* var. *laciniata. L. exigua* var. *laciniata,* proposed for listing in this rule, occurs only in portions of two Kentucky counties and the threats to the survival of the taxon are not restricted to any particular significant portion of that range. Accordingly, our assessment and determination applies to the taxon throughout its entire range. We find that *L. exigua* var. *laciniata* is likely, within the foreseeable future, to become an endangered species throughout its entire range, based on the immediacy, severity, and scope of the threats described above. We propose listing *L. exigua* var. *laciniata* as threatened in accordance with sections 3(6) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition, through listing, results in public awareness and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed, preparation of a draft and final recovery plan, and revisions to the plan as significant new information becomes available. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. The recovery plan identifies site-specific management actions that will achieve recovery of the species, measurable criteria that determine when a species may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (comprising species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the

final recovery plan will be available on our Web site (*http://www.fws.gov/endangered*), or from our Kentucky Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their ranges may occur primarily or solely on non-Federal lands, as is the situation with *L. exigua* var. *laciniata.* To achieve recovery of these species requires cooperative conservation efforts on private, local government, State, and Tribal lands.

If this species is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the Commonwealth of Kentucky would be eligible for Federal funds to implement management actions that promote the protection and recovery of *L. exigua* var. *laciniata.* Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Although *L. exigua* var. *laciniata* is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

For *L. exigua* var. *laciniata,* Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include, but may not be limited to: Issuance of section 404 Clean Water Act permits by the USACE; construction and management of gas pipeline and power line rights-of-way by the Federal Energy Regulatory Commission; and construction and maintenance of roads or highways by the Federal Highway Administration.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies. Although the KSNPC has designated *L. exigua* var. *laciniata* as endangered within Kentucky, this designation conveys no legal protection. The Act will, therefore, offer the only protections to this taxon.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species, and at 17.32 for threatened species. With regard to endangered wildlife, a permit must be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species and for incidental take in connection with otherwise lawful activities.

Our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), is to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of species proposed for listing. We believe, based on the best available information, that the public can take the following actions without resulting in a violation of section 9, only if these activities are carried out in accordance with existing regulations and permit requirements:

(1) Activities authorized, funded, or carried out by Federal agencies (e.g. utility line construction, maintenance, and improvement; highway construction, maintenance, and improvement) when such activity is conducted in accordance with any reasonable and prudent measures provided by us according to section 7 of the Act.

(2) Normal agricultural and silvicultural practices, including herbicide and pesticide use, which are carried out in accordance with any existing regulations, permit and label requirements, and best management practices.

(3) Normal landscape activities around your own personal residence.

The following activities could potentially result in a violation of section 9 of the Act; however, this list is not comprehensive:

Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the species, including import or export across State lines and international boundaries, except for properly documented antique specimens of these taxa at least 100 years old, as defined by section 10(h)(1) of the Act.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Kentucky Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Requests for copies of the regulations concerning listed plants and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services Division, 1875 Century Boulevard, Atlanta, GA 30345 (Phone 404/679–7313; Fax 404/679–7081).

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270),

we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that listing the species is based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during this public comment period on our specific assumptions and conclusions in this proposed rule.

We will consider all comments and information received during this comment period on this proposed rule during our preparation of a final determination. Accordingly, the final decision may differ from this proposal.

Public Hearings

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in the **ADDRESSES** section. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act (NEPA)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as endangered or threatened under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* or upon request from the Field Supervisor, Kentucky Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this document are the staff members of the Kentucky Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245; unless otherwise noted.

■ 2. In § 17.12(h), add an entry for ''*Leavenworthia exigua* var. *laciniata*'' in alphabetical order 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							
*	*	*	*	*	*		*
Leavenworthia exigua var. *laciniata*.	Kentucky glade cress.	U.S.A. (KY)	Brassicaceae	T		NA	NA
*	*	*	*	*	*		*

* * * * *

Dated: May 6, 2013.

Rowan W Gould,

Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. 2013–12103 Filed 5–23–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120924488–3473–01]

RIN 0648–BC60

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Regulatory Amendment 15

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Regulatory Amendment 15 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), as prepared by the South Atlantic Fishery Management Council (Council). Regulatory Amendment 15 would revise the optimum yield (OY) and the annual catch limit (ACL) for yellowtail snapper. If implemented, this rule would increase the commercial and recreational ACLs and recreational annual catch target (ACT) for yellowtail snapper harvested in or from the South Atlantic exclusive economic zone (EEZ). This rule would also modify the commercial ACL and the accountability measure (AM) for gag that requires a closure of all other South Atlantic shallow-water grouper (SASWG) when the gag commercial ACL is met or projected to be met. This rule also proposes several administrative changes to regulatory text, which are unrelated to the measures contained in Regulatory Amendment 15. The intent of this rule is to provide socio-economic benefits to snapper-grouper fishermen and communities that utilize the snapper-grouper resource, while maintaining fishing mortality at sustainable levels according to the best scientific information available.

DATES: Written comments must be received on or before June 24, 2013.

ADDRESSES: You may submit comments on the amendment identified by ''NOAA–NMFS–2013–0088'' by any of the following methods:

- *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.* Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0088,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Rick DeVictor, 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 Regulatory Amendment 15, which includes an environmental assessment, an initial regulatory flexibility analysis (IRFA), and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sf/pdfs/SGRegAmend15.pdf.*

FOR FURTHER INFORMATION CONTACT: Rick DeVictor, Southeast Regional Office, telephone: 727–824–5305, or email: *rick.devictor@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic, which includes yellowtail snapper and SASWG species (*i.e.,* gag, black grouper, red grouper, scamp, red hind, rock hind, yellowmouth grouper, yellowfin grouper, graysby, and coney), is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

Yellowtail Snapper

The state of Florida completed a stock assessment for yellowtail snapper in May 2012. The yellowtail snapper stock is neither overfished nor currently undergoing overfishing. The assessment results suggest the yellowtail snapper catch levels could be increased without jeopardizing the health of the population. Both the Gulf of Mexico and South Atlantic Fishery Management Councils' Scientific and Statistical Committees (SSCs) reviewed the assessment in October 2012 and determined the assessment to be based upon the best scientific information available and provided a new acceptable biological catch (ABC) recommendation that is greater than the previous recommendation.

While the Council and NMFS were developing Regulatory Amendment 15, the Council requested an emergency rule under the Magnuson-Stevens Act to temporarily increase the yellowtail snapper commercial ACL. On November 7, 2012, NMFS implemented a temporary rule to increase the commercial ACL in the South Atlantic to prevent unnecessary adverse socioeconomic impacts on snapper-grouper fishermen (77 FR 66744). The temporary rule was effective through May 6, 2013, and was extended through November 28, 2013 (78 FR 25213, April 30, 2013), unless superseded by other rulemaking.

Gag and Other South Atlantic Shallow-Water Grouper

The final rule to implement Amendment 16 to the FMP established a suite of management measures to end the overfishing of gag (74 FR 30964, June 29, 2009). These measures included reducing the aggregate bag limit for groupers and tilefishes, reducing the bag limit for gag and black grouper combined, establishing a commercial quota for gag, and establishing a 4-month seasonal closure for SASWG species. The final rule also implemented a management measure that closes the commercial sector for gag and all other SASWG for the remainder of the fishing year when the gag quota (now called an ACL) is met. This measure was implemented to reduce bycatch of gag. However, new information suggests the closure of gag and all other SASWG is not as effective as previously thought at reducing bycatch of gag. Recent studies suggest that, with the exception of red grouper and scamp, gag are not as closely associated in landings with the other SASWG species.

In addition, the closure of gag and all other SASWG species was implemented at a time when the SASWG complex did not have ACLs and AMs to prevent overfishing from occurring. The final rule to implement Amendment 17B to the FMP established ACLs and AMs for gag, and the closure of gag and all other SASWG species when the gag ACL is met became a commercial AM for gag (75 FR 82280, December 30, 2010). The red grouper ACLs and AMs were established through the final rule to implement Amendment 24 to the FMP (77 FR 34254, June 11, 2012), and ACLs and AMs were established for the other SASWG species in the final rule to implement the Comprehensive ACL Amendment (77 FR 15916, March 16, 2012).

Because of the new information that SASWG species, except for red grouper and scamp, do not co-occur with gag, NMFS has determined that the closure of all other SASWG species when the gag ACL is met is no longer necessary to help reduce any overfishing of gag. Also, because of the implementation of ACLs and AMs for the other SASWG species, the closure of gag and all other SASWG species when the gag ACL is met is no longer necessary to protect the other SASWG species because they now have their own catch limits.

Management Measures Contained in This Proposed Rule

This rule would implement management measures affecting yellowtail snapper, gag and other SASWG harvested in or from the South Atlantic EEZ.

Yellowtail Snapper

This rule would increase the commercial ACL, recreational ACL, and recreational ACT for yellowtail snapper. The commercial ACL would increase from 1,142,589 lb (518,270 kg), round weight, to 1,596,510 lb (725,686 kg), round weight. The recreational ACL would increase from 1,031,286 lb (467,783 kg), round weight, to 1,440,990 lb (653,622 kg), round weight. And the recreational ACT would increase from 897,160 lb (406,945 kg), round weight, to 1,253,661 lb (568,651 kg), round weight.

Gag and Other South Atlantic Shallow-Water Grouper

This rule would modify the commercial AM for gag so that only the commercial sector for gag would close when the gag commercial ACL is met or projected to be met. The ACLs and AMs for all other SASWG species would remain unchanged. This proposed rule would also reduce the gag commercial ACL from 353,940 lb (160,544 kg), gutted weight, to 326,722 lb (148,199 kg), gutted weight, to account for projected gag discard mortality from commercial trips that target co-occurring species (*i.e.,* red grouper and scamp) during a gag closure.

Other Changes to Codified Text

This rule would make several changes to the regulatory text in 50 CFR part 622 that are administrative in nature and unrelated to Regulatory Amendment 15. In two paragraphs within § 622.183, ''fishery'' would be changed to ''sector'' to clarify that it is a commercial sector or recreational sector within a specific fishery and to be consistent with other regulations in part 622.

Black grouper and red grouper would be removed from the heading of § 622.190(c)(1), restrictions applicable after a commercial quota closure, because black grouper and red grouper no longer have quotas, only ACLs and AMs.

In several paragraphs within § 622.193, ''fishery'' would be changed to ''sector'', for clarification and consistency purposes. Also in § 622.193, the specific years for evaluating the recreational landings relative to the ACL would be removed from the regulatory text because these years will keep changing. Instead, more general language would be included in the regulatory text, specifically ''recreational landings would be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.'' In addition, closure provisions are included in the regulatory text for snowy grouper when the recreational post-season AM is implemented, because these closure provisions were inadvertently not included in the final rule to implement the Comprehensive ACL Amendment.

In Table 4 of Appendix A to Part 622, ''Grass porgy, *Calamus arctifrons''* would be removed from the table because this species was removed from the South Atlantic snapper-grouper fishery management unit in the Comprehensive ACL Amendment, however, it was inadvertently not removed from the regulations during implementation of that amendment.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this rule is consistent with Regulatory Amendment 15, the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This 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 rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows.

The purposes of the rule and Regulatory Amendment 15 are to modify the existing specification of OY and the ACL for yellowtail snapper in the South Atlantic and modify the existing gag commercial ACL and the AM for gag that requires a closure of all other SASWG in the South Atlantic when the gag commercial ACL is met or projected to be met. The Magnuson-Stevens Act serves as the legal basis for the rule.

This rule is expected to directly affect commercial fishing vessels that possess commercial snapper-grouper permits and for-hire vessels that possess for-hire snapper-grouper permits for the South Atlantic. 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. For for-hire vessels, the other qualifiers apply and the receipts threshold is $7.0 million (NAICS code 713990, recreational industries).

A commercial snapper-grouper permit is required to commercially harvest yellowtail snapper or SASWG, including gag, in the South Atlantic EEZ. As of October 30, 2012, 690 vessels had a commercial snapper-grouper permit. As a result, this rule would be estimated to directly affect 690 commercial fishing businesses. The average annual gross revenue per commercial vessel in the snapper-grouper fishery for 2008 through 2011 was approximately $28,000 (2011 dollars). The maximum annual gross revenue for these vessels was approximately $618,000. On July 9, 2012, 1,524 vessels had a South Atlantic for-hire snapper-grouper permit. For-hire permits do not distinguish charter vessels from headboats but an estimated 75 headboats are believed to possess a for-hire snapper-grouper permit. In 2009, South Atlantic charter vessels

received an average of approximately $109,000 (2011 dollars) in revenue and headboats received an average of $195,000 (2011 dollars).

Based on the information above, all commercial and for-hire fishing vessels expected to be directly affected by this rule are determined for the purpose of this analysis to be small business entities.

The proposed revision to the yellowtail snapper ACL and OY would increase the commercial yellowtail snapper ACL by 453,921 lb (206,328 kg) and the recreational yellowtail snapper ACL by 409,704 lb (186,229 kg), round weight. The increase in the commercial ACL is expected to result in an increase in total gross revenue of approximately $1.3 million per year for the commercial sector, or approximately $2,790 per vessel per year for the estimated 465 vessels expected to commercially harvest yellowtail snapper. This change represents an increase of approximately 8.5 percent in annual gross revenue per vessel, on average. The proportional effect on average annual profit for these vessels cannot be determined with available data.

With respect to the proposed increase in the recreational yellowtail snapper ACL, the current recreational yellowtail snapper ACL is not harvested. As a result, an increase in the ACL would not be expected to result in an increase in angler demand, and associated for-hire revenue or profit in the short term. However, increased demand, and associated revenue and profit, may occur in the future.

The proposed changes in the commercial AM and ACL for gag are expected to result in a gain in annual gross revenue of $263,843 from other SASWG and a reduction in annual gross revenue of $142,102 from gag, respectively. Combined, these proposed actions would be expected to result in a net gain in total annual gross revenue of $121,741. This increase would represent approximately $320 per affected vessel, or approximately 1 percent in annual gross revenue.

In addition to the actions considered in Regulatory Amendment 15 and included in this proposed rule, this proposed rule would make several changes to the regulatory text in 50 CFR part 622. These proposed changes are described in the preamble. These changes clarify language associated with prior regulatory action or are revised for consistency purposes and are therefore administrative in nature. These administrative changes would not generate any direct economic effects.

As a result of the information above, a reduction in profits for a substantial number of small entities is not expected. Because this rule, if implemented, is not expected to have a significant adverse economic effect on a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

No duplicative, overlapping, or conflicting Federal rules have been identified. This rule would not establish any new reporting or record-keeping requirements.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Gag, Shallow-Water Grouper, South Atlantic, Yellowtail snapper.

Dated: May 21, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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

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

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

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

■ 2. In § 622.183, the introductory heading in paragraph (b)(1) is revised and the introductory heading and first sentence in paragraph (b)(4) are revised to read as follows:

§ 622.183 Area and seasonal closures.

* * * * *

(b) * * *

(1) *Seasonal closure of the commercial and recreational sectors for gag and associated grouper species.* * * *

* * * * *

(4) *Seasonal closure of the recreational sector for vermilion snapper.* The recreational sector for vermilion snapper in or from the South Atlantic EEZ is closed from November 1 through March 31, each year. * * *

* * * * *

■ 3. In § 622.190, paragraph (a)(7) and the heading of paragraph (c)(1) are revised to read as follows:

§ 622.190 Quotas.

* * * * *

(a) * * *

(7) *Gag*—326,722 lb (148,199 kg).

* * * * *

(c) * * *

(1) *South Atlantic gag, greater amberjack, snowy grouper, golden tilefish, vermilion snapper, black sea bass, red porgy, and wreckfish.* * * *

* * * * *

■ 4. In § 622.193, paragraphs (b), (c), and the first sentence in paragraphs (n)(1)(i) and (n)(2) are revised to read as follows:

§ 622.193 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(b) *Snowy grouper*—(1) *Commercial sector.* If commercial landings, as estimated by the SRD, reach or are projected to reach the quota specified in § 622.190(a)(1), the AA will file a notification with the Office of the Federal Register to close the commercial sector for snowy grouper for the remainder of the fishing year.

(2) *Recreational sector.* If recreational landings, as estimated by the SRD, exceed the recreational ACL of 523 fish, 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 length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. When NMFS reduces the length of the following recreational fishing season, the following closure provisions apply: the bag and possession limit for snowy grouper in or from the South Atlantic EEZ is zero. This bag and possession limit also applies in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.,* in state or Federal waters. Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

(c) *Gag*—(1) *Commercial sector.* If commercial landings, as estimated by the SRD, reach or are projected to reach the quota specified in § 622.190(a)(7), the AA will file a notification with the Office of the Federal Register to close the commercial sector for gag for the remainder of the fishing year.

(2) *Recreational sector.* (i) If recreational landings, as estimated by the SRD, reach or are projected to reach the recreational ACL of 340,060 lb (154,249 kg), gutted weight, and gag 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 to close the gag recreational sector for the remainder of the fishing year. On

and after the effective date of such notification, the bag and possession limit for gag in or from the South Atlantic EEZ is zero. This bag and possession limit also applies in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.,* in state or Federal waters.

(ii) Without regard to overfished status, if gag recreational landings exceed the 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 ACL for that fishing year by the amount of the overage.

(iii) Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

* * * * *

(n) * * *

(1) * * *

(i) If commercial landings for yellowtail snapper, as estimated by the SRD, reach or are projected to reach the commercial ACL of 1,596,510 lb (724,165 kg), round weight, 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. On and after the effective date of such a notification, all sale or purchase of yellowtail snapper is prohibited and harvest or possession of this species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.,* in state or Federal waters.

* * * * *

(2) * * * If recreational landings for yellowtail snapper, as estimated by the SRD, exceed the recreational ACL of 1,440,990 lb (653,622 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. * * *

* * * * *

■ 5. In Appendix A to part 622, Table 4 is revised to read as follows:

Appendix A to Part 622—Species Tables

* * * * *

TABLE 4 OF APPENDIX A TO PART 622—SOUTH ATLANTIC SNAPPER-GROUPER

Balistidae—Triggerfishes
Gray triggerfish, *Balistes capriscus*
Carangidae—Jacks
Blue runner, *Caranx bartholomaei*
Bar jack, *Caranx ruber*
Greater amberjack, *Seriola dumerili*
Lesser amberjack, *Seriola fasciata*
Almaco jack, *Seriola rivoliana*
Banded rudderfish, *Seriola zonata*
Ephippidae—Spadefishes
Spadefish, *Chaetodipterus faber*
Haemulidae—Grunts
Margate, *Haemulon album*
Tomtate, *Haemulon aurolineatum*
Sailor's choice, *Haemulon parrai*
White grunt, *Haemulon plumieri*
Labridae—Wrasses
Hogfish, *Lachnolaimus maximus*
Lutjanidae—Snappers
Black snapper, *Apsilus dentatus*
Queen snapper, *Etelis oculatus*
Mutton snapper, *Lutjanus analis*
Blackfin snapper, *Lutjanus buccanella*
Red snapper, *Lutjanus campechanus*
Cubera snapper, *Lutjanus cyanopterus*
Gray snapper, *Lutjanus griseus*
Mahogany snapper, *Lutjanus mahogoni*
Dog snapper, *Lutjanus jocu*
Lane snapper, *Lutjanus synagris*
Silk snapper, *Lutjanus vivanus*
Yellowtail snapper, *Ocyurus chrysurus*

TABLE 4 OF APPENDIX A TO PART 622—SOUTH ATLANTIC SNAPPER-GROUPER—Continued

Vermilion snapper, *Rhomboplites aurorubens*
Malacanthidae—Tilefishes
Blueline tilefish, *Caulolatilus microps*
Golden tilefish, *Lopholatilus chamaeleonticeps*
Sand tilefish, *Malacanthus plumieri*
Percichthyidae—Temperate basses
Wreckfish, *Polyprion americanus*
Serranidae—Groupers
Rock hind, *Epinephelus adscensionis*
Graysby, *Epinephelus cruentatus*
Speckled hind, *Epinephelus drummondhayi*
Yellowedge grouper, *Epinephelus flavolimbatus*
Coney, *Epinephelus fulvus*
Red hind, *Epinephelus guttatus*
Goliath grouper, *Epinephelus itajara*
Red grouper, *Epinephelus morio*
Misty grouper, *Epinephelus mystacinus*
Warsaw grouper, *Epinephelus nigritus*
Snowy grouper, *Epinephelus niveatus*
Nassau grouper, *Epinephelus striatus*
Black grouper, *Mycteroperca bonaci*
Yellowmouth grouper, *Mycteroperca interstitialis*
Gag, *Mycteroperca microlepis*
Scamp, *Mycteroperca phenax*
Yellowfin grouper, *Mycteroperca venenosa*
Serranidae—Sea Basses
Black sea bass, *Centropristis striata*
Sparidae—Porgies
Jolthead porgy, *Calamus bajonado*
Saucereye porgy, *Calamus calamus*
Whitebone porgy, *Calamus leucosteus*
Knobbed porgy, *Calamus nodosus*
Red porgy, *Pagrus pagrus*
Scup, *Stenotomus chrysops*

The following species are designated as ecosystem component species:

Cottonwick, *Haemulon melanurum*
Bank sea bass, *Centropristis ocyurus*
Rock sea bass, *Centropristis philadelphica*
Longspine porgy, *Stenotomus caprinus*
Ocean triggerfish, *Canthidermis sufflamen*
Schoolmaster, *Lutjanus apodus*

* * * * *

[FR Doc. 2013–12447 Filed 5–23–13; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 78, No. 101

Friday, May 24, 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

Submission for OMB Review; Comment Request

May 20, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

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

Food and Nutrition Service

Title: Supplemental Nutrition Assistance Program: State Issuance and Participation Estimates—Forms FNS–388 and FNS–388A.

OMB Control Number: 0584–0081.

Summary of Collection: Section 18(b) of the Food Stamp Act of 1977, as amended August 14, 1979 by Pubic Law 96–58, requires that ''In any fiscal year, the Secretary shall limit the value of those allotments issued to an amount not in excess of the appropriation for such fiscal year.'' Timely State monthly issuance estimates are necessary for the Food and Nutrition Service (FNS) to ensure that it remains within the appropriation and will have a direct effect upon the manner in which allotments would be reduced when necessary. FNS uses the FNS–388 report to obtain monthly statewide estimated or actual issuance and participation data for the current and previous months, and the actual participation data for the second preceding month. For the report months of January and July, the participation data must be categorized as non-assistance (NA) and public assistance (PA) and provided for each project areas. This NA and PA participation data is captured on the FNS–388A.

Need and Use of the Information: The FNS–388 and FNS–388A reports provide the necessary data for an early warning system to enable the Department to fulfill the requirements of Section 18(b) of the Food Stamp Act. In addition, the data is used to (1) validate the Annual Supplemental Nutrition Assistance Program (SNAP) Household Characteristic Survey; (2) to compile a Statistical Summary Report which is used for special studies and in response to Congressional and other inquiries; and (3) to compare against the reconciliation points' FNS–46 issuance data (for electronic benefit transfer (EBT), cash-out, and alternative issuance) for indication of accountability problems. FNS has also used the project area data to determine where to demonstrate pilot projects such as a test of school-based SNAP outreach initiatives.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 53.

Frequency of Responses: Recordkeeping; Reporting: Monthly; Semi-annually.

Total Burden Hours: 5,157.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013–12368 Filed 5–23–13; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 20, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 - 17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received by June 24, 2013. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information

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

Rural Business Service

Title: 7 CFR 4279–B, Guaranteed Loan Making—Business and Industry Loans.

OMB Control Number: 0570–0017.

Summary of Collection: The Business and Industry (B&I) program was legislated in 1972 under Section 310B of the Consolidated Farm and Rural Development Act, as amended. The purpose of the program is to improve, develop, or finance businesses, industries, and employment and improve the economic and environmental climate in rural communities. This purpose is achieved through bolstering the existing private credit structure through the guaranteeing of quality loans made by lending institutions, thereby providing lasting community benefits. The B&I program is administered by the Rural Business Service (RBS) through Rural Development State and sub-State offices serving each State.

Need and Use of the Information: RBS will collect information needed by the Agency including completed forms, financial statements and various other documents used by the lender, borrower and Agency to determine program eligibility and creditworthiness of the loan proposal. The information is used by RBS loan officers and approved officials to determine program eligibility and for program monitoring.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 625.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 16,066.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013–12367 Filed 5–23–13; 8:45 am]

BILLING CODE 3410–XT–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Economic Development Administration (EDA).

Title: Application for Investment Assistance.

OMB Control Number: 0610–0094.

Form Number(s): ED–900.

Type of Request: Regular submission (revision of a currently approved information collection).

Number of Respondents: 1,261.

Average Hours per Response: 23 hours and 45 minutes.

Burden Hours: 29,949.

Needs and Uses: The Application for Investment Assistance is required to apply for EDA investment assistance under its Public Works, Economic Adjustment, Technical Assistance, Research, and Planning programs. This collection of information is required to ensure that the application meets the requirements for EDA assistance set out in EDA's regulations at 13 CFR Chapter III.

Revision: The Trade Adjustment Assistance for Communities program was removed from the collection.

Affected Public: Not-for-profit institutions; Federal government; State, local, or tribal government.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Nicholas Fraser.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer,, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov).*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nicholas Fraser, OMB Desk Officer, FAX number (202) 395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov.*

Dated: May 21, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–12417 Filed 5–23–13; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Economic Development Administration (EDA).

Title: Trade Adjustment Assistance for Firms.

OMB Control Number: 0610–0091.

Form Number(s): ED–840P.

Type of Request: Regular submission (extension of currently approved information collection).

Number of Respondents: 800 (500 petitions for certification and 300 adjustment proposals).

Average Hours Per Response: 8 hours and 12 minutes for petitions for certification; 120 hours for adjustment proposals; 1 hour for hearing.

Burden Hours: 40,101 (4,100 for petitions for certification; 36,000 for adjustment proposals; 1 hour for hearing).

Needs and Uses: The information contained in Form ED–840P is necessary for EDA to evaluate whether proposed projects satisfy eligibility and programmatic requirements contained in chapters 3 and 5 of title II of the Trade Act of 1974, as amended (U.S.C.2341 et seq.) and the Trade Adjustment Assistance Extension Act of 2011 (Pub. L. 112–40) which reauthorized the program.

If the petitioner or any other person or organization with substantial interest submits a request for a public hearing, the Secretary of Commerce is directed to provide for a public hearing and afford such interested persons an opportunity to produce evidence and be heard.

Affected Public: Businesses or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Nicholas Fraser.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nicholas Fraser, OMB Desk Officer, FAX number (202) 395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov.*

Dated: May 21, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–12416 Filed 5–23–13; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–47–2013]

Notification of Proposed Production Activity; Vestas Nacelles America, Inc.; Subzone 123E (Wind Turbines); Brighton, Denver, Pueblo, and Windsor, Colorado

Vestas Nacelles America, Inc. (Vestas), operator of Subzone 123E, submitted a notification of proposed production activity for its facilities in Brighton, Denver, Pueblo, and Windsor, Colorado. The notification conforming to the requirements of the regulations of the Foreign-Trade Zones Board (15 CFR 400.22) was received on May 3, 2013.

The subzone currently has authority to produce wind turbines and related products (nacelles, hubs, blades, and towers) under FTZ procedures using certain foreign inputs. The current request involves the use of additional inputs in the production of the finished products noted above. Pursuant to 15 CFR 400.14(b) of the regulations, FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Vestas from customs duty payments on the foreign status components used in export production. On its domestic sales, Vestas would be able to choose the duty rates during customs entry procedures that apply to wind turbines, nacelles, hubs, blades, and towers (free, 2.5%) for the foreign status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

Components and materials sourced from abroad include: ethyl alcohol (denatured); acrylic/poly-based paints; caulking/sealants; liquid soaps; degreasers; oils and lubricants; assembly pastes; antifreeze/coolants; fiberglass plates; plastic pipes/tubes/hoses/tapes/sheeting/trays/cable supports/covers/bags/plugs/bottles/collectors; rubber profiles/strips/sealing lips/hoses/blocks; cardboard containers and frames; gloves; oil sampling kits, of glass; exhaust hoses; cover plates; steel pipes/fittings/containers/cables/chain/grills/locks; fasteners; terminals; bushings; grips; shims; aluminum plates/sleeves/covers/rivets; pumps; wheel assemblies; guards; dehumidifiers; cooling units; condensate heaters; heat exchangers; slip rings; filters; kabi sprayers; bearings; shafts; yaw gears; couplings; gaskets; seals; actuators; rotors; electrical components (terminals, transformers, toroids, coils, cables, insulators); heaters; batteries; lamps/lights; valves; consoles; cabinets; lightning conductors; sensors; aspiration boxes; torque arm modules; hubs; and, parts of transport units (duty rate ranges from free to 12.5%).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 3, 2013.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Pierre Duy at *Pierre.Duy@trade.gov*, or (202) 482–1378.

Dated: May 17, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–12346 Filed 5–23–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 99–5A002]

Export Trade Certificate of Review

ACTION: Notice of Issuance of an amended Export Trade Certificate of Review to California Almond Export Association, LLC (''CAEA'') (Application #99–5A002).

SUMMARY: The U.S. Department of Commerce issued an amended Export Trade Certificate of Review to California Almond Export Association, LLC on May 20, 2013.

FOR FURTHER INFORMATION CONTACT: Joseph E. Flynn, Director, Office of Competition and Economic Analysis, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) (''the Act'') authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2013).

The Office of Competition and Economic Analysis (''OCEA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of the certification in the **Federal Register.** Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

CAEA's Export Trade Certificate of Review has been amended to:

1. Add the following new Member of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): Roche Brothers International (Escalon, CA).

2. Delete the following company as a Member of CAEA's Certificate: Quality Nut Co. (Escalon, CA).

Dated: May 21, 2013.

Joseph E. Flynn,

Director, Office of Competition and Economic Analysis.

[FR Doc. 2013–12489 Filed 5–23–13; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Meeting of the United States Travel and Tourism Advisory Board

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: This notice sets forth the schedule and agenda for an open meeting of the United States Travel and Tourism Advisory Board (Board). The Board will meet to discuss and deliberate on proposed recommendations addressing travel facilitation and visa policy; aviation infrastructure; public-private partnerships; and data and research. The Board will also hear updates from representatives of the U.S. government on the implementation of the National Travel and Tourism Strategy and the progress on implementing the President's Executive Order 13597 on travel and tourism. The agenda may change to accommodate Board business. The final agenda will be posted on the Department of Commerce Web site for the Board at *http://tinet.ita.doc.gov/TTAB/TTAB_Home.html*, at least one week in advance of the meeting.

DATES: June 10, 2013 2 p.m.—5 p.m. Pacific Daylight Time (PDT).

ADDRESSES: Las Vegas Convention Center, 3150 Paradise Road, Las Vegas, NV 89109.

FOR FURTHER INFORMATION CONTACT: Jennifer Pilat, the United States Travel and Tourism Advisory Board, Room 4043, 1401 Constitution Avenue NW., Washington, DC 20230, telephone: 202–482–4501, email: *jennifer.pilat@trade.gov*.

SUPPLEMENTARY INFORMATION:

Agenda: At the meeting, the Board will hear updates from its four subcommittees on travel facilitation, business climate, infrastructure and sustainability, and advocacy, and discuss and deliberate on proposed recommendations addressing travel facilitation and visa policy; aviation infrastructure; public-private partnerships; and data and research.

Background: The Board advises the Secretary of Commerce on matters relating to the U.S. travel and tourism industry.

Public Participation: The meeting will be open to the public and will be physically accessible to people with disabilities. All guests are required to register in advance. Seating is limited and will be on a first come, first served basis. Requests for sign language interpretation, other auxiliary aids, or pre-registration, should be submitted no later than 5 p.m. EDT on June 3, 2013 to Jennifer Pilat, the U.S. Travel and Tourism Advisory Board, Room 4043, 1401 Constitution Avenue NW., Washington, DC 20230, telephone 202–482–4501, *OACIE@trade.gov*. Last minute requests will be accepted, but may be impossible to fill.

No time will be available for oral comments from members of the public attending the meeting. Any member of the public may submit pertinent written comments concerning the Board's affairs at any time before or after the meeting. Comments may be submitted to Jennifer Pilat at the contact information indicated above. To be considered during the meeting, comments must be received no later than 5:00 p.m. EDT on June 3, 2013, to ensure transmission to the Board prior to the meeting.

Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of Board meeting minutes will be available within 90 days of the meeting.

Dated: May 20, 2013.

Jennifer Pilat,

Executive Secretary, United States Travel and Tourism Advisory Board.

[FR Doc. 2013–12421 Filed 5–23–13; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC690

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice of receipt and request for comment.

SUMMARY: Notice is hereby given that NMFS has received applications for eight direct take permits, in the form of Hatchery and Genetic Management Plans (HGMPs), pursuant to the Endangered Species Act of 1973, as amended (ESA). The applications are for hatchery programs in Northeast Oregon and southeast Washington portions of the Snake River basin, for the propagation of spring Chinook salmon and steelhead. The proposed permits would expire in 2018. This document serves to notify the public of the availability of the permit applications and an associated draft environmental assessment (EA) for public review, comment, and submission of written data, views, arguments or other relevant information. All comments and other information received will become part of the public record and will be available for review pursuant to section 10(c) of the ESA.

DATES: Comments and other submissions must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5:00 p.m. Pacific time on June 24, 2013.

ADDRESSES: Written responses to the application and the draft environmental assessment should be sent to Brett Farman, National Marine Fisheries Services, Salmon Management Division, 1201 NE. Lloyd Boulevard, Suite 1100, Portland, OR 97232. Comments may also be submitted by email to: *SnakeHatcheries.nwr@noaa.gov.* Include in the subject line of the email comment the following identifier: Comments on NE. Oregon/SE. Washington plans. Comments may also be sent via facsimile (fax) to (503) 872–2737. When commenting on the draft environmental assessment, please refer to the specific page number and line number of the subject of your comment. The documents are available on the Internet at *www.nwr.noaa.gov.* Requests for copies of the permit applications and draft EA may also be directed to the National Marine Fisheries Services, Salmon Management Division, 1201 NE. Lloyd Boulevard, Suite 1100, Portland, OR 97232. Comments received will also be available for public inspection, by appointment, during normal business hours by calling (503) 230–5418.

FOR FURTHER INFORMATION CONTACT: Brett Farman at (503) 231–6222 or email: *brett.farman@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

Chinook salmon (*Oncorhynchus tshawytscha*): threatened, naturally produced and artificially propagated Snake River spring/summer.

Steelhead (*O. mykiss*): threatened, naturally produced and artificially propagated Snake River.

Background

Section 9 of the ESA and Federal regulations prohibit the ''taking'' of a species listed as endangered or threatened. The term ''take'' is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits to take listed species for any act otherwise prohibited by section 9 for scientific purposes or to enhance the propagation or survival of the affected species, under section 10(a)(1)(A) of the ESA. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Between October 10, 2010, and July 15, 2011, NMFS received applications, in the form of HGMPs, from the Oregon Department of Fish and Wildlife (ODFW), Washington Department of Fish and Wildlife (WDFW), and U.S. Bureau of Indian Affairs for ESA section 10(a)(1)(A) permits for the direct take of ESA-listed Snake River spring/summer Chinook salmon and ESA-listed Snake River steelhead in order to carry out artificial propagation (hatchery) programs in northeast Oregon and southeast Washington in the Grande Ronde, Tucannon, and Imnaha River basins. An additional application, for operation of the Lookingglass Hatchery spring Chinook salmon program was received from the ODFW in January 2012. The purpose of these programs is to support conservation, as well as harvest in tribal, recreational, and commercial fisheries.

Authority

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate each application, associated documents, and comments submitted thereon to determine whether the applications meet the requirements of section 10(a)(1)(A) of the ESA.

If it is determined that the requirements are met, permits will be issued to ODFW, WDFW, and the BIA for the purpose of carrying out the hatchery programs. NMFS will publish a record of its final action in the **Federal Register.**

Angela Somma,

Chief, Endangered Species Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–12459 Filed 5–23–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC696

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council's (Council) Groundfish Oversight Committee will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Wednesday, June 12, 2013 at 8:30 a.m.

ADDRESSES:

Meeting address: The meeting will be held at the Providence Biltmore Hotel, 11 Dorrance Street, Providence, RI 02903; telephone: (401) 421–0700; fax: (401) 455–3040.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The items of discussion in the committee's agenda are as follows:

The Groundfish Oversight Committee will meet to discuss issues related to the Northeast Multispecies Fishery Management Plan, including the review of Plan Development Team (PDT) work related to the development of Amendment 18; potential revision of the goals and objectives for Amendment 18 based on PDT work and recommendations of the Groundfish Advisory Panel. The committee will address other business as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: May 21, 2013.

Tracey L. Thompson,

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

[FR Doc. 2013–12451 Filed 5–23–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC697

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Council to convene public Advisory Panel meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a meeting of the Coastal Migratory Pelagics (CMP) Advisory Panel (AP) via webinar.

DATES: The meeting will convene at 10 a.m. eastern time on Wednesday, June 12, 2013 and is expected to end no later than 11:30 a.m.

ADDRESSES: The meeting will be held via webinar. The registration link for the webinar is *https://www2.gotomeeting.com/register/416806802* and will be posted to the Gulf Council's Web site.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Ryan Rindone; Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council (Council) will convene its Coastal Migratory Pelagics (CMP) Advisory Panel (AP). The CMP AP will review materials related to the development and selection of preferred alternatives in Action 6 of Draft Amendment 20 to the Coastal Migratory Pelagics Fishery Management Plan for Gulf of Mexico fisheries.

Copies of the agenda and other related materials can be obtained by calling (813) 348–1630.

Although other non-emergency issues not on the agenda may come before the CMP AP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the CMP AP will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Dated: May 21, 2013.

Tracey L. Thompson,

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

[FR Doc. 2013–12452 Filed 5–23–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XJ40

Endangered Species; File No. 13543

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

ACTION: Notice; issuance of permit modification.

SUMMARY: Notice is hereby given that South Carolina Department of Natural Resources [Responsible Party: Robert Boyles], 217 Ft. Johnson Rd.,

Charleston, SC 29412, has been issued a modification to scientific research Permit No. 13543.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Southeast Region, NMFS, 263 13th Ave. South, St. Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Kristy Beard, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On January 17, 2013, notice was published in the **Federal Register** (78 FR 3882) that a modification to Permit No. 13543, issued April 30, 2009 (74 FR 20926), had been requested by the above-named organization. The requested modification has been granted under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 13543 authorizes the permit holder to handle, measure, weigh, affix a passive integrated transponder tag, flipper tag, and photograph sea turtles that have already been captured by authorized coastal trawl surveys in waters from North Carolina to Florida. The purpose of the research is to further the understanding of the growth, distribution, and life history of sea turtles. The permit modification, No. 13543–01 authorizes the requested increase in annual take limits for Kemp's ridley (*Lepidochelys kempii*) and loggerhead (*Caretta caretta*) sea turtles to accommodate recent increases in capture rates of these species in the trawl surveys. The permit is valid through April 30, 2014.

Issuance of this modification, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: May 20, 2013.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–12361 Filed 5–23–13; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Friday, June 21, 2013.

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance, Examinations, and Enforcement Matters. In the event that the time, date, or place of this meeting changes, an announcement of the change, along with the new time, date, or place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Melissa D. Jurgens, 202–418–5516.

Natise Stowe,

Executive Assistant.

[FR Doc. 2013–12511 Filed 5–22–13; 11:15 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Friday, June 14, 2013.

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance, Examinations, and Enforcement Matters. In the event that the time, date, or place of this meeting changes, an announcement of the change, along with the new time, date, or place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Melissa D. Jurgens, 202–418–5516.

Natise Stowe,

Executive Assistant.

[FR Doc. 2013–12512 Filed 5–22–13; 11:15 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Friday, June 28, 2013.

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance, Examinations, and Enforcement Matters. In the event that the time, date, or place of this meeting changes, an announcement of the change, along with the new time, date, or place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Melissa D. Jurgens, 202–418–5516.

Natise Stowe,

Executive Assistant.

[FR Doc. 2013–12510 Filed 5–22–13; 11:15 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Friday, June 7, 2013.

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance, Examinations, and Enforcement Matters. In the event that the time, date, or place of this meeting changes, an announcement of the change, along with the new time, date, or place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Melissa D. Jurgens, 202–418–5516.

Natise Stowe,

Executive Assistant.

[FR Doc. 2013–12513 Filed 5–22–13; 11:15 am]

BILLING CODE 6351–01–P

COUNCIL ON ENVIRONMENTAL QUALITY

Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies; Extension of Public Comment Period on the Interagency Guidelines

AGENCY: Council on Environmental Quality.

ACTION: Extension of comment period.

SUMMARY: Section 2031 of the Water Resources Development Act of 2007 (Pub. L. 110–114) directed the Secretary of the Army to revise the ''Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies'' (Principles and Guidelines), dated March 10, 1983, consistent with several considerations enumerated in the Act.

The revised Principles and Guidelines consist of three key components: (1) The Principles and Requirements (formerly called Principles and Standards), setting out broad policy and principles that guide investments; (2) the Interagency Guidelines, providing guidance to Federal agencies for determining the applicability of the Principles and Guidelines and for developing agency-specific implementing procedures for formulating, evaluating, and comparing water resources projects, programs, activities, and related actions; and (3) the Agency Specific Procedures, outlining agency-specific procedures for incorporating the Principles and Requirements into agency missions and programs.

Per the March 27, 2013 notice, at 78 FR 18562 interested individuals and organizations are invited to submit comments on the draft Interagency Guidelines, one key component of the Principles and Guidelines. The draft Interagency Guidelines are available for review and comments can be submitted through the Web site, *www.whitehouse.gov/administration/eop/ceq/initiatives/PandG/*. With this notice, we are pleased to inform you that this comment period (originally 60 days in duration) has been extended by 30 days. The new deadline for public comment on the draft Interagency Guidelines is June 27, 2013.

DATES: Submit comments on or before June 27, 2013.

ADDRESSES: *www.whitehouse.gov/administration/eop/ceq/initiatives/PandG.*

FOR FURTHER INFORMATION CONTACT: Ilana Cohen, Council on Environmental Quality, at (202) 395–5750.

SUPPLEMENTARY INFORMATION: Section 2031 of the Water Resources Development Act of 2007 (Pub. L. 110–114) directed the Secretary of the Army to revise the ''Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies,'' dated March 10, 1983, consistent with several considerations enumerated in the Act.

Additional information on the revision process is available at *http://www.whitehouse.gov/administration/eop/ceq/initiatives/PandG*.

Dated: May 17, 2013.

Nancy H. Sutley,

Chair, Council on Environmental Quality.

[FR Doc. 2013–12285 Filed 5–23–13; 8:45 am]

BILLING CODE 3225–F3–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0102]

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction act of 1995, the Defense Finance and Accounting Service announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 23, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Finance and Accounting Service ATTN: DFAS–IN/ZPFA, 8899 East 56th St., Indianapolis, IN 46249–0500.

Title, Associated Form, and OMB Number: Statement of Claimant Requesting Recertified Check, DD Form 2660; OMB Number 0730–0002.

Needs and Uses: In accordance with TFM Volume 1, Part 4, Section 7060.20 and DoD 7000.14–R, Volume 5, there is a requirement that a payee identify himself/herself and certify as to what happened to the original check issued by the government (non-receipt, loss, destruction, theft, etc.). This collection will be used to identify rightful reissuance of government checks to individuals or businesses outside the Department of Defense.

Affected Public: Individuals or households; businesses or other for-profit.

Annual Burden Hours: 3,180 hours.

Number of Respondents: 38,157.

Responses per Respondent: 1.

Average Burden per Response: 5 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Statement of Claimant Requesting Recertified Check is used to ascertain pertinent information needed by the Department of Defense in order to reissue checks to payees, if the checks have not been negotiated to financial institutions within one (1) year of the date of issuance, when an original check has been lost, not received, damaged, stolen, etc. The form will be completed by the payee who was issued the original check. The information provided on this form will be used in determining whether a check may be reissued to the named payee.

Dated: May 20, 2013.

Patricia L. Toppings,

OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2013–12408 Filed 5–23–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0119]

Proposed Collection; Comment Request

AGENCY: National Geospatial-Intelligence Agency, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the National Geospatial-Intelligence Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 23, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Corporate Application Branch, User Access Services Division, National Geospatial-Intelligence Agency, 7500 GEOINT Drive, Springfield, VA 22150.

Title; Associated Form; and OMB Number: National Geospatial-Intelligence Agency Enterprise Workforce System, OMB Control Number 0704–TBD.

Needs and Uses: The information collection requirement is necessary to maintain and disseminate employee information to facilitate a variety of NGA's mission-related duties, including activities related to administrative matters, account creation, operations support, access controls, workforce security, training records, expertise, competency management, polygraph information, drug, vision and medical test results, Federal reporting requirements, and domestic and international counterintelligence.

Affected Public: Individuals or households.

Annual Burden Hours: 6000.

Number of Respondents: 12000.

Responses per Respondent: 1.

Average Burden per Response: 30 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents provide personal and professional information to the agency for both administrative and mission-related activities. NEWS is the central reference for agency personnel to use to maintain and disseminate employee information to facilitate a variety of NGA's mission-related duties, including activities related to administrative matters, account creation, operations support, access controls, workforce security, training records, expertise, competency management, polygraph information, drug, vision and medical test results, Federal reporting requirements, and domestic and international counterterrorism. Without the system, NGA would not be able to perform administrative activities resulting in inconvenience to the individual and its mission-related duties that could result in not being able to protect agency assets.

Dated: May 20, 2013.

Patricia L. Toppings,

OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2013–12410 Filed 5–23–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0118]

Proposed Collection; Comment Request

AGENCY: Defense Security Cooperation Agency, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Defense Security Cooperation Agency announces the reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 23, 2013.

ADDRESSES: You may submit comments, identified by number and title by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Security Cooperation Agency (DSCA), ATTN: David Frasher, 220 12th Street, South, Suite 203, Arlington, VA 22202–5408 or call (703) 601–4459.

Title; Associated Form; and OMB Number: International Military Student Information, DD Form 2339 (automated); OMB Number 0704–TBD (Previously cleared under OMB Control Number 0702–0064).

Needs and Uses: This DD Form 2339 (automated) is required in support of international military students who are attending training in the United States as part of the security assistance training program. The DD Form 2339 (automated) is utilized in gather information on the international student prior to his/her arrival in the United States in order that civilian and military sponsors can be assigned to assist the student during his/her training.

Affected Public: Individuals or households.

Annual Burden Hours: The estimated total burden hours for collection and entry of International Military Student Information (IMSI) into TMS are 750 hours. This estimate is derived by taking the approximate number of DD Form 2339s submitted (approx 3,000 submitted, one for each student) and multiplying it by the approximate time (15 minutes) it takes to collect and enter IMSI, then dividing by 60 minutes; (3,000 * 15)/60 = 750 hours.

Number of Respondents: 3,000.

Responses per Respondent: 1.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The International Military Student Information (IMSI) is utilized by the security cooperation organizations and pertains only to non U.S. citizens who are members of a foreign military service that have been designated by their government to attend training in the United States. The IMSI is utilized by the gaining organization to provide background information on the individual in order that a military or civil sponsor may be assigned to assist the individual during his/her stay in the United States.

Dated: May 20, 2013.

Patricia Toppings,

OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2013–12409 Filed 5–23–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0093]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by June 24, 2013.

Title, Associated Form and OMB Number: Web-based DoD Postsecondary Education Complaint System, 0704–TBD; DoD Postsecondary Education Complaint Intake—DD Form 2961 (electronic-only).

Type of Request: New Collection.

Number of Respondents: 9 per month; 100 annually.

Responses per Respondent: 1.

Annual Responses: 100.

Average Burden per Response: 10 minutes.

Annual Burden Hours: 17.

Needs and Uses: The information collection requirement is necessary to obtain, document, and respond to complaints, questions, and other information concerning postsecondary education and services provided to military students, veterans, and their adult family members. The President's Executive Order 13607, signed on April 27, 2012, calls for the creation of a robust, centralized complaint process for students receiving Federal military and veterans' educational benefits. The web based intake documents information electronically such as the level of study of the student, school the student is attending, type of education benefits being used, branch of the military service, substance of the complaint or issue, and preferred contact information for the person making the complaint.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. John Kraemer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Kraemer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD Information Management Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: May 20, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–12434 Filed 5–23–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 13–07]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 13–07 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: May 20, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

MAY 14 2013

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 13-07, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Oman for defense articles and services estimated to cost $100 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided under Separate Cover)

BILLING CODE 5001-06-P

Transmittal No. 13–07

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Oman

(ii) *Total Estimated Value:*

Major Defense Equipment*	$40 million.
Other	60 million.
Total	100 million.

* As defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 2 AN/AAQ–24(V) Large Aircraft Infrared Countermeasures (LAIRCM) Systems (1 B747–400 and 1 B747–800), 11 Small Laser Transmitter Assemblies, 3 System Processors/Repeaters, 14 AN/AAR–54 Missile Warning Sensors, User Data Module Cards and Control Interface Units, Multi-role Electro-Optic End-to-End test set, Card Memory, Smart Cards, and Support Equipment, Consumables, and Flight Test/Certification. Also included are tools and test equipment, support equipment, spare and repair parts, publications and technical documents, personnel training and training equipment, U.S. Government and contractor technical assistance, and other related elements of logistics and program support.

(iv) *Military Department:* Air Force (QAM)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or*

Defense Services Proposed to be Sold: See Attached Annex

(viii) *Date Report Delivered to Congress:* 14 May 2013

POLICY JUSTIFICATION

Oman—AN/AAQ–24(V) Large Aircraft Infrared Countermeasures (LAIRCM) Systems

The Government of Oman has requested a possible sale of 2 AN/AAQ–24(V) Large Aircraft Infrared Countermeasures (LAIRCM) Systems (1 B747–400 and 1 B747–800), 11 Small Laser Transmitter Assemblies, 3 System Processors/Repeaters, 14 AN/AAR–54 Missile Warning Sensors, User Data Module Cards and Control Interface Units, Multi-role Electro-Optic End-to-End test set, Card Memory, Smart Cards, and Support Equipment, Consumables, and Flight Test/Certification. Also included are tools and test equipment, support equipment, spare and repair parts, publications and technical documents, personnel training and training equipment, U.S. Government and contractor technical assistance, and other related elements of logistics and program support. The estimated cost is $100 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a partner country which has been, and continues to be, an important force for political stability and economic progress in the Middle East.

Oman requests these capabilities to provide for the protection of its head-of-state aircraft fleet. LAIRCM will provide increased protection from missile threats. The proposed purchase of LAIRCM will enhance the safety of Oman's political leadership, promoting the global engagement of a friendly country.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be Northrop Grumman Corporation of Rolling Meadows, Illinois. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require multiple U.S. Government or contractor representatives to travel to Oman over a period of 10 years for program and technical support and training.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 13–07

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The AN/AAQ–24(V) LAIRCM is a self-contained, directed energy countermeasures system designed to protect aircraft from infrared-guided surface-to-air missiles. The system features digital technology and micro-miniature solid-state electronics. The system operates in all conditions, detecting incoming missiles and jamming infrared-seeker equipped missiles with aimed bursts of laser energy.

2. LAIRCM system software, including Operational Flight Program and jam codes, is classified Secret.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 2013–12336 Filed 5–23–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

National Security Education Board; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, Defense Language and National Security Education Office (DLNSEO), DoD.

ACTION: Meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the following Federal advisory committee meeting of the National Security Education Board will take place.

DATES: Monday, June 17, 2013, from 1:00 p.m. to 5:30 p.m.

ADDRESSES: The Liaison Capitol Hill, 415 New Jersey Avenue NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Alison Patz, telephone (703) 696–1991, *Alison.patz@wso.whs.mil*, fax (703) 696–5667.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of the meeting is to review and make recommendations to the Secretary of Defense concerning requirements established by the David L. Boren National Security Education Act, Title VII of Public Law 102–183, as amended.

Agenda

1:00 p.m.—Opening Remarks and Key Updates.
1:30 p.m.—State of the Language Flagship.
2:15 p.m.—Federal Internship Opportunities.
3:00 p.m.—Intelligence Community Strategic Language Needs and Approaches.
3:45 p.m.—2013 Boren Awards Update.
4:15 p.m.—National Security Education Program Service Requirements Updates.
4:45 p.m.—Board Discussion.
5:30 p.m.—Adjourn.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis.

Committee's Point of Contact: Alison Patz, Alternate Designated Federal Official, (703) 696–1991, *Alison.patz@wso.whs.mil.*

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and sections 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Department of Defense National Security Education Board about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of the planned meeting.

All written statements shall be submitted to the Designated Federal Official for the National Security Education Board, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Designated Federal Official can be obtained from the GSA's FACA *Database—https://www.fido.gov/facadatabase/public.asp.*

Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Official at the address listed in **FOR FURTHER INFORMATION CONTACT** at least five calendar days prior to the meeting that is the subject of this notice. Written statements received after this date may not be provided to or considered by the National Security Education Board until its next meeting.

The Designated Federal Official will review all timely submissions with the National Security Education Board and ensure they are provided to all members of the National Security Education Board before the meeting that is the subject of this notice.

Dated: May 21, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–12433 Filed 5–23–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0120]

Privacy Act of 1974; System of Records

AGENCY: National Geospatial-Intelligence Agency, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The National Geospatial-Intelligence Agency is altering a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a(r)), as amended. The blanket (k)(1) exemption applies to this systems of records to accurately describe the basis for exempting disclosure of classified information that is or may be contained in the records.

DATES: This proposed action will be effective on June 24, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before June 24, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this *Federal Register* document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: National Geospatial-Intelligence Agency (NGA), ATTN: Security Specialist, Mission Support, MSRS P–12, 7500 GEOINT Drive, Springfield, VA 22150.

SUPPLEMENTARY INFORMATION: The National Geospatial-Intelligence Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**. The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on July 23, 2012, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: May 21, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

B0303–06

SYSTEM NAME:

National Geospatial-Intelligence Agency (NGA)—Enterprise Workforce System (NEWS) (January 25, 2010, 75 FR 3899)

CHANGES:

Change system ID to ''NGA–003''.

SYSTEM NAME:

Delete entry and replace with ''National Geospatial-Intelligence Agency Enterprise Workforce System.''

SYSTEM LOCATION:

Delete entry and replace with ''Records are maintained at National Geospatial-Intelligence Agency (NGA) headquarters in Washington, DC metro facilities.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Current and former NGA employees, military personnel, independent industry advisors, contractors, and foreign visitors employed by or assigned to NGA facilities.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Identifying information, such as name, date of birth, place of birth, address, telephone numbers, email addresses, employee identification number, job title and band, emergency contact information, supervisor's contact information, photographs, passport and/or drivers' license information, citizenship, polygraph, security clearance, access control passes, payroll information, Social Security Number (SSN), time and attendance, performance, awards and bonuses, duty location, education and training data, military and veterans status, gender, ethnicity/race indicator, disability data, drug, vision and medical test results for deployment readiness.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''50 U.S.C. § 402a; Coordination of counterintelligence activities; Executive Order 10450, Security requirements for Government employment; Executive Order 12968 Access to classified information; 5 CFR part 732, National security positions; 5 CFR part 736, Personnel Investigations; 32 CFR part 147, Adjudicative Guidelines for Determining Eligibility for Intelligence Directive (DCID) 6/4, Personnel Security Standards and Procedures Governing Eligibility for Access to Sensitive Compartmented Information; 5 U.S.C. 301 Departmental Regulations; DoDD 5105.60, National Geospatial-Intelligence Agency (NGA); 5 U.S.C. 7532, Suspension and Removal; Employees; E.O. 12958, Classified National Security Information; DoD 5200.2–R, DoD Personnel Security Program; Director of Central Intelligence Directive No. 1/14, Personnel Security Standards and Procedures Governing Eligibility for Access to Sensitive Compartmented Information (SCI); and E.O. 9397 (SSN), as amended.''

PURPOSE(S):

Delete entry and replace with ''NGA collects, uses, maintains, and disseminates employee information to facilitate a variety of NGA's mission-related duties, including activities related to administrative matters, account creation, operations support, access controls, workforce security, training records, expertise, competency management, polygraph information, drug, vision and medical test results, Federal reporting requirements, and international counterintelligence. NGA Enterprise Workforce System data, which includes personally identifiable information (PII), is necessary for NGA to effectively and efficiently conduct its mission on multiple levels by using PII provided by employees and contingent workers.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally

permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records may be specifically disclosed outside of the DoD as a routine use pursuant to 5 U.S.C. a(b)(3) as follows:

The DoD Blanket Routine Uses set forth at the beginning of NGA's compilation or systems of records notices apply to this system.''

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Delete entry and replace with ''Records in this system are stored electronically.''

RETRIEVABILITY:

Delete entry and replace with ''Records may be retrieved by name or other personal identifier listed above in the Categories of Records.''

SAFEGUARDS:

Delete entry and replace with ''Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable NGA automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions. Some of the technical controls include, limited, role based access as well as profiles based access to limit users to only data that is needed for the performance of their official duties. The system is located in a secure data center and operated by Federal personnel.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''NGA will delete or destroy these records three years after the end date of employment with NGA.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Corporate Applications Branch, User Access Services Division (ASU), National Geospatial-Intelligence Agency, 7500 GEOINT Drive, Springfield, VA 22170.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the National Geospatial-Intelligence Agency (NGA), Freedom of Information Act/Privacy Act Office, 7500 GEOINT Drive, Springfield, VA 22150.

The request envelope and letter should both be clearly marked 'Privacy Act Inquiry.'

The written request must contain your full name, current address, and date and place of birth. Also include an explanation of why you believe NGA would have information on you and specify when you believe the records would have been created.

You must sign your request and your signature must either be notarized or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

IF EXECUTED OUTSIDE THE UNITED STATES:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

IF EXECUTED WITHIN THE UNITED STATES, ITS TERRITORIES, POSSESSIONS, OR COMMONWEALTHS:

'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). Signature)'.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to this system of records contains information about themselves should address written inquiries to the National Geospatial-Intelligence Agency (NGA), Freedom of Information Act/Privacy Act Office, 7500 GEOINT Drive, Springfield, VA 22150.

The request envelope and letter should both be clearly marked 'Privacy Act Inquiry.'

The written request must contain your full name, current address, and date and place of birth. Also include an explanation of why you believe NGA would have information on you and specify when you believe the records would have been created.

You must sign your request and your signature must either be notarized or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

IF EXECUTED OUTSIDE THE UNITED STATES:

'I declare (or certify, verify, or state).under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

IF EXECUTED WITHIN THE UNITED STATES, ITS TERRITORIES, POSSESSIONS, OR COMMONWEALTHS:

'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). Signature)'.''

CONTESTING RECORD PROCEDURE:

Delete entry and replace with ''Individuals contesting the accuracy of records in this system of records contains information about themselves should address written inquiries to the National Geospatial-Intelligence Agency (NGA), Freedom of Information Act/Privacy Act Office, 7500 GEOINT Drive, Springfield, VA 22150.

The request envelope and letter should both be clearly marked 'Privacy Act Inquiry.'

The written request must contain your full name, current address, and date and place of birth. Also include an explanation of why you believe NGA would have information on you and specify when you believe the records would have been created.

You must sign your request and your signature must either be notarized or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

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IF EXECUTED WITHIN THE UNITED STATES, ITS TERRITORIES, POSSESSIONS, OR COMMONWEALTHS:

'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). Signature)'.''

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''Information originates from the individual and from sources contacted during personnel and background investigations.''

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Delete entry and replace with ''An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1) and published in 32 CFR Part 320. For additional information, contact the system owner.''

[FR Doc. 2013–12432 Filed 5–23–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2013–OS–0104]

Privacy Act of 1974; System of Records

AGENCY: Defense Commissary Agency, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Defense Commissary Agency proposes to alter a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on June 24, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before June 24, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Rathgeb, Deputy General Counsel—Litigation, FOIA and Privacy Act, Office of the General Counsel, Defense Commissary Agency, 1300 E. Avenue, Fort Lee, VA 23801–1800; telephone (804) 734–800, x48116.

SUPPLEMENTARY INFORMATION: The Department of the Navy's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or from the Defense Privacy and Civil Liberties Office Web site at *http://dpclo.defense.gov/privacy/SORNs/component/deca/index.html.*

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on May 6, 2013, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: May 7, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Z0035–01

SYSTEM NAME:

Financial Transaction Data (December 28, 2007, 72 FR 73781)

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with ''Commissary Retail Sales Transaction Data.''

SYSTEM LOCATION:

Delete entry and replace with ''Defense Commissary Agency, 1300 E Avenue, Fort Lee, VA 23801–1800.

An official listing of locations can be obtained from the Office of the Deputy Director/Chief Operating Office.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Members of the uniformed services on active duty, members of the uniformed services entitled to retired pay, dependents of such members; persons authorized to use the system under chapter 54 of Title 10, U.S.C.; and other personnel listed in Department of Defense Instruction 1330.17, Armed Services Commissary Operations, such as recipients of the Medal of Honor, selected military personnel of foreign nations, and personnel of other organizations and activities, to include the American Red Cross, the United Service Organizations.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''*Personal Information:* Individual's name; address(es); zip code; ship-to address(es); email address(es); telephone number(s); date of birth; Social Security Number (SSN); Department of Defense Identification Number (DoD ID Number) and ID card bar code value; internet and mobile ordering web login username and password.

FINANCIAL TRANSACTIONS INFORMATION:

Store point-of-sale terminal number, date of transaction, transaction number, merchandise purchased, universal product codes (UPCs), global trade item numbers (GTINs), quantity, unit price, total purchase, on-line orders; method of payment information; account/card holder name, check number, financial institution routing number, financial institution bank account number, Magnetic Ink Character Recognition Number (MICR), credit and debit/ATM card number, expiration date, Card Verification Value 2 (CVV2), Card Validation Code (CVC), or Card Identifier (CID); smart card and other chip-based card payment information; issuer, card holder name, bank, credit or debit account and account limits; electronic benefit transfer card (Women, Infants and Children Program (WIC) and Supplemental Nutritional Assistance Program (SNAP))information; issuer, account/card holder name, account number, purchases and refunds, account balance; prepaid/preloaded/stored value card information, issuer, account number, account limits, and account balance; gift card/certificate information; gift card/certificate number, amount, limits, and balance; coupon information; brand, product, and value; loyalty card, rewards card, points card, advantage card or club card information; card holder name, card number, digital coupons available, buying preferences, and demographic data concerning the patron; other similar methods of payment information initiated by mobile device applications to include Near Field Communications (NFC).

Commissary Patron Demographic Information: age, military status (active, reserve, retired, civilian, officer, enlisted, family member, survivor, foreign), military rank, branch of service, household size, distance from nearest commissary, frequency of grocery shopping trips, and income range; shopper preference information; preferred brand names, price, quality, size, availability of discounts, promotions or coupons; and commissary patron profile information; social media (e.g. Facebook, Twitter, Flickr, YouTube) username; compilation of commissary patron comments, inquiries, complaints, and feedback concerning commissary merchandise and the patron's commissary shopping experience posted by the commissary patron in the social media environment; and the commissary patron's publically viewable social media profile information.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''5 U.S.C. 301, Departmental regulations; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. § 2481, Defense Commissary and Exchange Systems; Existence and Purpose; 10 U.S.C. § 2484, Commissary Stores: Merchandise That May Be Sold; Uniform Surcharges and Pricing; 10 U.S.C. § 2485, Commissary Stores: Operation; Department of Defense Directive 5105.55, Defense Commissary Agency (DeCA); Department of Defense Instruction 1330.17, Armed Services Commissary Operations; Department of Defense 7000.14–R, Department of Defense Financial Management Regulations (FMRs), Volume 4, Chapter 3, Receivables; Volume 6A, Reporting Policy and Procedures, Volume 11A, Reimbursable Operations, Policy and Procedures, Volume 11B, Reimbursable Operations, Policy and Procedures—Working Capital Funds.''

PURPOSE(S):

Delete entry and replace with ''To enable the Defense Commissary Agency to carry out its mission to enhance the quality of life of members of the uniformed services, retired members, and dependents of such members, and to support military readiness, recruitment and retention, by providing a world-wide system of commissaries similar to commercial grocery stores and selling merchandise and household goods similar to that sold in commercial grocery stores.

To enable the authentication of authorized patrons, record purchases and purchase prices, calculate the total amount owed by the customer, and accept payment by various media.

To enable the collection of debts due the United States in the event a patron's medium of payment is declined or returned unpaid.

To enable the monitoring of purchases of restricted items outside the United States, its territories and possessions, as necessary to prevent black marketing in violation of treaties or agreements, and to comply with age restrictions applicable to certain purchases by minors or those under allowable ages.

To enable authorized patrons to order commissary retail products on-line by home computer or mobile device and to pay for such purchases electronically either at the time of ordering or at the time of pick up.

To enable authorized patrons to create a commissary patron profile for the purposes of determining aggregate patron demographic data, patron shopping preference information, the compilation of individual patron comments, inquiries, complaints, requests, and feedback posted to social media pages.

For use in responding to individual patron inquiries, assessing aggregate patron satisfaction with the delivery of the commissary benefit, and in determining appropriate product availability meeting the commissary customers' current and future needs and wants.''

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Treasury and its designated contractors for electronic check processing and electronic funds transfers related to credit/debit card charges;

To a loyalty card, rewards card, points card, advantage card or club card or digital coupon program coupon contractor that will use the information to verify a commissary customer's enrollment in a loyalty, rewards, points, advantage, club or digital coupon program, and to provide discounts, digital coupons or other incentives to be applied to the customers' commissary purchases.

To the on-line ordering fulfillment contractor to allow for the confirmation by email of orders received, fulfilled, and closed.

To purchasers of commissary sales transaction data pursuant to 10 U.S.C. § 2485(h), Release of certain commercially valuable information to the public.

The DoD Blanket Routine Uses published at the beginning of the Defense Commissary Agency's compilation of systems of records notices may apply to this system of records.

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (14 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government, typically to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and SSN, DoD ID Number, DoD barcode value, credit card or debit/ATM card number, the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.''

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

* * * * *

RETRIEVABILITY:

Delete entry and replace with ''By individual's name, store, point-of-sale terminal number, transaction date, order date, merchandise purchased, transaction number, SSN, Military Card Identification Number, DoD ID Number, DoD ID Bar Code value, financial institution routing number, financial institution account number, Magnetic Ink Character Recognition Number (MICR), loyalty, rewards, points, advantage, club or digital coupon card number, credit or debit/ATM card number, address(es)/email address(es), telephone number, zip code, military status, military rank, family size, income group, and shopping preferences.''

SAFEGUARDS:

Delete entry and replace with ''Access to records is limited to the custodian of the records or by persons responsible for servicing the records in the performance of their official duties. Records are stored in locked cabinets or rooms and controlled by personnel screening. Computer terminals are located in supervised areas. Access to computerized data is controlled by password or other user authentication code systems. All electronic data is transmitted using approved, secured methods to ensure the data is protected while in transit, such as encryption and through the use of Secure File Transfer Protocol (FTP) using Secure Sockets Layer (SSL). Credit/debit card numbers are masked. Name, SSN, or DoD ID number is not collected for credit card purchases. PINs are automatically encrypted when entered by a patron at the point of sale using a touch-screen keyboard. Credit card information is also subject to the Data Security Standards (DSS) promulgated by the Payment Card Industry (PCI) Security Council.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Records of commissary retail transactions are maintained for 6 years and 3 months. Records of demographic

information, shopper preferences and customer profiles are maintained for 3 years. Paper records containing Personally Identifiable Information (PII) are shredded to a level where the information cannot be reconstructed. Electronic records, including metadata, are permanently deleted by Records Managers with administrator privileges from applicable information systems upon verification of disposal status.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Deputy Director/Chief Operating Officer, Defense Commissary Agency, 1300 E Avenue, Fort Lee, VA 23801–1800.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Defense Commissary Agency, ATTN: Privacy Officer, 1300 E Avenue, Fort Lee, VA 23801–1800.

Requests should contain individual's name and address, telephone number, email address, SSN, DoD ID Number, and DoD ID Bar Code value.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system of records should address written inquiries the Defense Commissary Agency, ATTN: Privacy Officer, 1300 E Avenue, Fort Lee, VA 23801–1800.

Requests should contain individual's name and address, telephone number, email address, SSN, DoD ID Number, and DoD ID Bar Code value.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The Defense Commissary Agency rules for accessing records, for contesting contents, and for appealing initial agency determination can be obtained from the Privacy Act Officer, 1300 E. Avenue, Fort Lee, VA 23801–1800.''

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''Individual, Defense Enrollment Eligibility System (DEERS), US Treasury Over the Counter Network (OTCNet), Commissary Advanced Retail Transaction System (CARTS), Defense Commissary Agency Enterprise Data Warehouse (EDW)''

* * * * *

[FR Doc. 2013–12414 Filed 5–23–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Child Care Access Means Parents in School Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

Overview Information: Child Care Access Means Parents in School (CCAMPIS) Program Notice inviting applications for new awards for fiscal year (FY) 2013.

Domestic Assistance (CFDA) Number: 84.335A.

DATES: *Applications Available:* May 24, 2013.

Deadline for Transmittal of Applications: June 24, 2013.

Deadline for Intergovernmental Review: August 22, 2013.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The CCAMPIS Program supports the participation of low-income parents in postsecondary education through provision of campus-based child care services.

Priorities: This notice contains two absolute priorities and two competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(iv), the absolute priorities are from section 419N(d) of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. 1070e(d). The competitive preference priorities are from the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637).

Absolute Priorities: For FY 2013 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet both these priorities. Each application must address these priorities.

These priorities are:

Absolute Priority 1: Projects that are designed to leverage significant local or institutional resources, including in-kind contributions, to support the activities assisted under section 419N of the HEA.

Absolute Priority 2: Projects that are designed to utilize a sliding fee scale for child care services provided under section 419N of the HEA in order to support a high number of low-income parents pursuing postsecondary education at the institution.

Competitive Preference Priorities: For FY 2013 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105 (c)(2)(i), we award up to an additional 3 points to an application that meets competitive preference priority 1 and up to an additional 3 points to an application that meets competitive preference priority 2, depending on how well the application meets these priorities. However, the maximum competitive preference points an application can receive under this competition is 3. These priorities are from the Department's notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637).

These priorities (up to 3 additional points) are:

Competitive Preference Priority 1: Support for Military Families (Up to 3 additional points).

Projects that are designed to address the needs of military-connected students (as defined in this notice).

Competitive Preference Priority 2: Improving Productivity (Up to 3 additional points).

Projects that are designed to significantly increase efficiency in the use of time, staff, money, or other resources while improving student learning or other educational outcomes (*i.e.,* outcome per unit of resource). Such projects may include innovative and sustainable uses of technology, modification of school schedules and teacher compensation systems, use of open educational resources (as defined in this notice), or other strategies.

Note: The priority includes suggestions for ways to improve productivity. The Department recognizes that some of these examples, such as modification of teacher compensation systems, may not be relevant within the context of this competition. Accordingly, applicants should consider responding to the competitive preference priority by proposing projects designed to improve productivity in the context of providing child care services.

Definitions: These definitions are from the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637), and they apply to the competitive preference priorities in this competition.

Military-connected student means (a) A child participating in an early

learning program, a student in preschool through grade 12, or a student enrolled in postsecondary education or training who has a parent or guardian on active duty in the uniformed services (as defined by 37 U.S.C. 101, in the Army, Navy, Air Force, Marine Corps, Coast Guard, National Guard, or the reserve component of any of the aforementioned services) or (b) a student who is a veteran of the uniformed services, who is on active duty, or who is the spouse of an active-duty service member.

Open educational resources (OER) means teaching, learning, and research resources that reside in the public domain or have been released under an intellectual property license that permits their free use or repurposing by others.

Program Authority: 20 U.S.C. 1070e.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 84, 86, 97, 98, and 99. (b) The Education Department suspension and debarment regulations in 2 CFR 3485. (c) The notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637).

Note: Because there are no program specific regulations for the CCAMPIS Program, applicants are encouraged to carefully read the authorizing statute, Title IV, Part A, Subpart 7, Sec. 419N of the HEA.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $9,465,764.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2014 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $10,000 to $375,000.

Estimated Average Size of Awards: $101,782.

Maximum Award: In accordance with section 419N(b)(2)(A) of the HEA, the maximum amount an applicant may receive under this program is one percent of the total amount of all Federal Pell Grant funds awarded to students enrolled at the institution for FY 2012. A grant will not be less than $10,000 for a single budget period of 12 months (see section 419N(b)(2)(B) of the HEA).

Estimated Number of Awards: 93.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

III. Eligibility Information

1. *Eligible Applicants:* Any institution of higher education that during FY 2012 awarded a total of $350,000 or more of Federal Pell Grant funds to students enrolled at the institution. Institutions that currently have a CCAMPIS Program grant with a project period ending in 2013 and 2014 are eligible to apply in accordance with section III.3 of this notice.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Other:* At this time, we do not anticipate conducting a competition for new awards in FY 2014. Institutions that currently have a CCAMPIS Program grant with a project ending in 2014 should apply for a new grant during the FY 2013 competition.

IV. Application and Submission Information

1. *Address to Request Application Package:* Josephine Alexander Hamilton, CCAMPIS Program, U.S. Department of Education, 1990 K Street NW., Room 7000, Washington, DC 20006–8510. Telephone: (202) 502–7600 or by email: *TRIO@ed.gov.* If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The Project Narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application and respond to the absolute priorities and the competitive preference priorities. You must limit the Project Narrative (Part III) to no more than 50 pages. Responses to the absolute priorities and the competitive preference priorities should follow responses to the selection criteria. A partial page will count as a full page toward the page limit. For purposes of determining compliance with the page limit, each page on which there are words will be counted as one full page. Applicants must use the following standards:

- A ''page'' is 8.5″ x 11″ on one side only, with 1″ margins at the top, bottom, and both sides. Page numbers and an identifier may be within the 1″ margin.
- Double space (no more than three lines per vertical inch) all text in the project narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in figures and graphs. Text in charts and tables may be single-spaced. You should also include a table of contents in the project narrative, which will not be counted against the 50-page limit.
- Use a font that is either 12 point or larger, or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman and Arial Narrow) will not be accepted.

The page limit does not apply to Part I—the Application for Federal Assistance face sheet (SF 424); Part II—the Budget Information Summary form (ED Form 524); Part III–A—the Program Profile form; Part III–B—the one-page Project Abstract form; and Part IV—the Assurances and Certifications. If you include any attachments or appendices, these items will be counted as part of Part III—the Project Narrative for purposes of the page limit requirement. You must include your complete response to the selection criteria and priorities in Part III—The Project Narrative.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: May 24, 2013.

Deadline for Transmittal of Applications: June 24, 2013.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed

under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: August 22, 2013.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We specify funding restrictions as outlined in section 419N(b)(2)(B) of the HEA. We reference additional regulations outlining funding restrictions in the Applicable Regulations section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, Central Contractor Registry, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR)—and, after July 24, 2012, with the System for Award Management (SAM), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR or SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR or SAM registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days to complete. Information about SAM is available at SAM.gov.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/applicants/get_registered.jsp.*

7. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the CCAMPIS Program, CFDA number 84.335A, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the CCAMPIS Program at *www.Grants.gov*. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.335, not 84.335A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document Format) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time, or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system;

and

• No later than two weeks before the application deadline date (14 calendar days; or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Eileen Bland, U.S. Department of Education, 1990 K Street NW., Room 7000, Washington, DC 20006–8510. FAX: (202) 502–7857.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.335A), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.335A), 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

Note: Applicants must include in the one-page abstract submitted with the application a statement indicating which competitive preference priorities they have addressed. The priorities addressed in the application must also be listed on the CCAMPIS Program Profile Sheet.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from section 419N of the HEA and are listed below.

The maximum score for the total of these criteria is 100 points. The maximum score for each criterion is

indicated in parentheses and the maximum score for each subcriterion is in the application package for this competition.

A. *Need for the Project.* (Maximum 35 Points)

In determining the need for the proposed project, the Secretary considers the extent to which the applicant demonstrates, in its application, the need for campus-based child care services for low-income students at the institution by including the following:

1. Information regarding student demographics.

2. An assessment of child care capacity on or near campus.

3. Information regarding the existence of waiting lists for existing child care.

4. Information regarding additional needs created by concentrations of poverty or by geographic isolation.

5. Other relevant data (see section 419N(c)(3) of the HEA).

B. *Quality of project design.* (Maximum 25 Points)

In determining the quality of the design of the proposed project, the Secretary considers the following:

1. The extent to which the applicant describes in its application the activities to be assisted and whether the grant funds will support an existing child care program or a new child care program (see section 419N(c)(4) of the HEA).

2. The extent to which the services to be provided by the proposed project are focused on those with the greatest needs (see 34 CFR 75.210(d)(3)(xi)).

3. The likely impact of the services to be provided by the proposed project on the intended recipients of those services (see 34 CFR 75.210(d)(3)(iv)).

4. The extent to which the application includes an assurance that the institution will meet the child care needs of low-income students through the provision of services, or through a contract for the provision of services (see section 419N(c)(6) of the HEA).

5. The extent to which the child care program will coordinate with the institution's early childhood education curriculum, to the extent the curriculum is available, to meet the needs of the students in the early childhood education program at the institution, and the needs of the parents and children participating in the child care program assisted under this section (see section 419N(c)(7) of the HEA).

6. The extent to which the proposed project encourages parental involvement (see 34 CFR 75.210(c)(2)(xix)).

7. If the applicant is requesting grant assistance for a new child care program (the applicant is not currently funded under this program) address:

a. The extent to which the applicant provides in its application a timeline, covering the period from receipt of the grant through the provision of the child care services, delineating the specific steps the institution will take to achieve the goal of providing low-income students with child care services (see section 419N(c)(8)(A) of the HEA).

b. The extent to which the applicant specifies in its application the measures the institution will take to assist low-income students with child care during the period before the institution provides child care services (see section 419N(c)(8)(B) of the HEA).

c. The extent to which the application includes a plan for identifying resources needed for the child care services, including space in which to provide child care services and technical assistance if necessary (see section 419N(c)(8)(C) of the HEA).

8. The extent to which the application includes an assurance that any child care facility assisted under this program will meet the applicable State or local government licensing, certification, approval, or registration requirements (see section 419N(c)(9) of the HEA).

9. The extent to which the application includes a plan for any child care facility assisted under this program to become accredited within three years of the date the institution first receives assistance (see section 419N(c)(10) of the HEA).

C. *Quality of management plan.* (Maximum 20 Points)

In determining the quality of the management plan for the proposed project, the Secretary considers the following:

1. The extent to which the application includes a management plan that describes the resources, including technical expertise and financial support, the institution will draw upon to support the child care program and the participation of low-income students in the program, such as accessing social services funding, using student activity fees to help pay the costs of child care, using resources obtained by meeting the needs of parents who are not low-income students, and accessing foundation, corporate or other institutional support, and demonstrates that the use of the resources will not result in increases in student tuition (see section 419N(c)(5) of the HEA).

2. The qualifications, including relevant training, experience, and time commitment of key project personnel (see 34 CFR 75.210(e)(3)(ii)).

3. The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (see 34 CFR 75.210(g)(2)(i)).

4. The extent to which the management plan includes specific plans for the institution to comply with the reporting requirements in section 419N(e)(1) of the HEA.

D. *Quality of Project Evaluation.* (Maximum 15 Points)

In determining the quality of the project evaluation, the Secretary considers the following:

1. The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project (see 34 CFR 75.210(h)(2)(i)).

2. The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible (see 34 CFR 75.210(h)(2)(iv)).

3. The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes (see 34 CFR 75.210(h)(2)(vi)).

E. *Adequacy of resources.* (Maximum 5 points)

In determining the adequacy of resources for the proposed project, the Secretary considers the following:

1. The extent to which the budget is adequate to support the proposed project (see 34 CFR 75.210(f)(2)(iii)).

2. The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits (see 34 CFR 75.210(f)(2)(v)).

2. *Review and Selection Process.* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

A panel of non-Federal readers will review each application in accordance with the selection criteria, pursuant to 34 CFR 75.217. For each application, the individual scores of the readers, which include any points awarded for the competitive priorities, will be added and the sum divided by the number of readers to determine the reader score received in the review process. If there are insufficient funds for all applications with the same score, the Secretary will choose among the tied applications so as to serve geographical areas that have been underserved by the CCAMPIS Program.

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The success of the CCAMPIS Program will be measured by the postsecondary persistence and degree of completion rates of the CCAMPIS Program participants that remain at the grantee institution. All CCAMPIS Program grantees will be required to submit an annual performance report documenting the persistence and degree attainment of their participants. Since students may take different lengths of time to complete their degrees, multiple years of performance reports data are needed to determine the degree completion rates of CCAMPIS Program participants. The Department will aggregate the data provided in the annual performance reports from all grantees to determine the accomplishment level.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Eileen S. Bland, U.S. Department of Education, 1990 K Street NW., Room 7000, Washington, DC 20006–8510. Telephone: (202) 502–7600 or by email: *TRIO@ed.gov.*

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact persons listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

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.

Delegation of Authority: The Secretary of Education has delegated authority to Brenda Dann-Messier, Assistant Secretary for Vocational and Adult Education, to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

Dated: May 20, 2013.

Brenda Dann-Messier,

Assistant Secretary for Vocational and Adult Education, delegated the authority to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

[FR Doc. 2013–12491 Filed 5–23–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Assistive Technology Alternative Financing Program

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.224D.

SUMMARY: The Secretary intends to use the slate of applicants developed for the Assistive Technology (AT) Alternative Financing Program (AFP) in fiscal year (FY) 2012 to make new grant awards in FY 2013. The Secretary takes this action because a significant number of high-quality applications remain on the grant slate and limited funding is available for new grant awards in FY 2013.

FOR FURTHER INFORMATION CONTACT: Robert Groenendaal, U.S. Department of Education, 400 Maryland Avenue SW.,

room 5025, Potomac Center Plaza (PCP), Washington, DC 20202–2800. Telephone: (202) 245–7393 or by email: *robert.groenendaal@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

On August 8, 2012, we published a notice in the **Federal Register** (77 FR 47375) inviting applications for new awards for FY 2012 under the AT AFP. The notice indicated that the absolute and competitive preference priorities in the notice would only apply to the FY 2012 grant competition because authorization for this program and its funding was provided for a single year in the FY 2012 appropriations act. However, in FY 2013, this authorization and funding was retained in the Consolidated and Further Continuing Appropriations Act, 2013 (Pub. L. 113–006).

In FY 2012, we received 15 applications for AT AFP grants and made three grant awards with the funds available. Given the quality of the applications that did not receive funding and the limited funding available for new awards in FY 2013, we intend to select grantees in FY 2013 from the existing slate of applicants.

Program Authority: Consolidated and Further Continuing Appropriations Act, 2013 (Pub. L. 113–006).

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

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.

Dated: May 21, 2013.

Michael K. Yudin,

Delegated the authority to perform the functions and the duties of the Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2013–12495 Filed 5–23–13; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9816–8]

California State Nonroad Engine Pollution Control Standards; In-Use Heavy Duty Vehicles (as Applicable to Yard Trucks and Two-Engine Sweepers); Notice of Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of decision.

SUMMARY: EPA is granting the California Air Resources Board's (CARB's) request for authorization of California's emission standards and accompanying enforcement procedures for in-use nonroad yard trucks and auxiliary engines used in two-engine sweepers as found within CARB's ''Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants from In-Use Heavy-Duty Diesel-Fueled Vehicles'' (Truck and Bus Regulation). The yard truck and auxiliary engine regulation that EPA is authorizing represents only a subset of provisions within the broader Truck and Bus Regulation. The California Truck and Bus Regulation establishes requirements for and principally applies to ''non-new'' on-road motor vehicles which are not the subject of this decision (such regulations are not preempted under the Clean Air Act). However, the Truck and Bus Regulation also applies to some engines that are subject to preemption, including any nonroad engines used to power yard trucks (which are principally used in nonroad agricultural operations) and the auxiliary engines used to power the broom or vacuum functions on two-engine sweepers. EPA's authorization in this Notice of Decision applies only to the yard truck and auxiliary engine provisions in the Truck and Bus Regulation.

DATES: Petitions for review must be filed by July 23, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID EPA–HQ–OAR–2012–0335. All documents relied upon in making this decision, including those submitted to EPA by CARB, are contained in the public docket. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air and Radiation Docket in the EPA Headquarters Library, EPA West Building, Room 3334, located at 1301 Constitution Avenue NW., Washington, DC. The Public Reading Room is open to the public on all federal government working days from 8:30 a.m. to 4:30 p.m.; generally, it is open Monday through Friday, excluding holidays. The telephone number for the Reading Room is (202) 566–1744. The Air and Radiation Docket and Information Center's Web site is *http://www.epa.gov/oar/docket.html.* The electronic mail (email) address for the Air and Radiation Docket is: *a-and-r-Docket@epa.gov,* the telephone number is (202) 566–1742, and the fax number is (202) 566–9744. An electronic version of the public docket is available through the federal government's electronic public docket and comment system. You may access EPA dockets at *http://www.regulations.gov.* After opening the *www.regulations.gov* Web site, enter EPA–HQ–OAR–2012–0335 in the ''Enter Keyword or ID'' fill-in box to view documents in the record. Although a part of the official docket, the public docket does not include Confidential Business Information (''CBI'') or other information whose disclosure is restricted by statute.

EPA's Office of Transportation and Air Quality (''OTAQ'') maintains a Web page that contains general information on its review of California waiver requests. Included on that page are links to prior waiver **Federal Register** notices, some of which are cited in today's notice; the page can be accessed at *http://www.epa.gov/otaq/cafr.htm.*

FOR FURTHER INFORMATION CONTACT: David Dickinson, Attorney-Advisor, Compliance Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue (6405J), NW., Washington, DC 20460. Telephone: (202) 343–9256. Fax: (202) 343–2800. Email: *Dickinson.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. California's Regulation

By letter dated March 2, 2012, CARB submitted to EPA its authorization request (CARB Authorization Request)

pursuant to section 209(e) of the Clean Air Act (''CAA'' or ''the Act''), regarding its regulation of emissions from yard trucks and two-engine sweepers (Yard Trucks Regulation).[1] The Yard Trucks Regulation, contained within CARB's Truck and Bus Regulation, was approved by the CARB Board at a public hearing on December 11, 2008 (by Resolution 08–43),[2] and formally adopted on October 19, 2009. The Truck and Bus Regulation is codified at title 13, California Code of Regulations, section 2025.[3] The CARB Board subsequently amended the regulation on September 19, 2011 (by Resolution 10–44),[4] which was approved by the California Office of Administrative Law on December 14, 2011.

With exceptions applicable to certain agricultural vehicles, including agricultural yard trucks, and auxiliary engines in two-engine sweepers, all agricultural vehicles and the auxiliary engines in two-engine sweepers must comply with general in-use emission requirements depending upon the gross vehicle weight rating (GVWR) and model year of the vehicle. The amended regulation does not require that these vehicles be equipped with particulate matter (PM) filters but does require them to be upgraded to 2010 or later model year engines based upon a model year/GVWR compliance schedule. Additional compliance flexibilities are provided for heavier, heavy-duty vehicles and for smaller fleets. In addition, the Yard Trucks Regulation includes a number of other compliance flexibilities (e.g. early compliance credits, exemptions for NO_X-exempt areas, etc). Special provisions apply to low-mileage agricultural vehicles, including agricultural yard trucks with nonroad engines and special provisions also apply to auxiliary engines used in two-engine sweepers.

B. Clean Air Act Nonroad Engine and Vehicle Authorizations

Section 209(e)(1) of the Act permanently preempts any State, or political subdivision thereof, from adopting or attempting to enforce any standard or other requirement relating to the control of emissions for certain new nonroad engines or vehicles.[5] For all other nonroad engines (including ''non-new'' nonroad engines), States are preempted from adopting and enforcing standards and other requirements relating to the control of emissions, except that section 209(e)(2) of the Act requires EPA, after notice and opportunity for public hearing, to authorize California to adopt and enforce such regulations unless EPA makes one of three specifically enumerated findings. In addition, other states with air quality attainment plans, approved under part D of Title I of the Act, may adopt and enforce such regulations if the standards, and implementation and enforcement, are identical to California's standards.

On July 20, 1994, EPA promulgated a rule that sets forth, among other things, regulations providing the criteria, as found in section 209(e)(2), which EPA must consider before granting any California authorization request for nonroad engine or vehicle emission standards.[6] EPA revised these regulations in 1997.[7] As stated in the preamble to the 1994 rule, EPA has historically interpreted the section 209(e)(2)(iii) ''consistency'' inquiry to require, at minimum, that California standards and enforcement procedures be consistent with section 209(a), section 209(e)(1), and section 209(b)(1)(C) (as EPA has interpreted that subsection in the context of section 209(b) motor vehicle waivers).[8]

In order to be consistent with section 209(a), California's nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. To be consistent with section 209(e)(1), California's nonroad standards and enforcement procedures must not attempt to regulate engine categories that are permanently preempted from state regulation. To determine consistency with section 209(b)(1)(C), EPA typically reviews nonroad authorization requests under the same ''consistency'' criteria that are applied to motor vehicle waiver requests. Pursuant to section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if she finds that California ''standards and accompanying enforcement procedures are not consistent with section 202(a)'' of the Act. Previous decisions granting waivers and authorizations have noted that state standards and enforcement procedures are inconsistent with section 202(a) if: (1) There is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time, or (2) the federal and state testing procedures impose inconsistent certification requirements.

C. Burden of Proof

In *Motor and Equip. Mfrs Assoc.* v. *EPA,* 627 F.2d 1095 (DC Cir. 1979) (''*MEMA I*''), the U.S. Court of Appeals stated that the Administrator's role in a section 209 proceeding is to:

> consider all evidence that passes the threshold test of materiality and . . . thereafter assess such material evidence against a standard of proof to determine whether the parties favoring a denial of the waiver have shown that the factual circumstances exist in which Congress intended a denial of the waiver.[9]

The court in *MEMA I* considered the standards of proof under section 209 for the two findings related to granting a waiver for an ''accompanying enforcement procedure'' (as opposed to the standards themselves): (1) Protectiveness in the aggregate and (2) consistency with section 202(a) findings. The court instructed that ''the standard of proof must take account of the nature of the risk of error involved in any given decision, and it therefore varies with the finding involved. We need not decide how this standard operates in every waiver decision.'' [10]

The court upheld the Administrator's position that, to deny a waiver, there must be ''clear and compelling evidence'' to show that proposed procedures undermine the protectiveness of California's standards.[11] The court noted that this standard of proof also accords with the congressional intent to provide California with the broadest possible discretion in setting regulations it finds protective of the public health and welfare.[12]

With respect to the consistency finding, the court did not articulate a standard of proof applicable to all proceedings, but found that the opponents of the waiver were unable to meet their burden of proof even if the standard were a mere preponderance of the evidence. Although *MEMA I* did not explicitly consider the standards of proof under section 209 concerning a

[1] CARB Authorization Request at EPA–HQ–OAR–2012–0335–0001.

[2] CARB Resolution 08–43 at EPA–HQ–OAR–2012–0335–0021.

[3] CARB Final Regulation Order at EPA–HQ–OAR–2012–0335–0005.

[4] CARB Resolution 10–44 at EPA–HQ–OAR–2012–0335–0019.

[5] States are expressly preempted from adopting or attempting to enforce any standard or other requirement relating to the control of emissions from new nonroad engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower. Such express preemption under section 209(e)(1) of the Act also applies to new locomotives or new engines used in locomotives.

[6] 59 FR 36969 (July 20, 1994).

[7] *See* 62 FR 67733 (December 30, 1997) and 40 CFR 1074.105.

[8] *See* 59 FR 36969 (July 20, 1994).

[9] *MEMA I,* 627 F.2d at 1122.

[10] *Id.*

[11] *Id.*

[12] *Id.*

waiver request for ''standards,'' as compared to accompanying enforcement procedures, there is nothing in the opinion to suggest that the court's analysis would not apply with equal force to such determinations. EPA's past waiver decisions have consistently made clear that: ''[E]ven in the two areas concededly reserved for Federal judgment by this legislation—the existence of 'compelling and extraordinary' conditions and whether the standards are technologically feasible—Congress intended that the standards of EPA review of the State decision to be a narrow one.'' [13]

Opponents of the waiver bear the burden of showing that the criteria for a denial of California's waiver request have been met. As found in *MEMA I,* this obligation rests firmly with opponents of the waiver in a section 209 proceeding:

> [t]he language of the statute and its legislative history indicate that California's regulations, and California's determinations that they must comply with the statute, when presented to the Administrator are presumed to satisfy the waiver requirements and that the burden of proving otherwise is on whoever attacks them. California must present its regulations and findings at the hearing and thereafter the parties opposing the waiver request bear the burden of persuading the Administrator that the waiver request should be denied.[14]

The Administrator's burden, on the other hand, is to make a reasonable evaluation of the information in the record in coming to the waiver decision. As the court in *MEMA I* stated: ''here, too, if the Administrator ignores evidence demonstrating that the waiver should not be granted, or if he seeks to overcome that evidence with unsupported assumptions of his own, he runs the risk of having his waiver decision set aside as 'arbitrary and capricious.' '' [15] Therefore, the Administrator's burden is to act ''reasonably.'' [16]

D. EPA's Administrative Process in Consideration of California's Yard Trucks Regulation

Upon receipt of CARB's request, EPA offered an opportunity for a public hearing, and requested written comment on issues relevant to a full section 209(e) authorization analysis, by publication of a **Federal Register** notice on August 21, 2012.[17] Specifically, we requested comment on: (a) Whether CARB's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable federal standards is arbitrary and capricious, (b) whether California needs such standards to meet compelling and extraordinary conditions, and (c) whether California's standards and accompanying enforcement procedures are consistent with section 209 of the Act.

EPA received no comments or testimony in response to EPA's August 21, 2012 **Federal Register** notice. EPA offered an opportunity for public hearing, related to CARB's authorization request, on September 20, 2012. No one notified EPA stating a desire to testify at the public hearing and therefore no hearing was held. The written comment period closed on October 22, 2012.

II. Discussion

A. California's Protectiveness Determination

Section 209(e)(2)(i) of the Act instructs that EPA cannot grant an authorization if the agency finds that California was arbitrary and capricious in its determination that its standards are, in the aggregate, at least as protective of public health and welfare as applicable federal standards. CARB's Board made a protectiveness determination in Resolution 08–43, finding that its amendments will not cause its nonroad engine emission standards, in the aggregate, to be less protective of public health and welfare than applicable federal standards.[18] CARB presents that there is no basis for EPA to find that the Board's determination is arbitrary and capricious since California is the only governmental jurisdiction in the nation entrusted with authority to adopt its own emission compliance requirements for in-use nonroad vehicles and engines. CARB envisions that nonroad yard truck fleets (and two-engine sweepers) will comply with the emission compliance requirements by modernizing their fleets through purchasing newer vehicles and engines and installing retrofit PM filters that will achieve emission reductions equal to or greater than the reductions that can be achieved under federal new engine emission standards.[19]

EPA did not receive any comments challenging California's protectiveness determination. Therefore, based on the record before us, EPA finds that opponents of the authorization have not shown that California was arbitrary and capricious in its determination that its standards are, in the aggregate, at least as protective of public health and welfare as applicable federal standards.

B. Need for California Standards To Meet Compelling and Extraordinary Conditions

Section 209(e)(2)(ii) of the Act instructs that EPA cannot grant an authorization if the agency finds that California ''does not need such California standards to meet compelling and extraordinary conditions. . . .'' This criterion restricts EPA's inquiry to whether California needs its own mobile source pollution program to meet compelling and extraordinary conditions, and not whether any given standards are necessary to meet such conditions.[20] As discussed above, for more than 40 years CARB has repeatedly demonstrated the need for its mobile source emissions program to address compelling and extraordinary conditions in California. In its Resolution 08–43, CARB affirmed its longstanding position that California continues to need its own motor vehicle and engine program to meet its serious air pollution problems.[21] Likewise, EPA has consistently recognized that California continues to have the same ''geographical and climatic conditions that, when combined with the large numbers and high concentrations of automobiles, create serious pollution problems.'' [22] Furthermore, no commenter has presented any argument or evidence to suggest that California no longer needs a separate mobile source emissions program to address compelling and extraordinary conditions in California. Therefore, EPA has determined that we cannot deny California an authorization for its Yard Trucks Regulation under section 209(e)(2)(ii).

C. Consistency With Section 209 of the Clean Air Act

Section 209(e)(2)(iii) of the Act instructs that EPA cannot grant an authorization if California's standards and enforcement procedures are not consistent with section 209. As described above, EPA has historically evaluated this criterion for consistency with sections 209(a), 209(e)(1), and 209(b)(1)(C).

[13] *See, e.g.,* 40 FR 21102–103 (May 28, 1975).

[14] *MEMA I,* 627 F.2d at 1121.

[15] *Id.* at 1126.

[16] *Id.*

[17] 77 FR 50502 (August 21, 2012).

[18] CARB Resolution 08–43; *see also* CARB Resolution 10–44.

[19] CARB Authorization Request at 9.

[20] *See* 74 FR 32744, 32761 (July 8, 2009); 49 FR 18887, 18889–18890 (May 3, 1984).

[21] CARB Resolution 08–43 and CARB Resolution 10–44.

[22] 49 FR 18887, 18890 (May 3, 1984); *see also* 76 FR 34693 (June 14, 2011), 74 FR 32744, 32763 (July 8, 2009), and 73 FR 52042 (September 8, 2008).

1. Consistency With Section 209(a)

To be consistent with section 209(a) of the Clean Air Act, California's Yard Trucks Regulation must not apply to new motor vehicles or new motor vehicle engines. California's Yard Trucks Regulation expressly applies only to in-use off-road yard trucks and auxiliary engines in two-engine sweepers and does not apply to new engines used in motor vehicles as defined by section 216(2) of the Clean Air Act.[23] No commenter presented otherwise. Based on the evidence in the record, EPA cannot deny California's request on the basis that California's Yard Trucks Regulation is not consistent with section 209(a).

2. Consistency With Section 209(e)(1)

To be consistent with section 209(e)(1) of the Clean Air Act, California's Yard Trucks Regulation must not affect new farming or construction vehicles or engines that are below 175 horsepower (hp), or new locomotives or their engines. CARB presents that the regulation specifically does not apply to locomotives and it further does not apply to new farm and construction equipment with engines less than 175 horsepower hp.[24] In addition, CARB notes that its regulation does not immediately attempt to regulate new farm and construction equipment and that under any compliance pathway a fleet is not required to take any action on a vehicle less than 7 years old. CARB maintains that its in-use regulations are consistent with the definition of new in EPA's section 209(e) rule. No commenter presented otherwise. Based on the evidence in the record, EPA cannot deny California's request on the basis that California's Yard Trucks Regulation is not consistent with section 209(e)(1).

3. Consistency With Section 209(b)(1)(C)

The requirement that California's standards be consistent with section 209(b)(1)(C) of the Clean Air Act effectively requires consistency with section 202(a) of the Act. California standards are inconsistent with section 202(a) of the Act if there is inadequate lead-time to permit the development of technology necessary to meet those requirements, giving appropriate consideration to the cost of compliance within that timeframe. California's accompanying enforcement procedures would also be inconsistent with section 202(a) if federal and California test procedures conflicted such that the same engine could not meet both the federal requirements and the California requirements. The scope of EPA's review of whether California's action is consistent with section 202(a) is narrow. The determination is limited to whether those opposed to the authorization or waiver have met their burden of establishing that California's standards are technologically infeasible, or that California's test procedures impose requirements inconsistent with the federal test procedures.[25]

a. Technological Feasibility

Congress has stated that the consistency requirement of section 202(a) relates to technological feasibility.[26] Section 202(a)(2) states, in part, that any regulation promulgated under its authority ''shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.'' Section 202(a) thus requires the Administrator to first determine whether adequate technology already exists; or if it does not, whether there is adequate time to develop and apply the technology before the standards go into effect. The latter scenario also requires the Administrator to decide whether the cost of developing and applying the technology within that time is feasible. Previous EPA waivers are in accord with this position.[27] For example, a previous EPA waiver decision considered California's standards and enforcement procedures to be consistent with section 202(a) because adequate technology existed as well as adequate lead-time to implement that technology.[28] Subsequently, Congress has stated that, generally, EPA's construction of the waiver provision has been consistent with congressional intent.[29]

CARB presents that the technology required to comply with its Yard Trucks Regulation is currently available, and that it has provided sufficient lead-time, giving consideration to cost of compliance.[30] CARB points to EPA's own analysis in the federal rule for these same engines, but also separately concluded that fleet owners will be able to absorb or pass compliance costs to their customers.

EPA did not receive any comments suggesting that CARB's standards and test procedures are technologically infeasible. Based on the evidence in the record, EPA cannot deny California's authorization based on technological infeasibility.

b. Consistency of Certification Procedures

California's standards and accompanying enforcement procedures would also be inconsistent with section 202(a) if the California test procedures were to impose certification requirements inconsistent with the federal certification requirements. Such inconsistency means that manufacturers would be unable to meet both the California and federal testing requirements using the same test vehicle or engine.[31] CARB presents that the Yard Trucks Regulation raises no issue regarding test procedure consistency because there are no additional test procedures for engine manufacturers or fleet owners to meet beyond federal and state certification testing for new engines.[32] CARB also points out that its retrofit verification program is a voluntary program available to retrofit device manufacturers, and not directly required of fleet owners.

EPA received no comments suggesting that CARB's Yard Trucks Regulation pose any test procedure consistency problem. Based on the evidence in the record, EPA cannot find that CARB's testing procedures are inconsistent with section 202(a). Consequently, EPA cannot deny CARB's request based on this criterion.

D. Authorization Determination for California's Yard Trucks Regulation

After a review of the information submitted by CARB and the record for this authorization request, EPA finds that no basis exists to demonstrate that authorization for California's Yard Trucks Regulation should be denied based on any of the statutory criteria of section 209(e)(2). For this reason, EPA finds that an authorization for California's Yard Trucks Regulation should be granted.

III. Decision

The Administrator has delegated the authority to grant California section 209(e) authorizations to the Assistant Administrator for Air and Radiation. After evaluating California's

[23] CARB Authorization Request at 11–13.

[24] *Id.*

[25] *MEMA I,* 627, F.2d at 1126.

[26] H.R. Rep. No. 95–294, 95th Cong., 1st Sess. 301 (1977).

[27] *See, e.g.,* 49 FR 1887, 1895 (May 3, 1984); 43 FR 32182, 32183 (July 25, 1978); 41 FR 44209, 44213 (October 7, 1976).

[28] 41 FR 44209 (October 7, 1976).

[29] H.R. Rep. No. 95–294, 95th Cong., 1st Sess. 301 (1977).

[30] CARB Authorization Request at 13–18.

[31] *See, e.g.,* 43 FR 32182 (July 25, 1978).

[32] CARB Authorization Request at 18, *See* 49 CFR parts 89 and 1039 and title 13, CCR, sections 2400 through 2427 and 2700 et seq.

Authorization Request, and the public record for this matter, EPA is granting an authorization to California for its Yard Trucks Regulation.

My decision will affect not only persons in California, but also entities outside the State who must comply with California's requirements. For this reason, I determine and find that this is a final action of national applicability for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by July 23, 2013. Judicial review of this final action may not be obtained in subsequent enforcement proceedings, pursuant to section 307(b)(2) of the Act.

IV. Statutory and Executive Order Reviews

As with past authorization and waiver decisions, this action is not a rule as defined by Executive Order 12866. Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12866.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Further, the Congressional Review Act, 5 U.S.C. 801, *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule for purposes of 5 U.S.C. 804(3).

Dated: May 16, 2013.

Gina McCarthy,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 2013–12505 Filed 5–23–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9009–3]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements Filed 05/13/2013 through 05/17/2013

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20130131, Draft EIS, FHWA, UT, West Davis Corridor, Comment Period Ends: 08/23/2013, Contact: Paul Ziman 801–955–3525.

EIS No. 20130132, Final EIS, USFWS, AK, Shadura Natural Gas Development Project within Kenai National Wildlife Refuge, Review Period Ends: 06/24/2013, Contact: Peter Wikoff 907–786–3837.

EIS No. 20130133, Draft EIS, BLM, CO, Dominguez-Escalante National Conservation Area Draft Resource Management Plan, Comment Period Ends: 08/15/2013, Contact: Samantha Staley 970–244–3188.

EIS No. 20130134, Draft EIS, FERC, CA, Drum-Spaulding Hydroelectric Project and Yuba-Bear Hydroelectric Project for Hydropower License, Comment Period Ends: 07/23/2013, Contact: Alan Mitchnick 202–502–6074.

EIS No. 20130135, Revised Final EIS, USACE, LA, Morganza to the Gulf of Mexico, Hurricane and Storm Damage Risk Reduction System Project, Review Period Ends: 06/24/2013, Contact: Nathan Dayan 504–862–2530.

EIS No. 20130136, Draft EIS, USACE, NV, Truckee Meadows Flood Control Project, Comment Period Ends: 07/08/2013, Contact: Tyler Stalker 916–557–5100.

EIS No. 20130137, Draft EIS, USFS, WY, Mackey Road Relocation, Medicine Bow-Routt National Forests and Thunder Basin National Grassland, Comment Period Ends: 07/09/2013, Contact: Amy Ormseth 307–358–4690.

Dated: May 21, 2013.

Cliff Rader,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2013–12458 Filed 5–23–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice; request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3502–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: 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; the accuracy of the Commission's burden estimates; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC 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 Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 24, 2013. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at 202–395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Judith B. Herman, Federal Communications Commission, via the Internet at *Judith-b.herman@fcc.gov.* Also, please submit your PRA comments by email send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, FCC, at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1030.

Title: Service Rules for Advanced Wireless Services (AWS) in the 1.7 GHz and 2.1 GHz Bands.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, Federal Government and state, local or tribal government.

Number of Respondents: 979 respondents; 1,625 responses.

Estimated Time per Response: .25 hours to 5 hours.

Frequency of Response: Annual, on occasion, one time and every 10 reporting requirements, recordkeeping requirements, and third party disclosure requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 151, 152, 154(i), 201, 301, 302, 303(f), 303(g), 303(r), 307, 308, 309, 310, 316, 319, 34, 332, and 333 of the Communications Act of 1934, as amended, and the Commercial Spectrum Enhancement Act (CSEA), Pub. L. 108–494, 118 Stat 3896, 3992 (2004).

Total Annual Burden: 32,386 hours.

Total Annual Cost: $581,800.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality except as follows: some relocators that seek reimbursement through the FCC cost-sharing plan administered by the clearinghouses will be required to retain records for more than three years, as will the clearinghouses themselves.

Needs and Uses: The Commission will submit this information collection during this comment period to obtain the full, three year clearance from the Office of Management and Budget (OMB). The Commission is requesting approval for a revision. There is a change to the Commission's previous burden estimates. The Commission is now reporting a seven hour adjustment in the total annual burden which is due to an increase in the estimated number of AWS licensees based on the grant of additional initial licenses (FCC Auction 78) and partitions and disaggregations of existing licenses to new licensees (765 incumbent FS licensees, 200 AWS licensees, 10 incumbent BRS licensees, 2 AWS–4 operators and 2 clearinghouses) = 979 respondents.

The Commission in the revisions proposed in the *AWS–4 NPRM,* FCC 12–32, which was submitted for OMB approval, proposed terrestrial service, technical, assignment and licensing rules for the 2000–2020 MHz and 2180–2200 MHz spectrum bands. These proposed rules were designed to provide for flexible use of this spectrum, to encourage innovation and investment in mobile broadband, and to provide a stable regulatory environment in which broadband deployment could develop. The *AWS–4 NPRM* proposed terrestrial service rules for these spectrum bands that would generally follow the Commission's Part 27 rules, which apply to flexible use services (such as AWS–1), modified as necessary to account for issues unique to the 2000–2020 MHz and 2180–2200 MHz bands. The proposals in the *AWS–4 NPRM* included band-specific buildout, renewal, and discontinuance of service criteria. Given the proximity of these spectrum bands to spectrum bands previously identified as Advanced Wireless Services (AWS), the *AWS–4 NPRM* referred to these spectrum bands as ''AWS–4'' or ''AWS–4 spectrum''. The *AWS–4 NPRM* proposed to expand spectrum available for AWS, which the Commission first adopted in the *AWS–1 Report and Order.*

For this revision, subject to OMB approval, the Commission in the *AWS–4 Report and Order,* FCC 12–151, adopts flexible use rules for 40 megahertz of spectrum in the 2 GHz band (2000–2020 MHz and 2180–2200 MHz) that would increase the nation's supply of spectrum for mobile broadband. We adopt AWS–4 terrestrial service, technical, and licensing rules that generally follow the Commission's Part 27 flexible use rules, modified as necessary to account for issues unique to the AWS–4 bands.

Recordkeeping, reporting and third party disclosure requirements associated with the items listed in paragraph one of the supporting statement that is submitted to OMB for approval, will be used by incumbent licensees and new entrants to negotiate relocation agreements and to coordinate operations to avoid interference. The information will also be used by the clearinghouses to maintain a national database, determine reimbursement obligations of entrants pursuant to the Commission's rules, and notify such entrants of their reimbursement obligations. Additionally, the information will be used to facilitate dispute resolution and for FCC oversight of the clearinghouses and the cost-sharing plan.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison, Office of the Secretary, Office of Managing Director.

[FR Doc. 2013–12440 Filed 5–23–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority, Comments Requested

AGENCY: Federal Communications Commission.

ACTION: Notice; request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden(s) and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: 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; the accuracy of the Commission's burden estimate(s); ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and further ways to reduce the information burden for small business concerns with fewer than 25 employees.

The FCC 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 Paperwork Reduction Act (PRA) that does not display a valid OMB Control Number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before July 23, 2013. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at: (202) 395–5167 or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Leslie F. Smith, Office of Managing Director (OMD), Federal Communications Commission (FCC), via the Internet at *Leslie.Smith@fcc.gov.* To submit your PRA comments by email, send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Leslie F. Smith, Office of Managing Director (OMD), Federal Communications Commission (FCC), (202) 418–0217, or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0655.

Title: Requests for Waivers of Regulatory Fees and Application Fees.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 340 respondents; 340 responses.

Estimated Time per Response: 1.0 hour.

Frequency of Response: On occasion reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 158 and 47 U.S.C. 159.

Total Annual Burden: 340 hours.

Total Annual Cost: $0.00.

Nature and Extent of Confidentiality: Parties filing information may request that the information be withheld from disclosure. Requests for confidentiality are processed in accordance with FCC rules under 47 CFR § 0.459. This information collection does not affect individuals; however, should any personally identifiable information (PII) be submitted, the FCC has a system of records notice, FCC/OMD–9, ''Commission Registration System (CORES)'' to cover the collection, use, storage, and destruction of this PII, as required by the *Privacy Act of 1974,* as amended, 5 U.S.C. 552a.

Privacy Act Impact Assessment: No impacts.

Needs and Uses: Pursuant to 47 U.S.C. 158 and 47 U.S.C. 159, the FCC is required to collect application fees and annual regulatory fees from its licensees and permittees. Licensees and permittees may request waivers of these fees where good cause is shown and where waiver or deferral of the fee would promote the public interest. Financial information and reports that are submitted to support waiver requests are ordinarily maintained as business records and can be easily assembled. The FCC uses the information submitted in support of the waiver request to determine if such waiver is warranted.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison, Office of the Secretary, Office of Managing Director.

[FR Doc. 2013–12439 Filed 5–23–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[GN Docket No. 13–5; DA 13–1016]

FCC Technology Transitions Policy Task Force Seeks Comment on Potential Trials

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Technology Transitions Policy Task Force (Task Force) seeks comment on several potential trials relating to the ongoing transitions from copper to fiber, from wireline to wireless, and from time-division multiplexing (TDM) to Internet Protocol (IP). The goal of these trials would be to gather a factual record to help determine what policies are appropriate to promote investment and innovation while protecting consumers, promoting competition, and ensuring that emerging all-IP networks remain resilient and reliable. Towards this end, the public notice seeks comment on a set of potential trials, including targeted trials on Voice over Internet Protocol (VoIP) interconnection, Next Generation 911 (NG911) and the transition from wireline to wireless service in certain geographic areas. The public notice also invites parties in favor of conducting a trial in which one or more providers make a general switch to all-IP traffic in a geographic area to submit a detailed and comprehensive plan laying out how such a trial would work. It also seeks comment on whether other trials should be considered, such as additional numbering trials, trials to facilitate better access for persons with disabilities, and whether there are additional trials concerning the TDM to IP or copper to fiber transitions that should be evaluated. Finally, it seeks comment on how best to work with state, local and Tribal governments and how to ensure successful trials while also avoiding potential harmful impacts to consumers.

DATES: Comments are due on or before July 8, 2013. Reply comments are due on or before August 7, 2013.

ADDRESSES: You may submit comments, identified by GN Docket No. 13–5 by any of the following methods: (1) The Commission's Electronic Comment Filing System (ECFS) or (2) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.
- *People with Disabilities:* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

In addition, one copy of each pleading must be sent to the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, *www.bcpiweb.com;* phone: (202) 488–5300 fax: (202) 488–5563.

FOR FURTHER INFORMATION CONTACT: Patrick Halley, Acting Deputy Director, Technology Transitions Policy Task Force, at 202–418–7550, or by email at *Patrick.Halley@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Task Force proposes to move forward with real-world trials to obtain data that will be helpful to the Commission. The goal

of any trials would be to gather a factual record to help determine what policies are appropriate to promote investment and innovation while protecting consumers, promoting competition, and ensuring that emerging all-IP networks remain resilient. We seek comment on several potential trials relating to the ongoing transitions from copper to fiber, from wireline to wireless, and from time-division multiplexing (TDM) to IP. Consistent with their policy development and coordination functions, today's action is taken by the Chiefs of the Consumer & Governmental Affairs Bureau, Public Safety and Homeland Security Bureau, Wireless Telecommunications Bureau, and Wireline Competition Bureau, as well as the Commission's General Counsel, all of whom were named by Chairman Genachowski to serve as members of the Task Force.

The Commission has a long history of using trials and pilot programs to help answer questions regarding technical concerns and to gather data and develop appropriate policy recommendations. Indeed, the Commission recently unanimously authorized a 6-month trial to examine providing interconnected VoIP providers direct access to telephone numbers. Stakeholders have also requested that the Commission initiate trials to explore technology transition issues.

In the spirit of these prior initiatives, we seek comment on a set of potential trials to assist the Commission in ensuring that policy decisions related to ongoing technology transitions are grounded in sound data.

First, as we move from TDM to all-IP networks, providers are migrating to VoIP interconnection. VoIP interconnection should be more efficient and has the potential to unleash new, innovative services and features. We seek comment on a VoIP interconnection trial that would gather data to determine whether there are technical issues that need to be addressed and gather information relevant to the appropriate policy framework.

Second, as we transition away from TDM, the nation's emergency calling (911) system must also migrate to NG911. NG911 refers to an initiative aimed at enabling the public to obtain emergency assistance by means of advanced communications technologies beyond traditional voice-centric devices. The NG911 proceeding examines how to update the 911 system to improve public emergency communications services and allow them to take advantage of the enhanced capabilities of IP-based devices and networks by enabling 911 PSAPs to receive texts, photos, videos, and data. Although there is broad consensus regarding the benefits and potential of NG911, when these new capabilities will be introduced is less certain. We seek comment on a trial that will assist the Commission, state, local and Tribal governments, and PSAPs in a few geographic areas to answer important technical and policy questions to accelerate the transition. Beyond NG911, we also seek comment on how a trial could elicit data on the impact of network resiliency and public safety more broadly as consumer migrate to wireless and IP-based services that are dependent on commercial power.

Third, at least one provider has proposed serving consumers with wireless service in place of wireline service in certain geographic areas. We seek comment on a trial that would analyze the impact of doing so and, in particular, focus on the consumer experience and ensure that consumers have the ability to move back to a wireline product during the trial.

Some parties have advocated a trial in which one or more providers make a general switch to all-IP traffic in a geographic area, potentially transitioning from wireline to wireless technology in part of the area, but also making a number of other simultaneous transitions. We have previously sought comment on this general approach. We seek further comment on this idea in the context of the three potential trials discussed above, including whether the trials discussed herein should be conducted in a single geographic area, if there is information to be gained from a general geographic trial that would not be gathered from the more targeted trials discussed here, and the costs and benefits of the alternative approaches. We invite parties in favor of conducting a broader geographic trial to submit a more detailed and comprehensive plan laying out how such a trial would work.

We also seek comment on whether there are other trials we should consider, such as additional numbering trials, trials to facilitate better access for persons with disabilities, and whether there are additional trials concerning the TDM to IP or copper to fiber transitions that we should evaluate. We also seek comment on the general structure and design of any trial, and legal and administrative issues. We recognize the important role that states and Tribes continue to play in these ongoing technology transitions and therefore seek comment on how to best work with state and local entities in selecting and implementing potential trials and ideas as to other ways that we can effectively coordinate with state and local agencies in this area.

We are mindful of the fact that, while participation in any trial would be voluntary for providers, all consumers in trial regions would likely be affected, either directly or indirectly. As consumer protection is a core principle guiding the work of the Task Force, comments in support of any trial proposal should address how best to ensure a successful trial while also avoiding potential harmful impacts to consumers.

We also seek comment on ways to obtain useful data in addition to trials. For instance, the Commission is currently collecting data regarding special access through a mandatory data request. Are there other data collections that the Commission should undertake to obtain data necessary to guide sound policymaking regarding the ongoing technological transitions?

I. Technology Trials

A. VoIP Interconnection

Several commenters have urged the Commission to initiate a trial for VoIP interconnection to ensure that technical and process issues are understood and resolved. We seek comment on whether to conduct such a trial so that the Commission can gather real-world data on the need and scope for technical or industry standards for the exchange of voice traffic in Internet protocol formats. We note that interconnection for voice (and possibly other real-time services) using Internet protocols at the application layer is distinct from and raises different technical and administration issues than general peering and interconnection for layer-3 IP data services, and we emphasize that the trial we propose today does not reach layer-3 peering issues.

Background. The Commission has highlighted the tremendous benefits, efficiencies, and increased reliability and redundancy that interconnecting using Internet protocols has over the traditional TDM framework. VoIP interconnection also unleashes the potential for new services and features for consumers such as high definition (HD) audio, additional video and text media formats, and secured caller ID. In the *USF/ICC Transformation Order,* the Commission stated that it ''expect[ed] all carriers to negotiate in good faith in response to requests for IP-to-IP interconnection for the exchange of voice traffic.'' *See USC/ICC Transformation Order,* FCC 11–161, published at 76 FR 78384, 76 FR 76623, 77 FR 26987, December 8, 2011, December 16, 2011, May 8, 2012. The

Commission also explained that ''[t]he duty to negotiate in good faith has been a longstanding element of interconnection requirements under the Communications Act and does not depend upon the network technology underlying the interconnection, whether TDM, IP, or otherwise.'' In the Further Notice of Proposed Rulemaking accompanying the *USF/ICC Transformation Order,* the Commission sought comment on all aspects of VoIP interconnection, from different legal frameworks, to various policy proposals and questions on implementation of each issue. Although commenters agreed that future interconnection for voice traffic would occur using Internet protocols, commenters disagreed about the appropriate policy framework for VoIP interconnection, and whether there was a need for technical and industry standards.

More recently, in 2012, the FCC's Technological Advisory Council (TAC) examined the issue of VoIP interconnection and concluded that, although ''VoIP Interconnect[ion] is happening all over the world, at a rapid rate,'' implementation in the United States has been ''delayed'' aside from the efforts of some cable companies and competitive local exchange carriers (CLECs). Finally, as noted above, the Commission recently adopted an Order and NPRM regarding providing interconnected VoIP providers direct access to numbers. Among other things, that item sought comment on the status of VoIP interconnection arrangements in the United States. We look forward to receiving updated information as we evaluate the framework for these potential trials.

Discussion. We seek comment on conducting a trial in a few geographic markets, including at least one major metropolitan area and one rural area. We seek comment on the number of geographic markets to be included in the trial, the scope of a geographic area, and on the selection criteria. We seek comment on how best to encourage participation in such a trial and the means of identifying appropriate geographic areas in these trials.

Technical Issues. We seek comment on how to structure a trial to help identify whether industry standards or standards profiles are needed in the areas of signaling, media formats (codecs), non-voice media such as text and video, fault location, and fail-over and quality-of-service measurements. A trial may also identify multiple lower-layer mechanisms for exchanging voice traffic, such as common points of presence or Internet exchange points, Internet transport, and dedicated transport links. We seek comment on how to structure any trial to help examine these issues.

Logistical Issues. In moving from TDM to VoIP interconnection, issues such as the number and physical points of interconnection, pricing, transit, numbering and number portability, service level agreements, quality of service, and other terms and conditions will need to be resolved. For example, the TAC identified several issues that need to be resolved to reach VoIP interconnection agreements, including routing, addressing, security, signaling, media, quality, accounting/charging, and testing. A trial may shed light on which issues are more difficult to resolve and which issues parties are able to negotiate more easily. In addition, parties will need to resolve application of any legacy rules to the VoIP interconnection agreement. For example, parties would need to resolve whether and how intercarrier compensation occurs with VoIP interconnection, or whether parties will exchange traffic under a bill-and-keep methodology. We seek comment on how best to structure any trial to provide the Commission with data to evaluate which policies may be appropriate.

Process. We are considering allowing providers that participate in a trial to negotiate in good faith without a backstop of regulations or specific parameters and provide updates, reports, and data to the Commission regarding any technical issues as well as any other issues of dispute. We also seek comment on whether we should, as some commenters have proposed, conduct another trial where parties agree to negotiate pursuant to the existing section 251/252 framework or a similar process (including one that does not require any party to concede that sections 251/252 apply as a legal matter). Given the positions in the record it is unclear whether any incumbent LECs would voluntarily agree to a trial using the section 251/252 framework. AT&T not only opposes NTCA's proposal to regulate VoIP interconnection under sections 251 and 252 as ''needless and harmful,'' but also argues that the Commission lacks Title II authority to regulate interconnection between IP-based service providers. *See* AT&T Jan. 28, 2013 Comments, GN Docket No. 12–353, at 11; AT&T Feb. 25, 2013 Reply Comments, GN Docket No. 12–353, at 32–33. CenturyLink contends that the requirements of section 251 were meant to address the ''difficulties of competitors in providing voice telephony service in a marketplace where incumbent LECs were monopolists with ubiquitous facilities and 100 percent market share. Because fewer than 40% of households currently purchase voice services from ILECs, this concern no longer exists, and section 251 should therefore not be used to mandate IP-to-IP interconnection.'' *See* CenturyLink Feb. 25, 2013 Reply Comments, GN Docket No. 12–353, at 18; *see also* Verizon Feb. 25, 2013 Reply Comments, GN Docket No. 12–353, at 11–12 (arguing that the Commission does not have the authority to require interconnection in any particular format, including IP, under section 251 of the Act). *But see* NECA *et al.* Feb. 25, 2013 Reply, GN Docket No. 12–353, at 3 (arguing that IP interconnection arrangements between carriers for the exchange of traffic is subject to sections 251 and 252, regardless of the technologies employed).

We seek comment on these approaches. Should we allow providers to negotiate and, if they cannot resolve disputes, then no agreement is reached? Or, should there be a process for arbitrating or mediating disputes? If so, should the state be responsible for arbitrating the agreements, or should the Commission or an independent entity arbitrate or mediate any disputes? Should any VoIP interconnection agreements reached during the trial be the basis for future agreements or could doing so impact the negotiations during the trial? If we undertake a trial under the section 251/252 framework, should the existing rules be applied or should they be modified?

Data. We propose that providers participating in a VoIP interconnection trial submit data regarding the length of time it took to reach an agreement, the issues in dispute, a copy of any agreements that are reached, as well as reports on the implementation of such agreements, such as call quality and reliability metrics, and a description of any technical problems that were encountered. We seek comment on the scope and frequency of these reporting requirements.

B. Public Safety—NG911

Background. Public safety is a paramount value that must to be protected as technologies transition. The transition of the current enhanced 911 (E911) system to IP-based technologies has already begun, with widely-accepted industry standards and first deployments of NG911. NG911 promises to use widely available IP technologies to create 911 services that are more resilient and cost-effective, offer additional capabilities such as text, data and video, and better meet the needs of people with disabilities. With the technology transition, we have the

opportunity to better coordinate the provision of emergency services with the emergence of IP-based networks. Such coordination may avoid deploying costly legacy network translation components, and hasten the availability of new features and functionality.

The NG911 architecture differs significantly from the legacy 911 TDM model. For example, the number and nature of hand-off points for 911 calls to the public safety emergency services IP network (ESInet) differs from the current approach of routing all calls through a selective router. Similarly, with nomadic, mobile, and over-the-top VoIP applications, conveying accurate caller location data to the 911 call center, *i.e.,* the PSAP, changes from a number-based lookup mechanism to new protocols.

Scope. Given that reliable 911 service is critical to public safety, we seek comment on a possible trial that would deploy an ''all-IP'' NG911 service on an accelerated basis in a number of geographic areas where public safety authorities are ready to deploy NG911 for one or more PSAPs. We seek comment on using trials that build on the earlier and more limited NG911 proof-of-concept effort that was conducted by the U.S. Department of Transportation in 2008. With an updated NG911 trial, we would hope to gather both process and technical knowledge, addressing such questions as: Can VoIP and other IP-based networks readily interconnect with ESInets? Can advanced real-time services, such as video and text, reach ESInets? In IP-based networks, how can subscriber location data be maintained and conveyed to the ESInet? How long does it take transition from a TDM-based to an IP-based architecture? Where and how are 911 calls to be handed off to the ESInet, whether by ILECs or other providers, such as CMRS, interconnected VoIP, interconnected text and telematics services? Are there state or Commission rules that accelerate or delay the conversion from E911 to NG911? Are there steps that regulators can take to speed the transition to NG911 and/or minimize the expense? We seek comment on the technical and process issues that should be covered by a trial and on how best to structure a trial to gather data on these issues.

Process. We are considering a NG911 trial that would take place in areas where public safety authorities are transitioning or have taken initial steps to prepare for transition of their legacy systems to NG911 and where providers, including landline, wireless, and interconnected VoIP, are able to deliver VoIP-based 9–1–1 calls (and potentially other IP-based traffic) to an ESInet, either ''natively'' or, if necessary, initially through legacy network gateways (LNGs). We seek comment on the process for identifying such areas. Trial participants would also make caller location available through NG911 mechanisms, including the Location Information Server (LIS). We seek comment on candidate PSAPs or regions, the selection of participating carriers, and whether trials should take place in areas where calls are delivered via VoIP or also via legacy network gateways. We intend to coordinate with the National 9–1–1 Implementation Coordination Office and seek comment on the best ways to coordinate with state, local, and Tribal authorities during such trials.

Any trial of this kind should provide data on both the challenges of transitioning from E911 to NG911 and the operational performance characteristics of NG911 call handling. Thus, we propose that participants in the trial document the design and conversion process, including effort and time required, and gather data on call handling performance, interoperability issues, location accuracy, and any system failures related to call or location delivery. We seek comment on how best to address these issues and whether there are other aspects that should be documented or evaluated.

Finally, we also seek comment on the impact of consumer migration to wireless and IP-based services that are dependent on commercial power and network resiliency and public safety services generally. Participants in the Commission's recent field hearings following Superstorm Sandy consistently raised this issue and the need to establish adequate back up power solutions. How should this issue be integrated into the Commission's technology trials and other data gathering efforts?

C. Wireline to Wireless

We seek comment on conducting trials to assess the impact on residential and business customers when they are transitioned from wireline voice and broadband products to wireless alternatives. We propose to compare wireline and wireless offerings across a number of dimensions, including: quality and terms of service, price, product functionalities, E–911 performance, accessibility options, reliability, and potential carrier cost savings in the delivery of voice and data services to higher cost areas. While there is potential for some service quality degradation if not properly transitioned, the move to wireless-only networks also could enable improved voice quality and reliability and broadband investment in areas not likely to be served in the near future with wireline technology, or at higher speeds than existing wireline offerings, among other potential benefits. We want to analyze the consumer experience, including challenges and benefits for consumers, of a wireless-only option as part of a trial. In this section we seek comment on how to structure any such trials.

Background. As part of the technology transition, some incumbent LECs are considering replacing existing customer voice and broadband services delivered over legacy circuit switched wireline networks with similar product offerings delivered over a wireless IP network. For example, Verizon is currently replacing copper based services damaged by Hurricane Sandy on Fire Island, New York with wireless-only voice and data products. We understand that Verizon is coordinating with applicable state authorities on the Fire Island transition. We hope to learn from these ongoing efforts in addition to the results of this proposed trial which would focus more systematically on the consumer experience during such a transition. For its part, AT&T has indicated that it intends to seek authority to serve millions of current wireline customers, mostly in rural areas, with a wireless-only product. *See* AT&T Wire Center Trials Petition at 9 (explaining that AT&T will offer wireless communications alternatives to customers living in particularly high-cost areas, including its Mobile Premises Services, which allows customers to make calls using ordinary wireline handsets connected to wireless base stations). We therefore seek comment on conducting a trial that would evaluate the customer experience when customers are transitioned from wireline to wireless voice and broadband services. In particular, we are interested in observing whether consumers/businesses lose any capabilities previously available to them or what steps consumers/businesses must take to keep the functionality of certain services. Such capabilities could include, among other things, access to 911 and emergency services, the ability to send and receive a fax, credit card transactions for small businesses, alarm/security systems, and the ability for individuals with disabilities to continue to use the devices they use on a regular basis. We are also interested in learning about the potential benefits for consumers/businesses of the transition

to wireless, including any improvement in voice quality in areas with degraded wireline networks, access to broadband for the first time in areas with no wireline broadband service, and potential improvements in network reliability.

Scope. We are considering a trial in which participating LECs would make available to consumers, in cooperation with state and Tribal governments, either through their own facilities or in partnership with a wireless provider, a home wireless voice product or data product or both, intended as a replacement for a customer's existing home voice and broadband data services. We propose to test these new service offerings in: (1) at least one geographic area within each participating LEC's service territory; and (2) at least one geographic area outside of each participating LEC's wireline service territory. We propose that all product offerings in any trial would be the same within each participating LEC's trial areas and that the characteristics of the offers would be made public prior to the trial. We seek comment on these proposals.

We seek comment on whether customers that participate in such a trial should have the option of wireline or wireless service during the trial or whether the LEC should be able to require all customers in the LEC service territory trial area to move to a wireless-only product. We propose that customers would be informed of when they will be allowed to switch back to their previous wireline products and that they may do so at no charge for some pre-established period, including after the trial period end date. Furthermore, we seek comment on whether LECs participating in the trial should disclose any differences between a customer's existing wireline and new wireless service prior to the customer switching. These differences may include price, data usage allowances, terms of service, 911 capabilities (including location accuracy), accessibility, calling features, incompatibilities with fax machines or other customer premises equipment, or any other differences. We seek comment on whether such a trial would result in obtaining useful information and how long it should last.

In its petition, AT&T proposes that technology and policy trials be conducted at the wire center level. The record reflected a general support that this as an appropriate level of geography. Therefore we are considering a trial at the wire center level and seek comment on whether wire centers are appropriately sized for this specific trial or whether an alternative unit would be more appropriate. We also seek comment on what factors should be used to select trial markets.

Data. We propose that LECs participating in such a trial would be required to collect and submit a variety of data, including a customer satisfaction survey, to the Commission for analysis. We seek comment on this proposal as well as any other issues relating to data collection. Should the Commission, and/or state or Tribal entities, collect data regarding customer churn, subscriber counts, disconnects, gross additions, average revenue per user (ARPU), counts of customers switching back to wireline service, customer service complaints, service visits and actual customer data speeds, by month and separately for each geographic area and product? Are there other indicia related to voice and broadband deployment and adoption, competition, and investment that the Commission should track during the trial period?

We seek comment on whether LECs participating in a trial should collect network reliability measures for both their wireline and wireless product offerings in the trial areas. We seek comment on whether, in addition to the network reliability measures that the Commission currently collects for wireline services, participating carriers should submit such information on network reliability for all product offerings in the relevant trial area during the trial period. In addition to these metrics, we seek comment on whether providers should submit the number of dropped and blocked wireless calls and data sessions for participating customers. Furthermore, we propose that participants describe how they address service continuity issues in the event of a power outage through the use of battery backup and other measures. Should we collect alternative or additional network reliability measures? If so, what should these measures be? We also seek comment on the public safety and accessibility issues raised by these trials.

D. Geographic All-IP Trials

AT&T and others have proposed an ''all-IP'' wire center trial. We have already sought comment on this general proposal, and an extensive record has been compiled addressing it. Each of the trials discussed above—VoIP interconnection, NG911, and wireline to wireless—address aspects of AT&T's proposal. Are there other aspects of moving from TDM to IP that a geographic trial of the kind AT&T has proposed would elicit helpful data—such as the ability to transition special-purpose TDM services?

We invite carriers interested in pursuing such a trial to submit a more detailed, comprehensive plan of how such a trial would work, including the design of the trial, the data that would be collected, the rules that would need to be waived and the role of the states and Tribes. In presenting a detailed roadmap for how such a trial would work, carriers, at a minimum, should list: (1) All of the services currently provided by the carrier in a designated wire center that the carrier would propose to phase out; (2) estimates of current demand for those services; and (3) what the replacement for those services would be, including current prices and terms and conditions under which the replacement services are offered.

II. Additional Trials

Numbering and related databases. We seek comment on a potential additional trial on numbering issues and related databases. The Commission recently authorized a limited 6-month trial to provide interconnected VoIP providers direct access to numbers, but that trial will not specifically examine changes in the structure of current numbering databases. We note that the technology transition offers an opportunity to take a fresh look at the assignment of numbers and the features, capabilities, and security of numbering-related databases, and the TAC recently made related recommendations on these issues. For example, there have been industry proposals for a unified, IP-accessible database that provides secure access to number-related information. Could a technology trial serve as a means to test new technical proposals for assigning telephone numbers, *e.g.,* individually instead of in blocks of 1,000? What protocols and procedures are most effective to assign and port numbers in an all-IP environment? Should there be a trial database that provides access to number-related information such as points of termination or caller-ID information? If so, how would we ensure that the information in the trial database(s) is kept consistent with existing databases such as the Local Exchange Routing Guide (LERG) and the caller-ID name (CNAM) databases? Should such databases support services other than voice, such as real-time video and text? Finally, should any such trial be conducted in conjunction with a VoIP interconnection trial or separately?

Improving Access for People with Disabilities. Ensuring that people with disabilities continue to have access to

evolving technologies is another core value of the Act. We seek comment on what trials we should conduct to assess the potential for improving access for people with disabilities during this transitional period. We note that Ofcom has conducted a study into the effectiveness of automated speech-to-text as an assistive tool for individuals who are deaf and hard-of-hearing in VoIP communications. Should the FCC conduct a trial on the effectiveness of new speech-to-text technologies in the telecommunications relay service (TRS) context? Could the Commission expand on the existing Ofcom study by evaluating the role of automated speech-to-text technologies in video-over-IP communications, including the extent to which the use of video could be used to enhance communication with such automated services if used for Internet Protocol Captioned Telephone Service (IP CTS)? Are there other trials that the Commission might conduct to investigate methods of improving access for individuals who are deaf, hard of hearing, deaf-blind, or who have a speech disability?

Other Possible Trials. We seek comment on whether we should have any trials that focus more specifically on the copper-to-fiber transition. Should we consider a trial on issues relating to copper retirement? For example, should we consider a trial where the incumbent LEC sells some or all copper loops to a competitive LEC? Support for such proposition has been mixed, and it is unclear if it is feasible given that fiber and copper may be intertwined in the access plant. Also, any such approach raises questions about the pricing of such copper and access to the ILEC's shared facilities and space. We seek comment on how we would address these issues in a trial. We generally seek comment on these issues.

Are there other trials we should conduct that focus on consumer protection and universal service? Should we have a trial that focuses on how to improve access to communications services for low-income Americans? For example, as the transition from wireline to wireless rapidly progresses, an increasing number of Lifeline participants are selecting wireless as their preferred method of communication. Given these demographic shifts, and building off of the success of the *2012 Lifeline and Link Up Reform Order,* should the Commission conduct trials to collect data on ways to further improve Lifeline program? Is a trial the right setting for the Commission to explore ways to test the appropriate monthly support amount for Lifeline voice service to better gauge the appropriate price point both for consumers and carriers who provide Lifeline services? Are there other universal service issues that could be tested in a trial?

We also seek comment on whether we should have any trials that focus specifically on the delivery of services to consumers and communities on Tribal lands. We generally seek comment on any potential issues associated with trials taking place on the lands of American Indian Tribes, Alaska Native Villages, or on Hawaiian Home Lands.

III. Role of State and Tribal Governments

We seek comment on the role of states and Tribal governments. We note that NARUC has created a Presidential Task Force on Federalism and Telecommunications to focus on many of these same issues related to technology transitions, and we are committed to coordinating as effectively as possible with this and other state efforts. We also note that the Commission's Intergovernmental Advisory Committee (IAC) has offered to play a role in working with states and localities on issues related to technology transitions. How should states and Tribal governments be involved in the trials? Should the NARUC Task Force, the IAC, or any other Commission advisory committees, be involved in the selection of applications or areas? Does it depend on the nature of the trial? Should states or Tribal governments be involved in selecting geographic areas? Should non-governmental consumer-focused organizations be involved in the trial selection process or the implementation and monitoring of trials?

We generally seek comment on how to work cooperatively with the states and Tribal governments with respect to each trial and the nature of their involvement, including how to address issues where the state commission lacks jurisdiction over IP-based or wireless services. We also seek comment on providing states and Tribal governments with access to data collected during the trial, and what role states and Tribal governments should have in analyzing the data and providing recommendations to the Commission.

IV. General Trial Design and Structure

We seek comment on the process of establishing, structuring, and gathering useful data from these possible trials. How should the Commission structure the trials to address concerns about incumbent LECs operating on ''best behavior'' during the trials? We seek comment on the process for selecting the geographic areas for the trials. We seek comment on the timing and duration of each trial. Should the timing differ based on the type of trial? How should each trial wind down, and what would be grounds for terminating a trial altogether before its anticipated completion date?

We seek comment on how to acquire the most useful data from these trials. What sort of reporting should we require from participants and what sort of automated or non-automated data collection would be useful in each trial? Should the Commission require trial participants to collect the same data in certain non-trial areas to allow comparison with a control sample? To what extent should the Commission gather quantitative data and when is qualitative data preferable? We seek comment on the usability of the trial data. What sort of protections should apply to potentially sensitive data? Should information be confidential, filed pursuant to protective orders, or generally open to the public? Should we, as the Commission required in the *VoIP Direct Access Order,* issue a report with our findings after each trial concludes?

V. Legal Issues

We seek comment on whether any Commission rules or statutory provisions are implicated by the proposed trials. For example, entities participating in the wireline to wireless trial would need to file section 214 discontinuances. Section 214(a) of the Act requires common carriers to obtain Commission authorization before discontinuing, reducing, or impairing service to a community. *See* 47 U.S.C. 214(a). Under Part 63 of its rules, the Commission has adopted specific requirements that clarify this duty and ensure that customers of domestic telecommunications services receive adequate notice of a carrier's discontinuance plans and have an opportunity to inform the Commission of any resultant hardships. *See* 47 CFR 63.60 *et seq.* In particular, before discontinuing service, a telecommunications carrier generally must notify all affected customers of its proposed discontinuances. Notice to customers must include the name and address of the carrier, the date of the planned service discontinuance, the geographic areas where service will be discontinued, and a brief description of the type of service affected. *See* 47 CFR 63.71(a). These requirements are intended to inform consumers about when their service may be discontinued and to provide them with an

opportunity to object to any proposed discontinuances. Should we modify the process for the trials? Would the Commission need to waive or forbear from any rules before conducting a trial? We generally seek comment on these issues as well as any issues regarding the Commission's legal authority to conduct these voluntary trials.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. All comments are to reference GN Docket No. 13–5 and may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS) or (2) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone: (202) 488–5300, fax: (202) 488–5563, or via email *www.bcpiweb.com.*

This matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules.

Federal Communications Commission.

Sean Lev,

General Counsel.

[FR Doc. 2013–12487 Filed 5–23–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update listing of financial institutions in liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as ''of record'' notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: May 20, 2013.

Federal Deposit Insurance Corporation.

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10479	Central Arizona Bank	Scottsdale	AZ	5/14/2013

[FR Doc. 2013–12418 Filed 5–23–13; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:00 a.m. on Tuesday, May 21, 2013, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's supervision, corporate, and resolution activities.

In calling the meeting, the Board determined, on motion of Director Jeremiah O. Norton (Appointive), seconded by Vice Chairman Thomas M. Hoenig, concurred in by Director Thomas J. Curry (Comptroller of the Currency), Director Richard Cordray (Director, Consumer Financial Protection Bureau), and Chairman Martin J. Gruenberg, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. §§ 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 - 17th Street NW., Washington, DC.

Dated: May 21, 2013.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2013–12581 Filed 5–22–13; 4:15 pm]

BILLING CODE P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

May 21, 2013.

TIME AND DATE: 10:00 a.m., Wednesday, May 29, 2013.

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (entry from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *S & S Dredging,* Docket No.

SE 2007–447. (Issues include whether the Administrative Law Judge erred by ruling that a violation was not ''significant and substantial'' because it was not reasonably likely to result in an injury that would require hospitalization or surgery.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 434–9950/(202) 708–9300 for TD Relay/1–800–877–8339 for toll free.

Emogene Johnson,

Administrative Assistant.

[FR Doc. 2013–12586 Filed 5–22–13; 4:15 pm]

BILLING CODE 6735–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

May 21, 2013.

TIME AND DATE: 10:00 a.m., Wednesday, May 29, 2013 (to commence shortly after completion of meeting on first scheduled case).

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (entry from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *Knox Creek Coal Corporation,* Docket Nos. VA 2010–81–R, et al. (Issues include whether the Administrative Law Judge erred in concluding that certain violations were not ''significant and substantial'' because of assumptions that were made concerning abatement.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Emogene Johnson,

Administrative Assistant.

[FR Doc. 2013–12589 Filed 5–22–13; 4:15 pm]

BILLING CODE 6735–01–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 June 4, 2013.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Ray Mark Bain,* Lubbock, Texas, individually, as co-trustee of the RMB 2012 Family Trust, trustee of the Ray Mark Bain 2007 Trust, and trustee of the Ray Mark Bain Children's Trust; Michael Lewis Bain, Canyon, Texas, individually, as co-trustee of the RMB 2012 Family Trust, trustee of the Michael L. Bain 2007 Trust, and trustee of the Michael L. Bain Children's Trust; and Nancy Bain Seybert, Perryton, Texas, individually, as trustee of the Nancy Bain Seybert 2007 Trust, and trustee of the Nancy Bain Seybert Children's Trust; Dimmitt, Texas; collectively a group acting in concert, to control, retain and acquire greater than 25 percent of Plains Bancorp, Inc., Dimmitt, Texas, and therefore, indirectly acquire voting shares of First United Bank, Dimmitt, Texas.

Board of Governors of the Federal Reserve System, May 20, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–12364 Filed 5–23–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 14, 2013.

A. Federal Reserve Bank of Philadelphia (William Lang, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. *Riverview Financial Corp*oration, Marysville, Pennsylvania; to merge with Union Bancorp, Inc., and thereby indirectly acquire Union Bank & Trust, both in Pottsville, Pennsylvania.

B. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Chief Iowa Investment Corporation,* Clive, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Montezuma State Bank, Montezuma, Iowa.

C. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Pioneer Bancshares, Inc.,* Dripping Springs, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Pioneer Bank, State Savings Bank, Dripping Springs, Texas.

Board of Governors of the Federal Reserve System, May 21, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–12441 Filed 5–23–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 20, 2013.

A. Federal Reserve Bank of St. Louis (Yvonne Sparks, Community Development Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *Sigma Holdings, Inc.,* Little Rock, Arkansas, to become a bank holding company by acquiring 100 percent of The Bank of Rison, Rison, Arkansas.

Board of Governors of the Federal Reserve System, May 20, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–12363 Filed 5–23–13; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Docket 2012–0076; Sequence 34; OMB Control No. 9000–0088]

Federal Acquisition Regulation; Submission for OMB Review; Travel Costs

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding the extension of a previously existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Travel Costs. A notice was published in the **Federal Register** at 77 FR 67366, on November 9, 2012. Two respondents submitted comments.

DATES: Submit comments on or before June 24, 2013.

ADDRESSES: Submit comments identified by Information Collection 9000–0088, Travel Costs by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0088, Travel Costs.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0088, Travel Costs'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0088, Travel Costs.

Instructions: Please submit comments only and cite Information Collection 9000–0088, Travel Costs, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Chambers, Procurement Analyst, Office of Acquisition Policy, GSA, (202) 501–3221 or via email at *Edward.chambers@gsa.gov.*

A. Purpose

FAR 31.205–46, Travel Costs, requires that, except in extraordinary and temporary situations, costs incurred by a contractor for lodging, meals, and incidental expenses shall be considered to be reasonable and allowable only to the extent that they do not exceed on a daily basis the per diem rates in effect as of the time of travel. These requirements are set forth in the Federal Travel Regulations for travel in the conterminous 48 United States, the Joint Travel Regulations, Volume 2, Appendix A, for travel in Alaska, Hawaii, the Commonwealth of Puerto Rico, and territories and possessions of the United States, and the Department of State Standardized Regulations, section 925, ''Maximum Travel Per Diem Allowances for Foreign Areas.'' The burden generated by this coverage is in the form of the contractor preparing a justification whenever a higher actual expense reimbursement method is used.

B. Discussion and Analysis

Two respondents submitted public comments on the extension of the previously approved information collection. The analysis of the public comments is summarized as follows:

Comment: One respondent stated that per diem reimbursement is reasonable so long as the per diem limits match the actual costs of travel and saves considerable administrative costs. The other respondent stated that the collection was both necessary and useful, but suggested that the Government explore the use of the Defense Travel System or a similar system to control travel costs.

Response: The comments are acknowledged, but do not address the estimated burden associated with this information collection requirement. The total estimated annual reporting burden remains the same as previously approved.

C. Annual Reporting Burden

Respondents: 5,800.
Responses per Respondent: 10.
Total Responses: 58,000.
Hours per Response: .25.
Total Burden Hours: 14,500.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275

First Street NE., Washington, DC 20417, telephone (202) 501-4755. Please cite OMB Control No. 9000–0088, Travel Costs, in all correspondence.

Dated: May 17, 2013.

William Clark,

Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2013–12345 Filed 5–23–13; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Docket 2012–0076; Sequence 35; OMB Control No. 9000–0095]

Federal Acquisition Regulation; Submission for OMB Review; Commerce Patent Regulations

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding the extension of a previously existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Department of Commerce patent regulations. A notice was published in **Federal Register** at 77 FR 43082, on July 23, 2012. One respondent submitted comments.

DATES: Submit comments on or before June 24, 2013.

ADDRESSES: Submit comments identified by Information Collection 9000–0095, Commerce Patent Regulations, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0095, Commerce Patent Regulations.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0095, Commerce Patent Regulations'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0095, Commerce Patent Regulations.

Instructions: Please submit comments only and cite Information Collection 9000–0095, Commerce Patent Regulations, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA, (202) 501–0650 or email *Edward.loeb@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR Subpart 27.3, Patents Rights under Government Contracts, implements the Department of Commerce regulation (37 CFR 401) based on chapter 18 of title 35 U.S.C., Presidential Memorandum on Government Patent Policy to the Heads of Executive Departments and Agencies, dated February 18, 1983, and Executive Order 12591, Facilitating Access to Science and Technology, dated April 10, 1987. Under the subpart, a contracting officer may insert clauses 52.227–11, Patent Rights—Ownership by the Contractor, or 52.227–13, Patent Rights—Ownership by the Government, in solicitations and contracts pertaining to inventions made in the performance of experimental, developmental, or research work.

In accordance with the clauses, a Government contractor must report all subject inventions to the contracting officer, submit a disclosure of the invention, and identify any publication, or sale, or public use of the invention (52.227–11(c), 52.227–13(e)(1)). The contracting officer may modify 52.227–11(e) or otherwise supplement the clause to require contractors to submit periodic or interim and final reports listing subject inventions (27.303(b)(2)(i) and (ii)). In order to ensure that subject inventions are reported, the contractor is required to establish and maintain effective procedures for identifying and disclosing subject inventions (52.227–11, Alternate IV; 52.227–13(e)(1)). In addition, the contractor must require his employees, by written agreements, to disclose subject inventions (52.227–11(e)(2); 52.227–13(e)(4)). The contractor also has an obligation to utilize the subject invention, and agree to report, upon request, the utilization or efforts to utilize the subject invention (27.302(e); 52.227–11(f)).

B. Discussion and Analysis

One respondent submitted public comments on the extension of the previously approved information collection. The analysis of public comments is summarized as follows:

Comment: The respondent commented that the extension of the information collection would violate the fundamental purposes of the Paperwork Reduction Act because of the burden it puts on the entity submitting the information and the agency collecting the information.

Response: In accordance with the Paperwork Required Act (PRA), agencies can request an OMB approval of an existing information collection. The PRA requires that agencies use the **Federal Register** notice and comment process, to extend the OMB's approval, at least every three years. This extension, to a previously approved information collection, pertains to the requirements of FAR clauses 52.227–11, Patent Rights—Ownership by the Contractor, or

52.227–13, Patent Rights—Ownership by the Government. The information is used, among other things to: (1) Encourage maximum participation of industry in federally supported research and development efforts; (2) Ensure that these inventions are used in a manner to promote free competition and enterprise without unduly encumbering future research and discovery; (3) Promote the commercialization and public availability of the inventions made in the United States by United States industry and labor; (4) Ensure that the Government obtains sufficient rights in federally supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of inventions; and (5) Minimize the costs of administering patent policies.

Comment: The respondent commented that the agency did not accurately estimate the public burden challenging that the agency's methodology for calculating it is insufficient and inadequate and does not reflect the total burden. For this reason, the respondent provided that the agency should reassess the total burden hours and revise the estimate upwards to be more accurate, as was done in FAR Case 2007–006. The same respondent also provided that the burden of compliance with the agency's information collection requirement greatly exceeds the agency's estimate

and outweighs any potential utility of the extension.

The respondent indicated that the number of annual respondents is understated and that the number of respondents is likely at least ten to twenty higher than the Government's estimate of 1200 annual respondents. The commenter also indicated that the number of responses per year was significantly understated at 10 such responses per year and that it would take more than four hours to comply with the requirements contained herein.

Response: Serious consideration is given, during the open comment period, to all comments received and adjustments are made to the paperwork burden estimate based on reasonable considerations provided by the public. This is evidenced, as the respondent notes, in FAR Case 2007–006 where an adjustment was made from the total preparation hours from three to 60. This change was made considering particularly the hours that would be required for review within the company, prior to release to the Government.

The burden is prepared taking into consideration the necessary criteria in OMB guidance for estimating the paperwork burden put on the entity submitting the information. For example, consideration is given to an entity reviewing instructions; using technology to collect, process, and disclose information; adjusting existing practices to comply with requirements; searching data sources; completing and reviewing the response; and transmitting or disclosing information. The estimated burden hours for a collection are based on an average between the hours that a simple disclosure by a very small business might require and the much higher numbers that might be required for a very complex disclosure by a major corporation. Also, the estimated burden hours should only include projected hours for those actions which a company would not undertake in the normal course of business. Careful consideration went into assessing the estimated burden hours for this collection.

A comprehensive re-evaluation of the burden associated with this collection has resulted in an upward adjustment in the estimated total annual burden hours from 45,630 to 57,352. The review was conducted by the Government's experts in patent regulations and the Department of Commerce patent regulation processes. As a result of the review, the burden hours were increased by over 25%. The recommended increase by the respondent was not supported by the review. A more detailed breakdown of the review is included in the supporting statement for this collection.

At any point, members of the public may submit comments for further consideration, and are encouraged to provide data to support their request for an adjustment.

C. Annual Reporting Burden

Respondents: 3759.
Responses per Respondent: 3.8143.
Total Responses: 14,338.
Hours per Response: 4.0.
Total Burden Hours: 57,352.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration (GSA), Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0095, Commerce Patent Regulations, in all correspondence.

Dated: May 17, 2013.

William Clark,

Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2013–12348 Filed 5–23–13; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Docket 2012–0076; Sequence 32; OMB Control No. 9000–0078]

Federal Acquisition Regulation; Submission for OMB Review; Make-or-Buy Program

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an information collection requirement for an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning the Make-or-Buy Program. A notice was published in the **Federal Register** at 77 FR 43080, on July 23, 2012. One respondent provided comments.

DATES: Submit comments on or before June 24, 2013.

ADDRESSES: Submit comments identified by Information Collection 9000–0078, Make-or-Buy Program, by any of the following methods:

- Regulations.gov: *http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0078, Make-or-Buy Program.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0078, Make-or-Buy Program'' on your attached document.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0078, Make-or-Buy Program.

Instructions: Please submit comments only and cite Information Collection 9000–0078, Make-or-Buy Program, in all correspondence related to this collection. Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Procurement Analyst, Contract Policy Division, GSA, (202) 501–0650 or via email at *edward.loeb@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Price, performance, and/or implementation of socio-economic policies may be affected by make-or-buy decisions under certain Government prime contracts. Accordingly, FAR 15.407–2, Make-or-Buy Programs—

(i) Sets forth circumstances under which a Government contractor must submit for approval by the contracting officer a make-or-buy program, i.e., a written plan identifying major items to be produced or work efforts to be performed in the prime contractor's facilities and those to be subcontracted;

(ii) Provides guidance to contracting officers concerning the review and approval of the make-or-buy programs; and

(iii) Prescribes the contract clause at FAR 52.215–9, Changes or Additions to Make-or-Buy Programs, which specifies the circumstances under which the contractor is required to submit for the contracting officer's advance approval a notification and justification of any proposed change in the approved make-or-buy program.

The information is used to assure the lowest overall cost to the Government for required supplies and services.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Federal Acquisition Regulation (FAR), and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

B. Analysis of Public Comments

One respondent submitted public comments on the extension of the previously approved information collection. The analysis of public comments is summarized as follows:

Comment: The respondent commented that the extension of the information collection would violate the fundamental purposes of the Paperwork Reduction Act because of the burden it puts on the entity submitting the information and the agency collecting the information.

Response: In accordance with the Paperwork Required Act (PRA), agencies can request an OMB approval of an existing information collection. The PRA requires that agencies use the **Federal Register** notice and comment process, to extend the OMB's approval, at least every three years. This extension, to a previously approved information collection, pertains to implementation of requirements of the provisions in FAR 15.407–2, Make-or-buy programs, and the related clause at FAR 52.215–9, Changes or Additions to Make-or-Buy Program. The information is used to assure the lowest overall cost to the Government for required supplies and services.

Comment: The respondent commented that the agency did not accurately estimate the public burden challenging that the agency's methodology for calculating it is insufficient and inadequate and does not reflect the total burden. For this reason, the respondent provided that the agency should reassess the total burden hours and revise the estimate upwards to be more accurate, as was done in FAR Case 2007–006. The same respondent also provided that the burden of compliance with the agency's information collection requirement greatly exceeds the agency's estimate and outweighs any potential utility of the extension. Further, the respondent commented that the estimate of 150 respondents subject to this requirement annually across the entire Government is far too low. The respondent offered that at least ten times and potentially as many as one hundred times as many respondents are subject to these make-or-buy requirements. The respondent stated that the estimate of three responses per respondent is also substantially understated. Contractors that hold cost reimbursement contracts subject to the requirements may be required to submit this type of information upwards of 50 times per year, especially for larger contracts. The respondent further believes that while the estimated eight hours of burden per response is not out of the realm of reasonableness and is more realistic than other estimates provided, the estimate is understated, and that most companies will require two to three times that amount of time per response.

Response: Serious consideration is given, during the open comment period, to all comments received and adjustments are made to the paperwork burden estimate based on reasonable considerations provided by the public. This is evidenced, as the respondent notes, in FAR Case 2007–006 where an adjustment was made from the total preparation hours from three to 60. This change was made considering particularly the hours that would be required for review within the company, prior to release to the Government.

The burden is prepared taking into consideration the necessary criteria in OMB guidance for estimating the paperwork burden put on the entity submitting the information. For example, consideration is given to an entity reviewing instructions; using technology to collect, process, and disclose information; adjusting existing practices to comply with requirements; searching data sources; completing and reviewing the response; and transmitting or disclosing information. The estimated burden hours for a collection are based on an average between the hours that a simple disclosure by a very small business might require and the much higher numbers that might be required for a very complex disclosure by a major corporation. Also, the estimated burden hours should only include projected hours for those actions which a company would not undertake in the normal course of business. Careful consideration went into assessing the estimated burden hours for this collection. An informal survey of the primary agencies that would require submission of the information for this collection indicated that the total estimated annual burden remains a valid estimate. Additionally, a review of the estimated burden by agency experts revealed that the estimated burden was realistic.

At any point, members of the public may submit comments for further consideration, and are encouraged to provide data to support their request for an adjustment.

C. Annual Reporting Burden

Respondents: 150.
Responses per Respondent: 3.
Total Responses: 450.
Hours per Response: 8.
Total Burden Hours: 3,600.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0078, Make-or-Buy Program, in all correspondence.

Dated: May 17, 2013.

William Clark,

Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2013–12353 Filed 5–23–13; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the National Vaccine Advisory Committee

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice of meeting.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) is hereby giving notice that the National Vaccine Advisory Committee (NVAC) will hold a meeting. The meeting is open to the public. Pre-registration is required for both public attendance and comment. Individuals

who wish to attend the meeting and/or participate in the public comment session should register at *http://www.hhs.gov/nvpo/nvac,* email *nvpo@hhs.gov,* or call 202–690–5566 and provide name, organization, and email address.

DATES: The meeting will be held on June 11–12, 2013. The meeting times and agenda will be posted on the NVAC Web site at *http://www.hhs.gov/nvpo/nvac* as soon they become available.

ADDRESSES: U.S. Department of Health and Human Services, 200 Independence Avenue SW., Room 800, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: National Vaccine Program Office, U.S. Department of Health and Human Services,, 200 Independence Avenue SW., Room 715–H, Washington, DC 20201. Phone: (202) 690–5566; fax: (202) 690–4631; email: *nvpo@hhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Section 2101 of the Public Health Service Act (42 U.S.C. 300aa–1), the Secretary of Health and Human Services was mandated to establish the National Vaccine Program to achieve optimal prevention of human infectious diseases through immunization and to achieve optimal prevention against adverse reactions to vaccines. The National Vaccine Advisory Committee was established to provide advice and make recommendations to the Director of the National Vaccine Program on matters related to the Program's responsibilities. The Assistant Secretary for Health serves as Director of the National Vaccine Program.

The topics to be discussed at the NVAC meeting will include adult immunizations, pertussis, influenza A(H7N9), immunizations and the Affordable Care Act, and updates from the NVAC working groups on global immunization and maternal immunization. The meeting agenda will be posted on the NVAC Web site: *http://www.hhs.gov/nvpo/nvac* prior to the meeting.

Public attendance at the meeting is limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the National Vaccine Program Office at the address/phone listed above at least one week prior to the meeting. Members of the public will have the opportunity to provide comments at the NVAC meeting during the public comment periods on the agenda. Individuals who would like to submit written statements should email or fax their comments to the National Vaccine Program Office at least five business days prior to the meeting.

Dated: May 16, 2013.

Bruce Gellin,

Director, National Vaccine Program Office, Executive Secretary, National Vaccine Advisory Committee.

[FR Doc. 2013–12419 Filed 5–23–13; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-13–0612]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 or send comments to Ron Otten, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Well-Integrated Screening and Evaluation for Women Across the Nation (WISEWOMAN) Reporting System (OMB #0920–0612, exp. 1/31/2014)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Cardiovascular disease (CVD), which includes heart disease, myocardial infarction, and stroke, is the leading cause of death for women in the United States, and is largely preventable. The WISEWOMAN program (Well-Integrated Screening and Evaluation for Women Across the Nation), administered by the Centers for Disease Control and Prevention (CDC), was established to examine ways to improve the delivery of services for women who have limited access to health care and elevated risk factors for CVD. The program focuses on reducing CVD risk factors and provides screening services for select risk factors such as elevated blood cholesterol, hypertension and abnormal blood glucose levels. The program also provides women with referrals to lifestyle programs and medical care. The WISEWOMAN program currently provides services to approximately 45,000 women who are jointly enrolled in the National Breast and Cervical Cancer Early Detection Program (NBCCEDP), also administered by CDC. The current cooperative agreements for WISEWOMAN awardees end June 30, 2013 and final submissions to CDC are due no later than October 31, 2013. CDC obtained OMB approval to collect information from these awardees through the ''WISEWOMAN Reporting System,'' OMB No. 0920–0612, exp. 1/31/2014. The information submitted to CDC includes semi-annual progress reports and minimum data elements (MDE) that are also submitted twice per year.

The WISEWOMAN program will continue under a new set of four-year cooperative agreements that begin July 1, 2013 and end June 30, 2017. The new funding period will reflect an increased emphasis on efficient oversight of program awardees and documenting program outcomes. As a result, the WISEWOMAN information collection will be revised to support updated program goals. Changes to be implemented in the new cooperative agreement funding cycle include a reduction in the frequency of progress report submission—from twice per year to once per year—and changes to the content of the MDE submissions. The first reports based on the revised reporting requirements will be submitted to CDC in April 2014.

The hardcopy progress report provides a narrative summary of each awardee's objectives and the activities undertaken to meet program goals, including public education and outreach. The estimated burden per response is 8 hours. In the new cooperative agreement cycle, the frequency of response will decrease from twice per year to once per year, resulting in a net decrease in respondent

burden for progress reporting. In the future, CDC may transition from a hardcopy report to MIS-based progress reporting.

The MDE information submitted to CDC includes baseline and follow-up data (12 months post enrollment) for all women served through the WISEWOMAN program. The MDE describe risk factors for the women served in each program and the number and type of lifestyle program sessions they attend. The information allows CDC to assess the effectiveness of the WISEWOMAN program in reducing the burden of cardiovascular disease risk factors among women who utilize program services. MDE information may also be utilized in assessments of WISEWOMAN program impact and cost-effectiveness. MDE information has previously been submitted to CDC in two electronic transmissions: the burden for Screening and Assessment MDE was estimated at 16 hours per response and the burden for Lifestyle Intervention MDE was estimated at 8 hours per response. Under the new WISEWOMAN cooperative agreements, the MDE will be submitted as a single electronic file with a combined estimated burden per response of 24 hours. The total number of MDE variables will increase from 66 to 87. The number of variables relating to Lifestyle Interventions will decrease and the number of variables relating to Screening and Assessment will increase.

CDC will continue to use the information collected from WISEWOMAN awardees to support continuous program monitoring and improvement activities, evaluation, and assessment of program outcomes. The overall program evaluation is designed to demonstrate how WISEWOMAN can obtain more complete health data on vulnerable populations, promote public education about disease incidence, cardiovascular disease risk-factors, health promotion, to improve the availability of screening and diagnostic services for under-served women, ensure the quality of services provided to under-served women, and develop strategies for improved interventions.

The estimated number of WISEWOMAN awardees is 21 but may be adjusted when new cooperative agreements are issued. Participation in this information collection is required as a condition of cooperative agreement funding. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs)	Total burden (in hrs)
WISEWOMAN Grantees	Screening and Assessment and Lifestyle Program MDEs.	21	2	24	1,008
.....	Annual Progress Report	21	1	8	168
Total	.....	.....	.....	.....	1,176

Ron A. Otten,

Director, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2013–12406 Filed 5–23–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–64, CMS–10295 and CMS–10401]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection;

Title of Information Collection: Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program; *Use:* Form CMS–64 has been used since January 1980 by Medicaid state agencies to report their actual program benefit costs and administrative expenses. CMS uses this information to compute the federal financial participation for the state's Medicaid program costs. Certain schedules of the CMS–64 form are used by states to report budget, expenditure and related statistical information required for implementation of the Medicaid portion of the State Children's Health Insurance Programs, Title XXI of the Social Security Act, established by the Balanced Budget Act of 1997. *Form Number:* CMS–64 (OCN: 0938–0067); *Frequency:* Quarterly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 224; *Total Annual Hours:* 16,464. (For policy questions regarding this collection contact Abraham John at 410–786–4518. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Reporting Requirements for States Under Transitional Medical Assistance (TMA) Provisions; *Use:* The HHS Secretary is required to submit annual reports to Congress with information collected from states in accordance with section 5004(d) of the American Recovery and Reinvestment Act of 2009. Medicaid agencies in 50 states complete the reports while we review the information to determine if each state has met all of the reporting requirements specified under section 5004(d). We are revising this package to remove the requirement to report the Medicaid Federal Medical Assistance Percentage since it no longer needs to be collected from states. *Form*

Number: CMS–10295 (OCN: 0938–1073). *Frequency:* Quarterly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 50; *Total Annual Responses:* 200; *Total Annual Hours:* 400. (For policy questions regarding this collection contact Rhonda Simms at 410–786–1200. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Standards Related to Reinsurance, Risk Corridors and Risk Adjustment; *Use:* Section 1341 of the Affordable Care Act provides that each state must establish a transitional reinsurance program to help stabilize premiums for coverage in the individual market during the first three years of Exchange operation. Section 1342 provides for the establishment of a temporary risk corridors program that will apply to qualified health plans in the individual and small group markets for the first three years of Exchange operation. Section 1343 provides for a program of risk adjustment for all non-grandfathered plans in the individual and small group market both inside and outside of the Exchange. These risk-spreading programs, which will be implemented by HHS, states, or both HHS and states, are designed to mitigate adverse selection and provide stability for health insurance issuers in the individual and small group markets as market reforms and Exchanges are implemented. Section 1321(a) also provides broad authority for the Secretary to establish standards and regulations to implement the statutory requirements related to Exchanges, reinsurance, risk adjustment, and other components of title I of the Affordable Care Act. The data collection and reporting requirements described in this information collection request will enable states, HHS, or both states and HHS to implement the aforementioned programs, which will mitigate the impact of adverse selection in the individual and small group markets both inside and outside the Exchange. *Form Number:* CMS–10401 (OCN: 0938–1155); *Frequency:* Occasionally; *Affected Public:* Private Sector (business or other for-profit and not-for-profit institutions); *Number of Respondents:* 24,171; *Total Annual Responses:* 584,042; *Total Annual Hours:* 1,013,293. (For policy questions regarding this collection contact Jaya Ghildiyal at 301–492–5149. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on June 24, 2013.

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, Email: *OIRA _submission@omb.eop.gov.*

Dated: May 21, 2013.

Martique Jones,

Deputy Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2013–12465 Filed 5–23–13; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10293]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection;

Title of Information Collection: Tribal Consultation State Plan Amendment Template; *Use:* Effective July 1, 2009, section 5006 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) amended section 1902(a)(73) of the Act to require that certain states utilize a process for the state to seek advice on a regular, ongoing basis from designees of the Indian Health Service (IHS) and Urban Indian Organizations concerning Medicaid and Children's Health Insurance Program (CHIP) matters having a direct effect on them. The consultation process is required for the 37 States in which 1 or more Indian Health Programs or Urban Indian Organizations furnish health care services. The State Medicaid agency for each of these States will complete the template page and submit it for approval as part of a State plan amendment, to document how it meets the requirements for tribal consultation. *Form Number:* CMS–10293 (OCN: 0938–1098); *Frequency:* Reporting—Occasionally; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 37; *Total Annual Responses:* 37; *Total Annual Hours:* 37. (For policy questions regarding this collection contact Lane Terwilliger at 410–786–6618. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by July 23, 2013:

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: May 20, 2013.

Martique Jones,

Deputy Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2013–12370 Filed 5–23–13; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers CMS–R–137, CMS–10371 and CMS–10471]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* Internal Revenue Service (IRS)/Social Security Administration (SSA)/Centers for Medicare and Medicaid Services (CMS) Data Match and Supporting Regulations in 42 CFR 411.20–491.206 *Use:* Medicare Secondary Payer (MSP) is essentially the same concept known in the private insurance industry as coordination of benefits; it refers to those situations where Medicare assumes a secondary payer role to certain types of private insurance for covered services provided to a Medicare beneficiary.

Congress sought to reduce the losses to the Medicare program by requiring in 42 U.S.C. 1395y(b)(5) that the Internal Revenue Service (IRS), the Social Security Administration (SSA), and CMS perform an annual data match (the IRS/SSA/CMS Data Match, or ''Data Match'' for short). We use the information obtained through Data Match to contact employers concerning possible application of the MSP provisions by requesting information about specifically identified employees (either a Medicare beneficiary or the working spouse of a Medicare beneficiary). This statutory data match and employer information collection activity enhances our ability to identify both past and present MSP situations. *Form Number:* CMS–R–137 (OCN: 0938–0565); *Frequency:* Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions, Farms, State, Local or Tribal Governments; *Number of Respondents:* 280,028; *Total Annual Responses:* 280,028; *Total Annual Hours:* 1,629,763. (For policy questions regarding this collection contact Rick Mazur at 410–786–1418. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Cooperative Agreement to Support Establishment of State-Operated Health Insurance Exchanges; *Use:* All States (including the 50 states, consortia of states, territories, and the District of Columbia herein referred to as states) that received a State Planning and Establishment Grant for Affordable Care Act's (ACA) Exchanges are eligible for the Cooperative Agreement to Support Establishment of State Operated Insurance Exchanges. Section 1311 of the Affordable Care Act offers the opportunity for each state to establish an Exchange [now referred to as Marketplace], and provides for grants to states for the planning and establishment of these Exchanges. Given the innovative nature of Exchanges and the statutorily-prescribed relationship between the Secretary and states in their development and operation, it is critical that the Secretary work closely with states to provide necessary guidance and technical assistance to ensure that states can meet the prescribed timelines, federal requirements, and goals of the statute.

In order to provide appropriate and timely guidance and technical assistance, the Secretary must have access to timely, periodic information regarding state progress. Consequently, the information collection associated with these grants is essential to facilitating reasonable and appropriate federal monitoring of funds, providing statutorily-mandated assistance to states to implement Exchanges in accordance with federal requirements, and to ensure that states have all necessary information required to proceed, such that retrospective corrective action can be minimized.

The submitted revision adds sets of Outcomes and Operational Metrics to States' data collection requirements; we will use the resulting data to evaluate Marketplace performance and overall effectiveness of the ACA. Key areas of measurement are the effectiveness of eligibility determination and enrollment processes, impact on affordability for consumers, and the effect of Marketplace participation on health insurances markets. Furthermore, these metrics facilitate actionable feedback and technical assistance to states for quality improvement efforts during the critical early period of operations. This funding opportunity was first released on January 20, 2011. *Form Number:* CMS–10371; *Frequency:* Occasionally; *Affected Public:* State, Local, or Tribal governments; *Number of Respondents:* 40; *Total Annual Responses:* 1475; *Total Annual Hours:* 64,695. (For policy questions regarding this collection contact Christina Daw at 301–492–4181. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* Medicare Prior Authorization of Power Mobility Devices (PMDs) Demonstration; *Use:* The purpose of the Medicare Prior Authorization of Power Mobility Devices Demonstration (the Demonstration) is to ensure that payments for PMDs are appropriate before the claims are paid, thereby preventing the fraud, waste, and abuse in the seven states participating in the Demonstration: California, Florida, Illinois, Michigan, New York, North Carolina and Texas. Additional benefits of the Demonstration include ensuring that a beneficiary's medical condition warrants their medical equipment under existing coverage guidelines and preserving their ability to receive quality products from accredited suppliers. In order to gather qualitative information for analysis, the evaluation team will use semi-structured interview guides that focus on the direct impact of the Demonstration on stakeholder groups. Stakeholders will be drawn from advocacy organizations, power mobility device supply companies, state and local government, and healthcare practitioners. This information collection request explains the research methodology and data collection strategies designed to minimize the burden placed on research participants, while effectively gathering the data needed for the evaluation of the

Demonstration. *Form Number:* CMS–10471 (OCN: 0938–NEW); *Frequency:* Yearly; *Affected Public:* Private sector (business or other for-profit and not-for-profit institutions) and State and Local Governments; *Number of Respondents:* 285; *Total Annual Responses:* 285; *Total Annual Hours:* 324. (For policy questions regarding this collection contact Andrea Glasgow at 410–786–4695. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by July 23, 2013:

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number ___, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: May 21, 2013.

Martique Jones,

Deputy Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2013–12469 Filed 5–23–13; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1458–N]

Medicare Program; Second Semi-Annual Meeting of the Advisory Panel on Hospital Outpatient Payment (HOP Panel) August 26–27, 2013

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces the second semi-annual meeting of the Advisory Panel on Hospital Outpatient Payment (HOP, the Panel) for 2013. The purpose of the panel is to advise the Secretary of the Department of Health and Human Services (DHHS) (the Secretary) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) (the Administrator) on the clinical integrity of the Ambulatory Payment Classification (APC) groups and their associated weights, and hospital outpatient therapeutic services supervision issues.

DATES: *Meeting Date:* The second semi-annual meeting in 2013 is scheduled for the following dates and times. The times listed in this notice are Eastern Daylight Time (EDT) and are approximate times; consequently, the meetings may last longer than the times listed in this notice, but will not begin before the posted times:

- Monday, August 26, 2013, 1 p.m. to 5 p.m. EDT.
- Tuesday, August 27, 2013, 9 a.m. to 5 p.m. EDT.

Meeting Information Updates: The actual meeting hours and days will be posted in the agenda. As information and updates regarding the onsite and webcaste meeting, agenda, and presentations become available, they will be posted on the CMS Web site at: *http://cms.gov/Regulations-and-Guidance/Guidance/FACA/AdvisoryPanelonAmbulatoryPaymentClassificationGroups.html*

Deadlines

Deadline for Presentations and Comments

The email copy of a presentation or comment and form CMS–20017 must be in the Designated Federal Official's (DFO's) email inbox (*APCPanel@cms.hhs.gov*) by 5 p.m. EDT, Friday, July, 19, 2013. The hardcopy of the presentation must be received by the DFO on or before Friday, July 26, 2013. Presentations and comments not received by the due dates will be considered late and will not be included on the agenda. (See below for submission instructions for both hardcopy and electronic submissions.)

Meeting Registration Timeframe: Monday, July 08, 2013 through Friday, August 09, 2013 at 5 p.m. EDT.

Participants planning to attend this meeting in person must register online, during the above specified timeframe at: *https://www.cms.gov/apps/events/default.asp.* On this Web page, double click the ''Upcoming Events'' hyperlink, and then double click the ''HOP Panel'' event title link and enter the required information. Include any requests for special accommodations.

Participants who do not plan to attend this meeting in person should not register. No registration is required for participants who plan to view the meeting via webcast.

Submission Instructions for Presentations and Comments

Because of staffing and resource limitations, we cannot accept written comments and or presentations by FAX.

Meeting Location and Webcast

The meeting will be held in the CMS Central Office, Auditorium, 7500 Security Boulevard, Woodlawn, Maryland 21244–1850.

Alternately, the public may view this meeting via a webcast. During the scheduled meeting, webcasting is accessible online at: *http://cms.gov/live* or *http://www.ustream.tv.* Viewers interested in receiving the webcast from *http://www.ustream.tv* will need to type ''CMS Public Events'' in the search bar to access the webcast.

FOR FURTHER INFORMATION CONTACT: For inquiries about the panel, contact the DFO:

Chuck Braver, 7500 Security Boulevard, Mail Stop: C4–05–17, Woodlawn, MD 21244–1850. Phone: (410) 786–3985. Email: *APCPanel@cms.hhs.gov*.

Mail hardcopies and email copies to the following addresses: Chuck Braver, DFO, CMS, CM, HAPG, DOC—HOP Panel, 7500 Security Blvd. Mail Stop: C4–05–17, Woodlawn, MD 21244–1850. Email: *APCPanel@cms.hhs.gov*

Note: We recommend that you advise couriers of the following information: When delivering hardcopies of presentations to CMS, call (410) 786–4532 or (410) 786–6719 to ensure receipt of documents by appropriate staff.

News Media: Representatives must contact our Public Affairs Office at (202) 690–6145.

Advisory Committees' Information Lines: The phone number for the CMS Federal Advisory Committee Hotline is (410) 786–3985.

Web sites: For additional information on the panel and updates to the panel's activities, we refer readers to view our Web site at the following: *http://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/AdvisoryPanelonAmbulatoryPaymentClassificationGroups.html.*

You may also search information about the panel and its membership in the Federal Advisory Committee Act (FACA) database at the following URL: *https://www.fido.gov/facadatabase/public.asp.*

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary is required by section 1833(t)(9)(A) of the Social Security Act (the Act) and section 222 of the Public Health Service Act (PHS Act) to consult with an expert outside advisory panel regarding the clinical integrity of the Ambulatory Payment Classification (APC) groups and relative payment weights. The panel (which was formerly known as the Advisory panel on Ambulatory Payment Classification Groups) is governed by the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), as amended (5 U.S.C. Appendix 2), to set forth standards for the formation and use of advisory panels.

The Charter provides that the panel shall meet up to 3 times annually. We consider the technical advice provided by the panel as we prepare the proposed and final rules to update the outpatient prospective payment system (OPPS).

II. Agenda

The agenda for the August 2013 meeting will provide for discussion and comment on the following topics as designated in the panel's charter:

- Addressing whether procedures within an APC group are similar both clinically and in terms of resource use.
- Evaluating APC group weights.
- Reviewing the packaging of OPPS services and costs, including the methodology and the impact on APC groups and payment.
- Removing procedures from the inpatient list for payment under the OPPS.
- Using single and multiple procedure claims data for CMS' determination of APC group weights.
- Addressing other technical issues concerning APC group structure.
- Recommending the appropriate supervision level (general, direct, or personal) for individual hospital outpatient therapeutic services.

III. Presentation

The presentation subject matter must be within the scope of the panel designated in the Charter. The subject matter will be limited to these and related topics. Unrelated topics include, but are not limited to, the conversion factor, charge compression, revisions to the cost report, pass-through payments, correct coding, new technology applications (including supporting information/documentation), provider payment adjustments, hospital outpatient supervision of diagnostic services and the types of practitioners who are permitted to supervise hospital outpatient services. The panel may not recommend that services be designated as nonsurgical extended duration therapeutic services.

The panel may use data collected or developed by entities and organizations, other than the DHHS and CMS in conducting its review. We recommend organizations submit data for the panel's and CMS staff's review. The Agenda will be posted on the CMS Web site before the meeting.

All presentations are limited to 5 minutes total presentation time, regardless of the number of individuals or organizations represented by a single presentation. Presenters may use their 5 minutes to represent either one or more agenda items.

All presentations will be considered public information and may be posted on the CMS Web site and will be shared with the public. Presentations may not contain any pictures, illustrations, or personally identifiable information.

To consider presentation and/or comment requests, we will need to receive the following information:

- A hardcopy of your presentation; only hardcopy comments and presentations can be reproduced for public dissemination.
- An email copy of your presentation sent to the DFO mailbox, *APCPanel@cms.hhs.gov*.
- Form CMS–20017 with complete contact information that includes name, address, phone number, and email addresses for all presenters and a contact that can answer any questions and or provide revisions that are requested for the presentation.
- Presenters must clearly explain the actions that they are requesting CMS to take in the appropriate section of the form. A presenter's relationship to the organization that they represent must also be clearly listed.
- The form is now available through the CMS Forms Web site. The Uniform Resource Locator (URL) for linking to this form is as follows: *http://www.cms.hhs.gov/cmsforms/downloads/cms20017.pdf*.

IV. Oral Comments

In addition to formal oral presentations, which are limited to 5 minutes total per presentation, there will be an opportunity during the meeting for public oral comments, which will be limited to 1 minute for each individual and a total of 3 minutes per organization.

V. Meeting Attendance

The meeting is open to the public; however, attendance is limited to space available. Priority will be given to those who pre-register, and attendance may be limited based on the number of registrants and the space available.

Persons wishing to attend this meeting must register by following the instructions in the ''*Meeting Registration Timeframe*'' section of this notice. A confirmation email will be sent to the registrants shortly after completing the registration process.

VI. Security, Building, and Parking Guidelines

The meeting will be held in a Federal government building; therefore, federal security measures are applicable.

The following are the security, building, and parking guidelines:

- Persons attending the meeting, including presenters, must be pre-registered and on the attendance list by the prescribed date.
- Individuals who are not pre-registered in advance may not be permitted to enter the building and may be unable to attend the meeting.
- Attendees must present valid government-issued photographic identification to the Federal Protective Service or Guard Service personnel before entering the building. Persons without proper identification will be denied access to the building.
- Security measures include inspection of vehicles, inside and out, at the entrance to the grounds.
- All persons entering the building must pass through a metal detector.
- All items brought into CMS including personal items, for example, laptops and cell phones are subject to physical inspection.
- The public may enter the building 30 to 45 minutes before the meeting convenes each day.
- All visitors must be escorted in areas other than the lower and first-floor levels in the Central Building.
- The main-entrance guards will issue parking permits and instructions upon arrival at the building.

VII. Special Accommodations

Individuals attending the meeting who are hearing or visually impaired and have special requirements or other special accommodations must include the request for these services during registration.

VIII. Panel Recommendations and Discussions

The panel's recommendations at any panel meeting generally are not final until they have been reviewed and approved by the panel on the last day of the meeting, before the final adjournment. These recommendations will be posted to our Web site after the meeting.

IX. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

(Catalog of Federal Domestic Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 17, 2013.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2013–12466 Filed 5–23–13; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1451–N]

Medicare Program; Public Meeting in Calendar Year 2013 for New Clinical Laboratory Test Payment Determinations

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces a public meeting to receive comments and recommendations (including accompanying data on which recommendations are based) from the public on the appropriate basis for establishing payment amounts for new or substantially revised Healthcare Common Procedure Coding System (HCPCS) codes being considered for Medicare payment under the clinical laboratory fee schedule (CLFS) for calendar year (CY) 2014.

DATES: *Meeting Date:* The public meeting is scheduled for Wednesday, July 10, 2013, from 9:00 a.m. to 3:00 p.m., Eastern Daylight Savings Time (EDST).

Deadline for Registration of Presenters and Submission of Presentations: All presenters for the public meeting must register and submit their presentations electronically to Glenn McGuirk at *Glenn.McGuirk@cms.hhs.gov* by June 28, 2013 (EDST).

Deadline for Submitting Requests for Special Accommodations: Requests for special accommodations must be received no later than 5:00 p.m. on June 28, 2013 (EDST).

Deadline for Submission of Written Comments: We intend to publish our proposed determinations for new and reconsidered codes for CY 2014 by early September. Interested parties may submit written comments on these proposed determinations by September 27, 2013 (EDST), to the address specified in the **ADDRESSES** section of this notice or electronically to Glenn McGuirk at *Glenn.McGuirk@cms.hhs.gov.*

ADDRESSES: The public meeting will be held in the main auditorium of the Centers for Medicare & Medicaid Services (CMS), Central Building, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

FOR FURTHER INFORMATION CONTACT: Glenn McGuirk, (410) 786–5723.

SUPPLEMENTARY INFORMATION:

I. Background

Section 531(b) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554) requires the Secretary to establish procedures for coding and payment determinations for new clinical diagnostic laboratory tests under Part B of title XVIII of the Social Security Act (the Act) that permit public consultation in a manner consistent with the procedures established for implementing coding modifications for International Classification of Diseases (ICD–9–CM). The procedures and public meeting announced in this notice for new tests are in accordance with the procedures published in the November 23, 2001 notice (66 FR 58743) to implement section 531(b) of BIPA.

Section 942(b) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) added section 1833(h)(8) of the Act. Section 1833(h)(8)(A) of the Act requires the Secretary to establish by regulation procedures for determining the basis for, and amount of, payment for any clinical diagnostic laboratory test with respect to which a new or substantially revised Healthcare Common Procedure Coding System (HCPCS) code is assigned on or after January 1, 2005 (hereinafter referred to as ''new tests''). A code is considered to be substantially revised if ''there is a substantive change to the definition of the test or procedure to which the code applies (such as a new analyte or a new methodology for measuring an existing analyte-specific test).'' (See section 1833(h)(8)(E)(ii) of the Act.)

Section 1833(h)(8)(B) of the Act sets forth the process for determining the basis for, and the amount of, payment for new tests. Section 1833(h)(8)(B)(i) and (ii) of the Act requires the Secretary to make available to the public a list that includes any such test for which establishment of a payment amount is being considered for a year and on the same day the list is made available, cause to have published in the **Federal Register** notice of a meeting to receive comments and recommendations (including accompanying data, which recommendations are based) from the public on the appropriate basis for establishing payment amounts for the tests on such list. This list of codes for which the establishment of a payment amount under the clinical laboratory fee schedule (CLFS) is being considered for calendar year (CY) 2014 is posted on the CMS Web site at *http://www.cms.hhs.gov/ClinicalLabFeeSched.*

Section 1833(h)(8)(B)(iii) of the Act requires that we convene a public meeting not less than 30 days after publication of the notice in the **Federal Register**. These requirements are codified at 42 CFR part 414, subpart G.

Two methods are used to establish payment amounts for new tests. The first method called ''crosswalking'' is used when a new test is determined to be comparable to an existing test code, multiple existing test codes, or a portion of an existing test code. The new test code is assigned the local fee schedule amounts and the national limitation amount of the existing test. Payment for the new test is made at the lesser of the local fee schedule amount or the national limitation amount (See 42 CFR 414.508(a)).

The second method called ''gapfilling'' is used when no comparable existing test is available. When using this method, instructions are provided to each Medicare carrier or Part A and Part B Medicare Administrative Contractor (MAC) to determine a payment amount for its carrier geographic area for use in the

first year. The contractor-specific amounts are established for the new test code using the following sources of information, if available: Charges for the test and routine discounts to charges; resources required to perform the test; payment amounts determined by other payers; and charges, payment amounts, and resources required for other tests that may be comparable or otherwise relevant. (See 42 CFR 414.508(b) and 414.509 for more information regarding the gapfilling process.)

II. Format

We are following our usual process, including an annual public meeting, to determine the appropriate basis and payment amounts for new test codes under the CLFS for CY 2014.

This meeting to receive comments and recommendations (including accompanying data, which recommendations are based) on the appropriate payment basis for the new test codes contained on the preliminary list is open to the public. The development of the codes for clinical laboratory tests is largely performed by the CPT Editorial Panel and will not be further discussed at the meeting. The on-site check-in for visitors will be held from 8:30 a.m. to 9:00 a.m., followed by opening remarks. Registered persons from the public may discuss and recommend payment determinations for specific new test codes for the CY 2014 CLFS.

Because of time constraints, presentations must be brief, lasting no longer than 10 minutes, and must be accompanied by 3 written copies. In addition, CMS recommends that presenters make copies available for approximately 50 meeting participants, since CMS will not be providing additional copies. Written presentations must be electronically submitted to CMS on or before June 28, 2013. Presentation slots will be assigned on a first-come, first-served basis. In the event that there is not enough time for presentations by everyone who is interested in presenting, CMS will gladly accept written presentations from those who were unable to present due to time constraints. Presentations should be sent via email to Glenn McGuirk, at *Glenn.McGuirk@cms.hhs.gov.* Presenters should address all of the following items:

- New test code and descriptor.
- Test purpose and method.
- Costs.
- Charges.
- A recommendation, with rationale, for one of the two methods (crosswalking or gapfilling) for determining payment for new tests.

Additionally, the presenters should provide the data on which their recommendations are based. Written presentations from the public meeting will be available upon request, via email, to Glenn McGuirk at *Glenn.McGuirk@cms.hhs.gov.* Presentations that do not address the above 5 items may be considered incomplete and may not be considered by CMS when making a payment determination. CMS may request missing information following the meeting to prevent a recommendation from being considered incomplete.

Taking into account the comments and recommendations (and accompanying data) received at the public meeting, we will post our proposed determinations with respect to the appropriate basis for establishing a payment amount for each such code, an explanation of the reasons for each determination, the data on which the determinations are based, and a request for public written comments on the proposed determinations on the CMS Web site by early September 2013. This Web site can be accessed at *http://www.cms.hhs.gov/ClinicalLabFeeSched*. We also will include a summary of all comments received by July 31, 2013 (15 business days after the meeting). Interested parties may submit written comments on the proposed determinations by September 27, 2013, to the address specified in the **ADDRESSES** section of this notice or electronically to Glenn McGuirk at *Glenn.McGuirk@cms.hhs.gov.* Final determinations of the payment amounts for new test codes to be included for payment on the CLFS for CY 2014 will be posted on our Web site in November 2013 along with the rationale for each determination, the data on which the determinations are based, and responses to comments and suggestions received from the public.

After the final determinations have been posted on our Web site, the public may request reconsideration of the basis for, and amount of payment for, a new test as set forth in § 414.509. (See the November 27, 2007 CY 2008 Physician Fee Schedule final rule with comment period (72 FR 66275 through 66280) for more information on these procedures.)

III. Registration Instructions

The Division of Ambulatory Services in the CMS Center for Medicare is coordinating the public meeting registration. Beginning June 10, 2013, registration may be completed on-line at the following Web address: *http://www.cms.hhs.gov/ClinicalLabFeeSched*. The following information must be submitted when registering:

- Name.
- Company name.
- Address.
- Telephone number.
- Email address.

When registering, individuals who want to make a presentation must also specify which new test code they will be presenting comments. A confirmation will be sent upon receipt of the registration. Individuals must register by the date specified in the **DATES** section of this notice.

IV. Security, Building, and Parking Guidelines

The meeting will be held in a Federal government building; therefore, Federal security measures are applicable. In planning your arrival time, we recommend allowing additional time to clear security. It is suggested that you arrive at the CMS facility between 8:15 a.m. and 8:30 a.m., so that you will be able to arrive promptly at the meeting by 9:00 a.m. Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting. The public may not enter the building earlier than 8:15 a.m. (45 minutes before the convening of the meeting).

Security measures include the following:

- Presentation of government-issued photographic identification to the Federal Protective Service or Guard Service personnel. Persons without proper identification may be denied access to the building.
- Interior and exterior inspection of vehicles (this includes engine and trunk inspection) at the entrance to the grounds. Parking permits and instructions will be issued after the vehicle inspection.
- Passing through a metal detector and inspection of items brought into the building. We note that all items brought to CMS, whether personal or for the purpose of demonstration or to support a demonstration, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for demonstration or to support a demonstration.

V. Special Accommodations

Individuals attending the meeting who are hearing or visually impaired and have special requirements, or a condition that requires special assistance, should provide that information upon registering for the

meeting. The deadline for such registrations is listed in the **DATES** section of this notice.

VI. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 3, 2013.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2013–12225 Filed 5–23–13; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Health Resources and Services Administration (HRSA) has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB). Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

Information Collection Request Title: Rural Health Information Technology Network Development Program (OMB No. 0915–0354)—REVISION

The purpose of the Rural Health Information Technology Network Development (RHITND) Program, authorized under the Public Health Service Act, Section 330A(f) (42 U.S.C. 254c(f)) as amended by the Health Care Safety Net Amendments of 2002 (Pub. L. 107–251), is to improve health care and support the adoption of health information technology (HIT) in rural America by providing targeted HIT support to rural health networks. HIT plays a significant role in the advancement of the Department of Health and Human Services' (HHS) priority policies to improve health care delivery. Some of these priorities include: improving health care quality, safety, and efficiency; reducing disparities; engaging patients and families in managing their health; enhancing care coordination; improving population and public health; and ensuring adequate privacy and security of health information.

The intent of RHITND is to support the adoption and use of electronic health records (EHR) in coordination with the ongoing HHS activities related to the Health Information Technology for Economic and Clinical Health (HITECH) Act, enacted as part of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5). The HITECH Act provides HHS with the authority to establish programs to improve health care quality, safety, and efficiency through the promotion of health information technology, including EHR.

For this program, performance measures were drafted to provide data useful to the program and to enable HRSA to provide aggregate program data required by Congress under the Government Performance and Results Act of 1993 (Pub. L. 103–62). These measures cover the principal topic areas of interest to the Office of Rural Health Policy, including: (a) Access to care; (b) the underinsured and uninsured; (c) workforce recruitment and retention; (d) sustainability; (e) health information technology; (f) network development; and (g) health related clinical measures. Several measures will be used for this program. These measures will speak to the Office's progress toward meeting the goals set.

A 60-day **Federal Register** Notice regarding this collection request was published in the **Federal Register** on March 7, 2013, (Vol. 78, No. 45; page. 14804). There were no public comments.

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

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Rural Health Information Technology Network Development Program	41	1	41	5.68	232.88
Total	41	1	41	5.68	232.88

ADDRESSES: Submit your comments to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–5806. Please direct all correspondence to the "attention of the desk officer for HRSA."

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Deadline: Comments on this ICR should be received within 30 days of this notice.

Dated: May 17, 2013.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2013–12340 Filed 5–23–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities; Proposed Collection; Public Comment Request

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects (Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

HRSA especially 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.

Information Collection Request Title: The Teaching Health Center Graduate Medical Education (THCGME) Program Eligible Resident/FTE Chart (OMB 0915–xxxx) NEW

Abstract: The THCGME Program Eligible Resident/FTE Chart published in the THCGME Funding Opportunity Announcements (FOAs) is a means for determining the number of eligible residents/FTEs in an applicant's primary care residency program. The chart requires applicants to provide data related to the size and/or growth of the residency program over previous academic years, the number of residents enrolled in the program during the baseline academic year, and a projection of the program's proposed expansion over the next four academic years. It is imperative that applicants complete this chart and provide evidence of a planned expansion, as per the statute, THCGME funding may only be used to support an expanded number of residents in a residency program. Utilization of a chart to gather this important information has decreased the number of errors in the eligibility review process resulting in more accurate review and funding process.

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 Information Collection Request are summarized in the table below.

Total Estimated Annualized burden hours:

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Teaching Health Center GME program Eligible Resident/FTE Chart	09	1	9	0.5	4.5
Total	09	1	9	0.5	4.5

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 10–29, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Deadline: Comments on this Information Collection Request must be received within 60 days of this notice.

Dated: May 17, 2013.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2013–12351 Filed 5–23–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Ryan White HIV/AIDS Program Core Medical Services Waiver; Application Requirements

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Final Notice with Opportunity for Comment

SUMMARY: Title XXVI of the Public Health Service Act, as amended by the Ryan White HIV/AIDS Treatment Extension Act of 2009 (Ryan White Program or RWP), requires that grantees expend 75 percent of Parts A, B, and C funds on core medical services, including antiretroviral drugs, for individuals with HIV/AIDS identified and eligible under the statute. The statute also grants the Secretary authority to waive this requirement if there are no waiting lists for the AIDS Drug Assistance Program (ADAP) and core medical services are available to all individuals identified and eligible under Title XXVI in an applicant's service area.

Prior to this policy announcement, grantees seeking a waiver of the 75 percent requirement have been required to submit core medical services waiver requests at the same time as the annual

grant application. Recognizing RWP grantees' request for additional flexibility in the timing of waiver applications, the Health Resources and Services Administration (HRSA) is providing grantees additional options for making waiver requests.

HRSA is amending the uniform waiver standards for RWP grantees requesting a core medical services waiver for fiscal year (FY) 2014 and beyond. The amended standards will allow grantees to apply for a waiver (a) at the same time as their annual Part A, B, or C application submission, (b) at any time up to their annual Part A, B, or C application submission, or (c) up to four months after their grant award for that funding year. This **Federal Register** notice seeks to make public the revised policy and provide an opportunity for public comment before its implementation.

DATES: Comments on this final policy must be received by June 24, 2013. The policy will become effective on September 23, 2013.

ADDRESSES: Written comments should be sent via email to the Division of Policy and Data, HIV/AIDS Bureau, Health Resources and Services Administration at *RyanWhiteComments@hrsa.gov* by June 24, 2013.

FOR FURTHER INFORMATION CONTACT: Theresa Jumento using the email above or by telephone at (301) 443–5807.

SUPPLEMENTARY INFORMATION: In response to the requests from the grantee community, and in order for grantees to plan appropriately, HRSA is revising the requirement that core medical services waiver requests be submitted with an applicant's grant application for the upcoming fiscal year. Under this revision, grantees may submit core medical services waiver requests prior to the annual grant application, with the application, or up to four months after the grant award date. HRSA believes that this change will allow grantees to more robustly assess and develop their funding and service delivery proposal. In addition, if the waiver request has already been received and approved, the application can be based on the approved waiver, and therefore include allocation tables based on that approval. Further, HRSA is clarifying that grantees approved for a core medical services waiver are not compelled to implement that waiver should the grantee determine that the actual needs of the jurisdiction are best met by maintaining funding for core medical services.

This revision replaces policy notice #08–02 and more clearly outlines the requirements to request a waiver of the core medical services provision. In response to concerns expressed by grantees, it provides additional clarity with regard to specific documentation expectations for each element of the waiver. It specifies clearly those documentation expectations whether the waiver request is submitted separately or jointly with the annual funding application.

For waiver applicants that do not submit their request with their annual grant application, HRSA is now requiring that these applicants submit a tentative allocation table outlining the percentage of funds that the grantee plans to spend on core medical and support services under the waiver, if approved. This will provide additional information to HRSA on how the grantee anticipates allocating its resources and will help to demonstrate that the request for a waiver is consistent with either the applicant's forthcoming grant application or their proposed budget revision. In addition to the applicant's annual grant application, waiver applicants now must also demonstrate that the proposed waiver is also consistent with the Comprehensive Plan and Statewide Coordinated Statement of Need.

The revised policy removes the section entitled ''Types of Documentation and Evidence.'' Instead, the requirements for the waiver are listed and then the policy specifies the documentation necessary to establish compliance. These changes clarify the documentation that grantees must use to meet each core medical services waiver request requirement. By standardizing the documentation for all grantees, HRSA will gain a clearer understanding of the availability of core medical services in the applicant's jurisdiction. Furthermore, HRSA will be able to make a more informed decision about the appropriateness of waiving the core medical services requirement in a jurisdiction.

In addition, the standardization of the documentation will ensure that HRSA has sufficient information to make an informed decision on each waiver request. Finally, the revised policy imposes a page number limitation on the narrative section of the core medical services waiver request. In addition, applicants will now submit core medical services waiver requests through the Electronic Handbook (EHB) Prior Approval portal when the core medical services waiver application is not being submitted with an annual grant application.

These revisions are intended to clarify the waiver process, and respond to the changing needs of the grantee community, while at the same time ensuring that the waiver process is fair and sufficiently robust so that HRSA undertakes appropriate reviews.

Policy

Uniform Standard for Waiver of Core Medical Services Requirement for Grantees Under Parts, A, B, and C

POLICY NUMBER 13–xx (Replaces Policy Notice 08–02).

Scope of Policy

Ryan White Parts A, B, C.

Summary and Purpose of Policy

The purpose of this policy is to outline the Health Resources and Services Administration (HRSA) HIV/AIDS Bureau (HAB) requirements for applying for a waiver of the requirement that 75 percent of Ryan White HIV/AIDS program funds be spent on core medical services.

Background

Title XXVI of the Public Health Service Act, Part A section 2604(c), Part B section 2612(b), and Part C section 2651(c) requires that grantees expend not less than 75 percent of their grant funds on core medical services. These sections also grant the Secretary authority to waive this requirement if there are no waiting lists for the AIDS Drug Assistance Program (ADAP) and core medical services are available to all individuals identified and eligible under Title XXVI in an applicant's service area.

Policy

Grantees may submit a waiver request at any time prior to submission of the annual grant application, along with the annual grant application, or up to 4 months after the start of the grant year for which a waiver is being requested. Applications submitted before or after an annual grant application have different requirements than those submitted with an annual grant application. Applicants should choose the method that best meets their needs. The requirements for each process are outlined below.

Requirements To Apply for a Waiver Before or After an Annual Grant Application

This section outlines the requirements to submit a waiver application: (1) in advance of a grantee's annual grant application or (2) after the grant application has been submitted up to 4 months into the grant year for which a waiver is being requested. Waiver requests must be submitted through the

EHB *Prior Approval* portal and must identify the grant year for which the waiver is being requested. The waiver request must be signed by the chief elected official or the Project Director, and include the following documentation that will be utilized by HRSA in determining whether to grant the waiver:

1. Letter signed by the Director of the Part B State/Territory Grantee indicating that there is no current or anticipated ADAP services waiting list in the State/Territory.

2. Evidence that all core medical services listed in the statute (Part A section 2604(c)(3), Part B section 2612(b)(3), and Part C section 2651(c)(3)), regardless of whether such services are funded by the Ryan White HIV/AIDS Program, are available and accessible within 30 days for all identified and eligible individuals with HIV/AIDS in the service area, without need to expend at least 75 percent of Ryan White funds on these services. Acceptable evidence must include all of the following:

a. HIV/AIDS care and treatment services inventories, including identification of the specific core medical services available, from whom, and through what funding source;

b. HIV/AIDS client/patient service utilization data in addition to what has previously been submitted via the Ryan White Services Report (RSR); and

c. Letters from Medicaid and other State and local HIV/AIDS entitlement and benefits programs, which may include private insurers.

3. Evidence of a public process, which documents that the applicant has sought input from affected communities; including consumers and the Ryan White HIV/AIDS Program-funded core medical services providers, related to the availability of core medical services and the decision to request a waiver. This public process may be the same one that is utilized for obtaining input on community needs as part of the annual priority setting and resource allocation, comprehensive planning, Statewide Coordinated Statement of Need (SCSN), public planning, and/or needs assessment process. Acceptable evidence must, at a minimum, include:

a. Letters from both the Planning Council Chair in the Metropolitan area (if grantee serves such area) and the State HIV/AIDS Director describing the public process that occurred in each jurisdiction.

4. A narrative of up to, but no more than, 10 pages that explains each item in a. through d. below:

a. Any underlying State or local issues that influenced the grantee's decision to request a waiver.

b. How the documentation submitted under item two supports the assertion that such core services are available and accessible to all individuals with HIV/AIDS, identified and eligible under Title XXVI in the service area.

c. How the approval of a waiver will positively contribute to the grantee's ability to address service needs for HIV/AIDS non-core services. Specifically address the grantee's ability to perform outreach and linkage of HIV-positive individuals not currently in care.

d. How the receipt of the core medical services waiver will allow for implementation consistent with the applicant's proposed percentage allocation of resources, comprehensive plan, and SCSN. Applicants must also document consistency by providing a proposed allocation table.

Waiver Review and Notification Process

HRSA/HAB will review the request and notify grantees of waiver approval or denial within eight weeks of receipt of the request. Core medical services waivers will be effective for the grant award period for which it is approved. Subsequent grant periods will require a new waiver request. Grantees that are approved for a core medical services waiver in advance of their annual grant application are not compelled to utilize the waiver should circumstances change.

Requirements To Apply for a Waiver With the Annual Grant Application

This section provides guidance for grantees who wish to submit a waiver request with their annual grant application. Waiver requests must be submitted as an attachment to the grantee's annual grant application and should *not* be submitted through the EHB *Prior Approval* portal. The waiver request must be signed by the chief elected official or the Project Director, and include the following documentation that will be utilized by HRSA in determining whether to grant the waiver:

1. Letter signed by the Director of the Part B State/Territory Grantee indicating that there is no current or anticipated ADAP services waiting list in the State/Territory.

2. Evidence that all core medical services listed in the statute (Part A section 2604(c)(3), Part B section 2612(b)(3), and Part C section 2651(c)(3)), regardless of whether such services are funded by the Ryan White HIV/AIDS Program, are available and accessible within 30 days for all identified and eligible individuals with HIV/AIDS in the service area, without need to expend at least 75 percent of Ryan White funds on these services. Acceptable evidence must include all of the following:

a. HIV/AIDS care and treatment services inventories, including identification of the specific core medical services available, from whom, and through what funding source;

b. HIV/AIDS client/patient service utilization data in addition to what has previously been submitted via the Ryan White Services Report (RSR); and

c. Letters from Medicaid and other State and local HIV/AIDS entitlement and benefits programs, which may include private insurers.

3. Evidence of a public process, which documents that the applicant has sought input from affected communities; including consumers and the Ryan White HIV/AIDS Program-funded core medical services providers, related to the availability of core medical services and the decision to request a waiver. This public process may be the same one that is utilized for obtaining input on community needs as part of the annual priority setting and resource allocation, comprehensive planning, Statewide Coordinated Statement of Need (SCSN), public planning, and/or needs assessment process. Acceptable evidence must, at a minimum, include:

a. Letters from both the Planning Council Chair in the Metropolitan area (if grantee serves such area) and the State HIV/AIDS Director describing the public process that occurred in each jurisdiction.

4. A narrative of up to, but no more than, 10 pages that explains each item in a. through d. below:

a. Any underlying State or local issues that influenced the grantee's decision to request a waiver.

b. How the documentation submitted under item two supports the assertion that such core services are available and accessible to all individuals with HIV/AIDS, identified and eligible under Title XXVI in the service area.

c. How the approval of a waiver will positively contribute to the grantee's ability to address service needs for HIV/AIDS non-core services. Specifically address the grantee's ability to perform outreach and linkage of HIV-positive individuals not currently in care.

d. How the receipt of the core medical services waiver is consistent with the applicant's grant application, comprehensive plan, and SCSN. Applicants must also document consistency by providing the following:

i. Proposed allocation table, if not included as part of the grant application and

ii. (PART A) ''Description of Priority Setting and Resource Allocation Processes'' and ''Unmet Need Estimate and Assessment'' sections of the current grant application; or

iii. (PART B) ''Needs Assessment and Unmet Need'' section of the current grant application; or

iv. (PART C) ''Description of the Local HIV Service Delivery System'' and ''Current and Projected Sources of Funding'' sections of the current grant application.

Waiver Review and Notification Process

HRSA/HAB will review the request and notify grantees of waiver approval or denial no later than the date of issuance of the Notice of Award (NoA). Core medical services waivers will be effective for the grant award period for which it is approved. Subsequent grant periods will require a new waiver request. Grantees that are approved for a core medical services waiver in their annual grant application are not compelled to utilize the waiver should circumstances change.

The Paperwork Reduction Act of 1995

This activity has been reviewed and approved by the Office of Management and Budget, under the Paperwork Reduction Act of 1995 (Control number 0915–0307).

Dated: May 17, 2013.

Mary K. Wakefield,

Administrator.

[FR Doc. 2013–12354 Filed 5–23–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Discretionary Grant Program

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Notice of Single Single-Case Deviation: Administrative Supplement From Competition Requirements for the Maternal and Child Health Bureau's (MCHB) National Center for Community Based Services.

SUMMARY: HRSA will be issuing a non-competitive award to the National Center for Community Based Services program. The 1-year award for $449,125 will be made available in the form of a cooperative agreement to the current grantee, University of Massachusetts, during the budget period July 1, 2013, through June 30, 2014. This will provide feasible time for the Maternal and Child Health Bureau (MCHB) to align fiscal resources and programmatic goals with the least disruption to the states, communities, and constituencies that currently receive leadership, assistance, and services.

SUPPLEMENTARY INFORMATION:

Intended Recipient of the Award: National Center for Community Based Services/University of Massachusetts (U42MC18283).

Amount of the Non-Competitive Awards: $449,125.

CFDA Number: 93.110.

Period of Supplemental Funding: July 1, 2013, through June 30, 2014.

Authority: Section Title V, Section 501(a)(2) of the Social Security Act, as amended.

Justification: As authorized by section 501(a)(2) of the Social Security Act, MCHB's Division of Children with Special Health Needs is responsible for facilitating the development of community-based systems of services for children and youth with special health care needs (CYSCHN).

To meet this legislative mandate, the Division funds the National Center for Community Based Services and the State Implementation Grant Program (D70). The National Center for Community Based Services (U42MC18283), a cooperative agreement funded at $449,125 per year for a 3-year project period, is due to end June 30, 2013. This national center focuses on improving access to services for underserved CYSHCN and their families, especially those from Latino Families. The D70 grant program has had several funding cycles since 2005, with a minimum of six grants in each cycle. In fiscal year (FY) 2014, the project period for eight of the D70 grants will end. At that time, the Division plans to begin a new cycle of D70 competitive awards to states to improve the system of services for CYSHCN.

The Division explored several grant funding options that would align with its strategic goals of funding entities to improve the services for CYSHCN at the state and community levels. The amount available in FY 2013 could only fund two D70 grants and would not provide the grantees with a peer learning community that has existed with previous cycles. Moreover, the resources and objective review costs for a funding cycle for only two grants is not cost effective. Therefore, in lieu of a D70 competition in FY 2013, the Division proposes to use these funds to extend the project period for the National Center for Community Based Services (U42MC18283) for 1 year until June 30, 2014. At that time, with the project period ending for the eight D70 grants, all funds will be available for a new, competitive cycle of D70 grants in 2014.

The MCHB proposes the 1-year non-competitive funding action for three strategic programmatic reasons: (1) To appropriately spend the necessary preparation time to complete a full grant competition aligned with the Division's strategic goals; (2) to provide for sufficient fiscal resources to continue programmatic activities; and (3) to maintain MCHB programmatic support with the least disruption to the state, community, and maternal and child health constituencies who are currently receiving assistance and services from these grantees, and the grantees themselves.

FOR FURTHER INFORMATION CONTACT: Sylvia Sosa, Integrated Services Branch, Division of Services for Children with Special Health Needs, Maternal and Child Health Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 13–61, Rockville, Maryland 20857; 301–443–2259; *ssosa@hrsa.gov.*

Dated: May 17, 2013.

Mary K. Wakefield,

Administrator.

[FR Doc. 2013–12344 Filed 5–23–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (''the Program''), as required by Section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact the Clerk, United States Court of Federal Claims, 717 Madison Place NW., Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 11C–26, Rockville, MD 20857; (301) 443–6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.,* provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated her responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at Section 2114 of the PHS Act or as set forth at 42 CFR 100.3, as applicable. This Table lists for each covered childhood vaccine the conditions which may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that ''[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**.'' Set forth below is a list of petitions received by HRSA on March 13, 2013, through April 30, 2013. This list provides the name of petitioner, city and state of vaccination (if unknown then city and state of person or attorney filing claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

(a) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Table but which was caused by'' one of the vaccines referred to in the Table, or

(b) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading ''**FOR FURTHER INFORMATION CONTACT**''), with a copy to HRSA addressed to Director, Division of Vaccine Injury Compensation Program, Healthcare Systems Bureau, 5600 Fishers Lane, Room 11C–26, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Dated: May 17, 2013.

Mary K. Wakefield,

Administrator.

List of Petitions Filed

1. Tory J. and Sarah E. Moody on behalf of Victorya E. Moody, Bedford, Indiana, Court of Federal Claims No: 13–0190V.
2. Pamela Jean Peguess, Memphis, Tennessee, Court of Federal Claims No: 13–0191V.
3. Eileen Goeschel, Sarasota, Florida, Court of Federal Claims No: 13–0199V.
4. Kearsten Demczuk, Park Ridge, Illinois, Court of Federal Claims No: 13–0205V.
5. Howard Reddy and Hanan Tarabay on behalf of Andrew Howard Reddy, Pensacola, Florida, Court of Federal Claims No: 13–0208V.
6. Mona Marie Troup, Everett, Washington, Court of Federal Claims No: 13–0209V.
7. Angel Blackstone on behalf of S.B., Deceased, Trenton, New Jersey, Court of Federal Claims No: 13–0213V.
8. Isidra Durwin, Sarasota, Florida, Court of Federal Claims No: 13–0214V.
9. Nancy and Sandro Giannetta on behalf of A.M.G., Sarasota, Florida, Court of Federal Claims No: 13–0215V.
10. Kimberly Pedersen, West Allis, Wisconsin, Court of Federal Claims No: 13–0216V.
11. Charles and Jeannie Maikish on behalf of S.M., Nyack, New York, Court of Federal Claims No: 13–0217V.
12. Ina Scanlon, Muncie, Indiana, Court of Federal Claims No: 13–0219V.
13. David Stachlewitz on behalf of H.G.S., Glendale, Arizona, Court of Federal Claims No: 13–0220V.
14. Mary E. Thompson, Brookport, Illinois, Court of Federal Claims No: 13–0222V.
15. Matthew Gorski, Wynnewood, Pennsylvania, Court of Federal Claims No: 13–0224V.
16. Woodrow Coffey, Jr., Irvine, California, Court of Federal Claims No: 13–0225V.
17. Stephen Warren on behalf of Taylor Warren, Deceased, New York, New York, Court of Federal Claims No: 13–0226V.
18. Robert Wiggins, Nashville, North Carolina, Court of Federal Claims No: 13–0228V.
19. Peggy Kalmeyer, Depew, New York, Court of Federal Claims No: 13–0230V.
20. Rosemary and Wayne Trezza on behalf of P.T., West Orange, New Jersey, Court of Federal Claims No: 13–0231V.
21. Jane Tomassetti, Woodbury, Minnesota, Court of Federal Claims No: 13–0234V.
22. Everett Johnson, Sr., Ashland, Kentucky, Court of Federal Claims No: 13–0235V.
23. Edwin W. Fockler, Sarasota, Florida, Court of Federal Claims No: 13–0237V.

24. James Cox, Las Cruces, New Mexico, Court of Federal Claims No: 13–0238V.
25. Chanel and Paul A. Monroe on behalf of Angelina Monroe, Las Vegas, Nevada, Court of Federal Claims No: 13–0239V.
26. Noteel Koss, Houston, Texas, Court of Federal Claims No: 13–0240V.
27. Tamika M. Kratzer on behalf of Ian M. Kratzer, Sacramento, California, Court of Federal Claims No: 13–0243V.
28. Rosalie Peck, Boston, Massachusetts, Court of Federal Claims No: 13–0249V.
29. Shannon Keller, Sacramento, California, Court of Federal Claims No: 13–0250V.
30. Edwina Bradshaw, North Myrtle Beach, North Carolina, Court of Federal Claims No: 13–0252V.
31. William and Brenda Lehann Rodriguez on behalf of C.R., Clayton, Georgia, Court of Federal Claims No: 13–0253V.
32. Corrine K. Ibana, Kamuela, Hawaii, Court of Federal Claims No: 13–0257V.
33. Lorel Cubano, San Juan, Puerto Rico, Court of Federal Claims No: 13–0259V.
34. Brittany and Davey Lambert on behalf of Noah Lambert, Memphis, Tennessee, Court of Federal Claims No: 13–0265V.
35. Scott and Caroline VanScoy on behalf of Alyssa VanScoy, Simi Valley, California, Court of Federal Claims No: 13–0266V.
36. Jane Sprecher, Reading, Pennsylvania, Court of Federal Claims No: 13–0271V.
37. Georgia Murdock, Silver Spring, Maryland, Court of Federal Claims No: 13–0273V.
38. Willie Andre Simmons, Augusta, Georgia, Court of Federal Claims No: 13–0274V.
39. Jung Park, M.D., New York, New York, Court of Federal Claims No: 13–0275V.
40. Allison and Steven Council on behalf of Adam Council, Plainfield, Illinois, Court of Federal Claims No: 13–0276V.
41. Maryann Giordano, Lindenhurst, New York, Court of Federal Claims No: 13–0277V.
42. Laura A. Jones, Greensboro, North Carolina, Court of Federal Claims No: 13–0279V.
43. David D. Griffin, Afghanistan, Court of Federal Claims No: 13–0280V.
44. James Demoski, Endicott, New York, Court of Federal Claims No: 13–0286V.
45. Christina N. Steinat, Seattle, Washington, Court of Federal Claims No: 13–0287V.
46. Jessica L. Stone, Baraboo, Wisconsin, Court of Federal Claims No: 13–0289V.
47. Holly Rhew, Wichita, Kansas, Court of Federal Claims No: 13–0293V.
48. Janet DeYear, Dallas, Texas, Court of Federal Claims No: 13–0299V.
49. Cynthia Adkins, Sarasota, Florida, Court of Federal Claims No: 13–0295V.
50. Saurabh V. and Archana Amin on behalf of Sheaa Amin, Linwood, New Jersey, Court of Federal Claims No: 13–0300V.
51. Juliet and Mohamed Edoo on behalf of Justin Edoo, Miami, Florida, Court of Federal Claims No: 13–0302V.
52. James Boyer, Boston, Massachusetts, Court of Federal Claims No: 13–0303V.

[FR Doc. 2013–12347 Filed 5–23–13; 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 a one-time noncompetitive Ryan White HIV/AIDS Program Part C funds award to the Genesis Health Group (GHG), Davenport, Iowa.

SUPPLEMENTARY INFORMATION: The amount of the award to ensure ongoing HIV medical services is $429,112.

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 15 months, explained below in further detail.

Justification for the Exception to Competition: The Community Health Care, Davenport, Iowa (Grant Number: H76HA00212) announced the relinquishment of their Part C grant on January 31, 2013. To prevent a lapse in HIV medical care, grant funds of $429,112 are to be awarded to GHG to provide interim HIV medical care. The $429,112 represents a proportional share of the last award to the Community Health Care to cover 15 months of HIV medical primary care services until the service area is competed for by July 1, 2014.

FOR FURTHER INFORMATION CONTACT: John Fanning, Public Health Analyst, Division of Community Based Programs/Southern Branch, HRSA, by mail at 5600 Fishers Lane, Rockville, MD 20857; by email at *jfanning@hrsa.gov*; or by phone at (301) 443–0493.

Dated: May 17, 2013.

Mary K. Wakefield,

Administrator.

[FR Doc. 2013–12349 Filed 5–23–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-day Comment Request: Autism Spectrum Disorder Research Portfolio Analysis

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute of Mental Health (NIMH), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) The quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To Submit Comments and For Further Information: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request

more information on the proposed project, contact: The Office of Autism Research Coordination, NIMH, NIH, Neuroscience Center, 6001 Executive Blvd., MSC 9663, Room 6184, Bethesda, MD 20892 or Email your request, including your address to: *iaccpublicinquiries@mail.nih.gov*. Formal requests for additional plans and instruments must be requested in writing.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Proposed Collection: Autism Spectrum Disorder (ASD) Research Portfolio Analysis, 0925—NEW—National Institute of Mental Health (NIMH), National Institutes of Health (NIH).

Need and Use of Information Collection: The purpose of the ASD portfolio analysis is to collect research funding data from U.S. and international ASD research funders, to assist the Interagency Autism Coordinating Committee (IACC) in fulfilling the requirements of the Combating Autism Act, and to inform the committee and interested stakeholders of the funding landscape and current directions for ASD research. Specifically, these analyses will examine the extent to which current funding and research topics align with the *IACC Strategic Plan for ASD Research.* The findings will help guide future funding priorities by outlining current gaps and opportunities in ASD research as well as serving to highlight annual activities and research progress.

OMB approval is requested for three years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 419.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents (funders)	Number of respondents	Number of response per respondent	Average Time per Response (in hours)	Total burden hours
U.S. Federal	26	36	15/60	234
U.S. Private	12	54	15/60	162
International Government	4	14	15/60	14
International Private	4	9	15/60	9

Dated: March 26, 2013.

Sue Murrin,

Executive Officer, NIMH, NIH.

[FR Doc. 2013–12420 Filed 5–23–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications/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 grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, AIDS and Cancer Specimen Resource (ACSR)

Date: May 29, 2013

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications

Place: National Cancer Institute Shady Grove, Shady Grove, 9609 Medical Center Drive, Room 1E030, Rockville, MD 20850 (Telephone Conference Call)

Contact Person: Donald L Coppock, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, Shady Grove–NIH, 9609 Medical Center Drive, Room 7W260, Bethesda, MD 20892, 240–276–6382, *donald.coppock@nih.gov*

This notice is being published less than 15 days prior to the meeting date due to scheduling conflicts.

Name of Committee: National Cancer Institute Special Emphasis Panel, NCI Program Project Meeting II

Date: June 12–13, 2013

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications

Place: Hilton, Rockville, 1750 Rockville Pike, Rockville, MD 20852

Contact Person: Majed M. Hamawy, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division Of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W120, Bethesda, MD 20892, 240–276–6457, *mh101v@nih.gov*

Name of Committee: National Cancer Institute Special Emphasis Panel, Innovative Technologies for Cancer Biospecimen Science

Date: June 12, 2013

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications

Place: National Cancer Institute—Shady Grove, Shady Grove, 9609 Medical Center Drive, Room 1E030, Rockville, MD 20850 (Telephone Conference Call)

Contact Person: Donald L Coppock, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W260, Bethesda, MD 20892, 240–276–6382, *donald.coppock@nih.gov*

Name of Committee: National Cancer Institute Special Emphasis Panel, RNA Biosensor

Date: June 13, 2013

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate contract proposals

Place: National Cancer Institute Shady Grove, Shady Grove, 9609 Medical Center Drive, Room 6W034, Rockville, MD 20850 (Telephone Conference Call)

Contact Person: Bratin K. Saha, Ph.D., Scientific Review Officer, Program Coordination and Referral Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W556, Bethesda, MD 20892, 240–276–6411, *sahab@mail.nih.gov*

Name of Committee: National Cancer Institute Special Emphasis Panel, R13 Review Teleconference

Date: June 25, 2013

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, Shady Grove, 9609 Medical Center Drive, Room 6W034, Rockville, MD 20850 (Telephone Conference Call)

Contact Person: Bratin K. Saha, Ph.D., Scientific Review Officer, Program Coordination and Referral Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W556, Bethesda, MD 20892, 240–276–6411, *sahab@mail.nih.gov*

Name of Committee: National Cancer Institute Special Emphasis Panel, NCI Omnibus Biology

Date: July 15–16, 2013

Time: 8:00 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: Zhiqiang Zou, MD, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, 7W242, Bethesda, MD 20892, 240–276–6372, *zouzhiq@mail.nih.gov*

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/sep/sep.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 20, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–12377 Filed 5–23–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute: Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, June 20, 2013, 03:00 p.m. to June 21, 2013, 06:00 p.m., Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852 which was published in the **Federal Register** on May 06, 2013, 78FR10574.

This notice is being amended due to a change in the meeting date and time from 3:00 p.m. to 6:00 p.m. on June 20 to 21, 2013 to 8:00 a.m. to 5:00 p.m. on June 20, 2013. The meeting is closed to the public.

Dated: May 20, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–12376 Filed 5–23–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of a Start-Up Exclusive Patent License Agreement: Treatment of Graves' Disease, Hyperthyroidism and Thyroid Cancer

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of a Start-Up Exclusive Patent License to Nova Therapeutics LLC, a company having a place of business in Delaware, to practice the inventions embodied in the following patent applications:

1. PCT Application No.: PCT/US2011/031752 filed 08 Apr 2011, HHS Ref. No.: E–067–2010/0–PCT–02, Titled: Inverse Agonists and Neutral Antagonists for the TSH Receptor, Inventors: Marvin Gershengorn (NIDDK), Susanne Neumann (NIDDK), Wenwei Huang (NCATS), Craig Thomas (NCATS).
2. Australian Application No.: 2011237421 filed 15 Aug 2012, HHS Ref. No.: E–067–2010/0–AU–03.
3. Canadian Application No.: 2,789,818 filed 15 Aug 2012, HHS Ref. No.: E–067–2010/0–CA–04.
4. Chinese Application No.: 201180013235.9 filed 15 Aug 2012, HHS Ref. No.: E–067–2010/0–CN–05.
5. European Application No.: 11766807.9 filed 15 Aug 2012, HHS Ref. No.: E–067–2010/0–EP–06.
6. Indian Application No.: 2055/KOLNP/2012 filed 15 Aug 2012, HHS Ref. No.: E–067–2010/0–IN–07.
7. Japanese Application No.: 2013–503984 filed 15 Aug 2012, HHS Ref. No.: E–067–2010/0–JP–08.
8. U.S. Application No.: 13/579,251 filed 15 Aug 2012, HHS Ref. No.: E–067–2010/0–US–09.

The patent rights in this invention have been assigned to the Government of the United States of America. The territory of the prospective Start-Up Exclusive Patent License Agreement may be worldwide and the field of use may be limited to: Treatment of Graves' Disease, hyperthyroidism and thyroid cancer.

DATES: Only written comments or applications for a license (or both) which are received by the NIH Office of Technology Transfer on or before June 10, 2013 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated Start-Up Exclusive Patent License Agreement should be directed to: Lauren Nguyen-Antczak, Ph.D., Licensing and Patenting Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–4074; Facsimile: (301) 402–0220; Email: *Lauren.Nguyen-antczak@nih.gov.* A signed confidentiality nondisclosure agreement will be required to receive copies of any patent application(s) that have not been published or issued by the United States Patent and Trademark Office of the World Intellectual Property Organization.

SUPPLEMENTARY INFORMATION: This invention concerns small molecule compounds that antagonize the activity of the thyroid stimulating hormone receptor (''TSHR''). These antagonists are classified into two functional categories: (a) Neutral antagonists that prevent TSHR from being turned on, and (b) inverse agonists that turn off active TSHR. Both categories of antagonists may be useful in treating hyperthyroidism and Graves' disease, an autoimmune disease that is commonly associated with hyperthyroidism. In addition, certain small molecule compounds that function as inverse agonists of TSHR may be effective in reducing the recurrence of thyroid cancer.

The prospective Start-Up Exclusive Patent License is being considered under the small business initiative launched on 1 October 2011 and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective Start-Up Exclusive Patent License may be granted unless the NIH receives written evidence and argument, within fifteen (15) days from the date of this published notice, that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Complete applications for a license in the prospective field of use that are filed in response to this notice will be treated as objections to the grant of the contemplated Start-Up Exclusive Patent License. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: May 20, 2013.

Richard U. Rodriguez,

Director, Division of Technology Development & Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2013–12375 Filed 5–23–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Announcement of Requirements and Registration for the ''Technology-based Products to Prevent High-Risk Drinking Among College Students Challenge''

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA), an operating division of the U.S. Department of Health and Human Services, announces a new opportunity for individuals and organizations to help prevent high-risk drinking among college students. Excessive and underage drinking among college students are significant public health problems on college and university campuses across the United States, which often result in life-altering consequences such as death, injury, assault, sexual abuse, unintended pregnancy, sexually transmitted diseases, academic difficulties, suicide attempts, and alcohol dependence. This challenge seeks technology-based products to decrease the acceptability of and engagement in high-risk drinking among college students. SAMHSA is seeking solutions to this problem through cost-effective, portable, technology-based products that effectively reach a diverse population of college students and their parents, as well as administrators, faculty, and staff, and that can be adapted to meet the local needs of these institutions throughout the United States. Technology-based products may include, but are not limited to, web applications, mobile apps, short message services (SMS), and podcasts.

This challenge aligns with SAMHSA's mission to reduce the impact of substance abuse and mental illness on America's communities. SAMHSA recognizes that preventing high-risk drinking among college students will save lives, improve academic success, and decrease other risks to students' health and safety.

The statutory authority for this challenge competition is Section 105 of the America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science Reauthorization Act of 2010 (COMPETES Act).

DATES:

- *Submission period begins:* May 24, 2013.
- *Submission period ends:* July 8, 2013.
- Winners are expected to be announced on or about September 13, 2013.

FOR FURTHER INFORMATION CONTACT: Richard Lucey, Jr., Special Assistant to the Director, SAMHSA/Center for Substance Abuse Prevention, 1 Choke Cherry Road, Room 4–1049, Rockville, MD 20857. Phone: (240) 276–2603. Email: *richard.lucey@samhsa.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Subject of Challenge Competition

This Challenge is a call for developers, substance abuse prevention practitioners, and others to develop technology-based products to prevent high-risk drinking among college students. For the purpose of this Challenge, high-risk drinking is defined as those situations that may involve but not be limited to: binge drinking (commonly defined as five or more drinks on any one occasion for males, four or more drinks for females); underage drinking; drinking and driving; situations when one's condition is already impaired by another cause, such as depression or emotional stress; and combining alcohol and medications, such as tranquilizers, sedatives, and antihistamines.

Each entrant shall submit a written proposal (maximum of 20 double-spaced pages, not including appendices, and hereafter referred to as Submission) that describes the product's design, performance, and developer's qualifications (for more detailed information, read the section titled ''Basis upon Which Winners Will Be Selected''). Up to five finalists will advance to the final product evaluation phase, during which time those entrants will participate in a proof-of-concept meeting with federal staff to discuss and demonstrate their technology-based product.

Eligibility Rules for Participation in the Competition: To be eligible to win a prize under this challenge, an entrant:

1. Shall register to participate in the competition under the rules promulgated by SAMHSA;
2. Shall comply with all requirements under this section;
3. In the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, must be a citizen or permanent resident of the United States;
4. May not be a federal entity or federal employee acting within the scope of their employment;
5. May not be a federal employee working on their application or submission during assigned duty hours;
6. May not be an employee of SAMHSA;
7. Federal grantees may not use federal funds to develop COMPETES Act challenge applications unless consistent with the purpose of their grant award; and
8. Federal contractors may not use federal funds from a contract to develop COMPETES Act challenge applications or to fund efforts in support of a COMPETES Act challenge submission.

An entrant will not be deemed ineligible because the individual or entity used federal facilities or consulted with federal employees during a competition if the facilities and employees are made available to all entrants participating in the competition on an equitable basis.

Registration Process for Participants: To register for this Challenge, entrants must visit the *www.challenge.gov* Web site and search for ''Technology-based Products to Reduce High-Risk Drinking among College Students Challenge.'' A registration link for the Challenge can be found on the landing page under the challenge description.

Amount of the Prizes

Total: $100,000 in prizes: $60,000 for first place, $30,000 for second place, and $10,000 for third place. Awards may be subject to federal income taxes and HHS will comply with IRS withholding and reporting requirements, where applicable.

Basis Upon Which Finalists Will Be Selected: (100 points possible)

Each Submission will be assigned to a three-person panel of objective reviewers from within the federal government who will evaluate and score the technology-based product proposal according to the selection criteria below. Each Submission will receive a score from 0 to 100 depending how well it addresses and responds to the requirements of the following selection criteria:

- *Quality of the Product Design (50 points maximum):* detailed description of the product, including instructions on how to install and operate it, and system requirements to run it (10 points); description of the connection between the product and a reduction in high-risk drinking among college students (20 points); description of the evidence base for the product's design; description of the product's

development plan, including any testing conducted with potential end users (5 points); description of the prevention-related information that targeted populations can use to decrease high-risk drinking among college students (10 points); and description of which platforms the technology-based product can be accessible through (5 points).

• *Quality of Product Performance (40 points maximum):* description of how the product can garner high engagement among college students; campus faculty, staff, and administrators; and parents of college students (10 points); description of how the product can be adopted and used by colleges and universities using their existing communication systems (20 points); and description of how the product can be updated and maintained (10 points).

• *Quality of Project Personnel (10 points maximum):* description of the applicant's relevant background and experience related to the product.

Based on the review panel's recommendation, each finalist will participate in a virtual or in-person meeting with federal staff to discuss their technology-based product and demonstrate its operation. The purpose of these meetings is to further evaluate the entrant's product, provide an additional source of information about each entrant's product to SAMHSA, and clarify any concerns or questions raised by the review panel.

For a Submission to be eligible to win this Challenge, it must meet the following requirements:

1. Acceptable platforms—The product must be designed for use with existing Web, mobile, voice, electronic health record, or other platform to support interactions with other capabilities.

2. Section 508 Compliance—Entrants must acknowledge, as a prerequisite to any subsequent acquisition by federal contract or other method, they may be required to make their product compliant with Section 508 accessibility and usability requirements at their own expense. Any electronic information technology that is ultimately obtained by HHS for its use, development, or maintenance must meet Section 508 accessibility and usability standards. Past experience has demonstrated that it can be costly for solution-providers to ''retrofit'' solutions if remediation is later needed. The HHS Section 508 Evaluation Product Assessment Template, available at *www.hhs.gov/od/vendors/index.html,* provides a useful roadmap for developers to review. It is a simple, Web-based checklist utilized by HHS officials to allow vendors to document how their products do or do not meet the various Section 508 requirements.

3. No HHS or SAMHSA logo—The product must not use HHS's or SAMHSA's logos or official seals in the Submission and must not claim endorsement.

4. Functionality/Accuracy—A Submission may be disqualified if the product fails to function as proposed by the entrant, or if the product provides inaccurate or incomplete information.

5. Security—Submissions must be free of malware. Entrant agrees that SAMHSA may conduct testing on the product to determine whether malware or other security threats may be present.

Additional Information

General Conditions: SAMHSA reserves the right to cancel, suspend, and/or modify the Challenge, or any part of it, for any reason, at SAMHSA's sole discretion. Participation in this Challenge constitutes an entrant's full and unconditional agreement to abide by the Challenge's Official Rules found at *www.challenge.gov.* Privacy Policy: ChallengePost collects personal information from you when you register on Challenge.gov. The information collected is subject to the ChallengePost privacy policy located at *www.challengepost.com/privacy.* Ownership of intellectual property is determined by the following:

• Each entrant retains title and full ownership in and to their submission. Entrants expressly reserve all intellectual property rights not expressly granted under the Challenge agreement.

• By participating in this Challenge, each entrant hereby irrevocably grants to the federal government a limited, non-exclusive, royalty-free, worldwide license and right to reproduce, publicly perform, publicly display, and use the Submission to the extent necessary to administer the Challenge, and to publicly perform and publicly display the Submission, including, without limitation, for advertising and promotional purposes relating to the Challenge.

Authority: 15 U.S.C. 3719.

Summer King,

Statistician.

[FR Doc. 2013–12430 Filed 5–23–13; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5681–N–21]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.DC).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where

property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Office of Enterprise Support Programs, Program Support Center, HHS, room 12–07, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Agriculture:* Ms. Brenda Carignan, Department of Agriculture, Reporters Building, 300 7th Street SW., Room 337, Washington, DC 20024, (202) 401–0787; *Coast Guard:* Commandant, United States Coast Guard, Attn: Jennifer Stomber, 2100 Second St. SW., Stop 7901, Washington, DC 20593–0001; (202) 475–5609; (These are not toll-free numbers).

Dated: May 16, 2013.

Mark Johnston,

Deputy Assistant Secretary for Special Needs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 05/24/2013

Suitable/Available Properties

Building

New York

Housing Units
441 USS Missouri Ln.
Staten Island NY 10305
Landholding Agency: Coast Guard
Property Number: 88201320005
Status: Excess
Comments: off-site removal only; 11,071 sf; housing; repairs a must; secured area; contact Coast Guard for more information

Unsuitable Properties

Building

California

Laufman Tack Barn
446525 Milford Grade rd.
Milford CA 96121
Landholding Agency: Agriculture
Property Number: 15201320020
Status: Unutilized
Comments: documented deficiencies; 80 yr.-old barn that has completely collapsed; currently condition: pile of rubble
Reasons: Extensive deterioration

[FR Doc. 2013–12090 Filed 5–23–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS WSSO EQD SSD PPWON RADE3PPMR SNR1N.NM0000]

Proposed Information Collection; Comment Request: Social Values of Ecosystem Services at Cape Lookout National Seashore

AGENCY: National Park Service, Interior.

ACTION: Notice and request for comments.

SUMMARY: We (National Park Service) will ask the Office of Management and Budget (OMB) to approve the Information Collection Request (ICR) described below. This collection will be used to survey two subsets of visitor groups and local community members about the values they place on cultural and natural resources at Cape Lookout National Seashore (CALO). To comply with the Paperwork Reduction Act of 1995 and as a part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to comment on this ICR. A Federal 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.

DATES: To ensure that your comments on this ICR are considered, OMB must receive them on or before June 24, 2013.

ADDRESSES: Please submit written comments on this information collection directly to the Office of Management and Budget (OMB) Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, via email to *OIRA_Submission@omb.eop.gov* or fax at 202–395–5806; and identify your submission as 1024–NEW: CALO Survey. Please also send a copy of your comments to Phadrea Ponds, Information Collection Coordinator, National Park Service, 1201 Oakridge Drive, Fort Collins, CO 80525 (mail); or *phadrea_ponds@nps.gov* (email). Please reference Information Collection 1024–NEW: CALO Survey in the subject line.

FOR FURTHER INFORMATION CONTACT: Eva DiDonato at *eva_didonato@nps.gov* (email); or by mail at 1201 Oakridge Drive, Fort Collins, CO 80525. You may also access this ICR at *www.reginfo.gov.*

I. Abstract

We will conduct a survey of Cape Lookout National Seashore visitors and a random sample of the general public in the local communities surrounding the park. The collection will be used to understand the social values that visitors and residents of the local community place on cultural and natural resources of the park. The information from this collection will provide National Park Service managers and planners with scientifically sound data about visitors that can be used to prepare resource management planning documents.

II. Data

OMB Control Number: None. This is a new collection.

Title: Social Values of Ecosystem Services at Cape Lookout National Seashore.

Type of Request: New.

Affected Public: General Public; Park Visitors and Local Residents.

Respondent Obligation: Voluntary.

Frequency of Collection: One time.

Estimated Number of Annual Responses: 5,547.

Estimated Annual Burden Hours: 842 hours. We estimate the public reporting burden will average 20 minutes to

complete the visitor or resident survey and two minutes to complete the initial onsite contact and/or nonresponse survey.

Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'': None.

III. Request for Comments

On August 2, 2012, we published a **Federal Register** notice (77 FR 46113) announcing that we would submit this ICR to OMB for approval. Public comments were solicited for 60 days ending October 1, 2012. We received one comment that did not address the information collection requirements; therefore, we did not make any changes to this collection based on this comment.

We again invite comments concerning this ICR on: (1) Whether or not the proposed collection of information is necessary for the agency to perform its duties, including whether or not the information will have practical utility; (2) the accuracy of our estimate of the burden for this 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 the use of automated collection techniques or other forms of information technology.

Please note that the comments submitted 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: May 21, 2013.

Leonard Stowe,

Acting Information Collection Clearance Officer, National Park Service.

[FR Doc. 2013–12444 Filed 5–23–13; 8:45 am]

BILLING CODE 4312–EH–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1210–1212 (Preliminary)]

Welded Stainless Steel Pressure Pipe From Malaysia, Thailand, and Vietnam; Institution of Antidumping Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping investigation Nos. 731–TA–1210–1212 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Malaysia, Thailand, and Vietnam of welded stainless steel pressure pipe, provided for in in subheadings 7306.40.50 and 7306.40.10 of the Harmonized Tariff Schedule of the United States (HTSUS), that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by July 1, 2013. The Commission's views are due at Commerce within five business days thereafter, or by July 9, 2013.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

DATES: *Effective Date:* May 16, 2013.

FOR FURTHER INFORMATION CONTACT: Michael Szustakowski (202–205–3169), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on May 16, 2013, by Bristol Metals, L.P., of Bristol, TN; Felker Brothers Corp., of Marshfield, WI; and Outokumpu Stainless Pipe, Inc., of Schaumberg, IL.

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Investigations has scheduled a conference in connection with these investigations for 9:30 a.m. on June 6, 2013, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the conference should be filed with *William.bishop@usitc.gov* and *Sharon.bellamy@usitc.gov* (DO NOT FILE ON EDIS) on or before June 4, 2013. Parties in support of the imposition of antidumping duties in these investigations and parties in

opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before June 11, 2013, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please consult the Commission's rules, as amended, 76 Fed. Reg. 61937 (Oct. 6, 2011) and the Commission's Handbook on Filing Procedures, 76 FR 62092 (Oct. 6, 2011), available on the Commission's Web site at *http://edis.usitc.gov.*

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.
Issued: May 20, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–12341 Filed 5–23–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Docket No 2957]

Certain Opaque Polymers, Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Opaque Polymers,* DN 2957; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at EDIS [1], and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at USITC.[2] The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at EDIS.[3] Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Rohm and Haas Company, Rohm and Haas Chemicals LLC and The Dow Chemical Company on May 20, 2013. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain opaque polymers. The complaint names as respondents Organik Kimya San. ve Tic. A.S. of Turkey; Organik Kimya Netherlands B.V. of Netherlands; Organik Kimya US, Inc. of Burlington, MA; Turk International of Aptos, CA and Aalborz Chemical LLC of Grand Rapids, MI.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 2957'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [4]). Persons with

[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov.*

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*

questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[5]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

Issued: May 20, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–12372 Filed 5–23–13; 8:45 am]

BILLING CODE 7020–02–P

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1110 (Review)]

Sodium Hexametaphosphate From China; Scheduling of an Expedited Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on sodium hexametaphosphate from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* May 7, 2013.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On May 7, 2013, the Commission determined that the domestic interested party group response to its notice of institution (78 FR 7452, February 1, 2013) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on May 31, 2013, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before June 5, 2013 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by June 5, 2013. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 Fed. Reg. 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov.*

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: May 20, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–12342 Filed 5–23–13; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] The Commission has found the joint response submitted by ICL Performance Products LP and Innophos, Inc. to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–854]

Enforcement Proceeding; Certain Two-Way Global Satellite Communication Devices, System and Components Thereof; Notice of Institution of Formal Enforcement Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has instituted a formal enforcement proceeding relating to the April 5, 2013, consent order issued in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202)

708–2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the original investigation on September 21, 2012, based on a complaint filed on behalf of BriarTek IP, Inc. (''BriarTek'') of Alexandria, Virginia. 77 FR 58579–80. The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain two-way global satellite communication devices, system and components thereof by reason of infringement of certain claims of U.S. Patent No. 7,991,380 (''the '380 patent''). The complaint further alleged the existence of a domestic industry. The Commission's notice of investigation named as respondents Yellowbrick Tracking, Ltd. (''Yellowbrick'') of Essex, United Kingdom; DeLorme Publishing Company, Inc.; and DeLorme InReach LLC (collectively, ''DeLorme''), both of Yarmouth, Maine. On December 7, 2012, Yellowbrick was terminated from the investigation based on a settlement agreement.

On April 5, 2013, the Commission issued notice of its determination not to review the presiding administrative law judge's initial determination granting DeLorme's motion to terminate the investigation based on a consent order stipulation and issued a consent order. The consent order prohibits the importing or selling for importation in the United States, or selling or offering for sale within the United States after importation any two-way global satellite communication devices, system, and components thereof that infringe one or more of claims 1, 2, 5, 10–12, and 34 of the '380 patent.

On April 10, 2013, BriarTek filed a complaint for enforcement proceedings under Commission Rule 210.75. BriarTek asserts that DeLorme has violated the consent order by the continued practice of prohibited activities such as selling or offering for sale within the United States after importation two-way global satellite communication devices, systems, or components thereof that infringe one or more of the asserted claims of the '380 patent.

Having examined the complaint seeking a formal enforcement proceeding, and having found that the complaint complies with the requirements for institution of a formal enforcement proceeding contained in Commission rule 210.75, the Commission has determined to institute formal enforcement proceedings to determine whether DeLorme is in violation of the April 5, 2013 consent order issued in the investigation, and what, if any, enforcement measures are appropriate. The following entities are named as parties to the formal enforcement proceeding: (1) BriarTek, (2) respondent DeLorme, and (3) the Office of Unfair Import Investigations.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.75 of the Commission's Rules of Practice and Procedure (19 CFR 210.75).

Issued: May 20, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–12373 Filed 5–23–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1206 (Preliminary)]

Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Japan of diffusion-annealed, nickel-plated flat-rolled steel products, provided for primarily in subheadings 7210.90 and 7212.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).[2]

Commencement of Final Phase Investigation

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Background

On March 27, 2013, a petition was filed with the Commission and Commerce by Thomas Steel Strip Corporation, Warren, Ohio, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of diffusion-annealed, nickel-plated flat-rolled steel products from Japan. Accordingly, effective March 27, 2013, the Commission instituted antidumping duty investigation No. 731–TA–1206 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference 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** of April 2, 2013 (78 FR 19734). The conference was held in Washington, DC, on April 17, 2013, and all persons who requested the

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Daniel R. Pearson dissenting.

opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 13, 2013. The views of the Commission are contained in USITC Publication 4395 (May 2013), entitled *Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan: Investigation No. 731–TA–1206 (Preliminary).*

Issued: May 20, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–12391 Filed 5–23–13; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0309]

Agency Information Collection Activities; Proposed Collection; Comments Requested: International Terrorism Victim Compensation Program Application

ACTION: 30-Day Notice.

The Department of Justice (DOJ), Office of Justice Programs (OJP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 78, Number 46, on pages 15047–15048, on March 8, 2013.], allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until June 24, 2013. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and,

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

(1)

Overview of this Information Collection:

(1) *Type of Information Collection:* Reinstatement, with no change, of a previously approved collection for which approval has expired.

(2) *Title of Form/Collection:* International Terrorism Victim Expense Reimbursement Program (ITVERP) Application.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: The Office of Management and Budget Number for the certification form is 1121–0309. The Office for Victims of Crime, Office of Justice Programs, United States Department of Justice is sponsoring the collection.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: The form is completed by U.S. nationals and U.S. government employees who become victims of acts of international terrorism that occur outside the United States. Applicants seeking compensation from OVC for expenses associated with their victimization will be required to submit said form. The form will be used to collect necessary information on expenses incurred by the applicant, as well as other pertinent information, and will be used by OVC to make an award determination.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 100 respondents will complete the certification in approximately 45 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total public burden associated with this information collection is 75 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE., Washington, DC 20530.

Dated: May 21, 2013.

Jerri Murray,

Department of Clearance Officer for PRA, United States Department of Justice.

[FR Doc. 2013–12413 Filed 5–23–13; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Prohibited Transaction Class Exemption 75–1, Security Transactions With Broker-Dealers, Reporting Dealers, and Banks

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Prohibited Transaction Class Exemption 75–1, Security Transactions with Broker-Dealers, Reporting Dealers, and Banks,'' to the Office of Management and Budget (OMB) for review and approval for continued use without change, in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before June 24, 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 free of charge 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: 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 Prohibited Transaction Class Exemption applicable to security transactions with broker-dealers, reporting dealers, and banks (PTE–75–1) provides exemptions from certain prohibited transaction provisions of the Employment Retirement Income Security Act of 1974 and the Internal Revenue Code for specified types of transactions relating to securities purchases and sales between employee benefit plans and broker-dealers, reporting dealers, and banks; provided that specified conditions are met. Exempted transactions include an employee benefit plan purchasing securities from broker-dealers' stock inventories; underwriting syndicates in which a plan fiduciary is a member; banks; reporting dealers; and market-makers, even if a market-maker is a plan fiduciary. Exempted transactions also include, under certain conditions, a plan accepting an extension of credit from a broker-dealer to facilitate settlement of a securities transaction. Among other conditions, PTE 75–1 requires a party seeking to rely on the exemption with respect to a transaction to maintain adequate records of the transaction for a period of six years.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1210–0092. OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval is scheduled to expire on May 31, 2013. The DOL seeks OMB to extend PRA authorization for this information collection for three (3) years without any change to existing requirements. 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 1210–0092. 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: Prohibited Transaction Class Exemption 75–1, Security Transactions with Broker-Dealers, Reporting Dealers, and Banks.

OMB Control Number: 1210–0092.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 7,492.

Total Estimated Number of Responses: 7,492.

Total Estimated Annual Burden Hours: 1,249.

Total Estimated Annual Other Costs Burden: $0.

Dated: May 8, 2013.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2013–12426 Filed 5–23–13; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Petition for Finding Under Employee Retirement Income Security Act

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Petition for Finding under Employee Retirement Income Security Act Section 3(40),'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before June 24, 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 free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201304-1210-008* (this link will only become active 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: 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: Regulations 29 CFR 2570.150 et seq. provide procedures for an entity against whom State jurisdiction has been asserted to petition the Secretary to make a finding under Employee Retirement Income Security Act (ERISA) section 3(40)(A)(i) that the entity is established or maintained under or pursuant to one or more collective bargaining agreements. The regulations

establish procedures for initiating an administrative proceeding before the Office of Administrative Law Judges (OALJ) and establish that an OALJ decision shall constitute a finding under ERISA section 3(40)(A)(i). The regulations also provide for an appeal of an OALJ decision to the Secretary. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on November 27, 2012 (77 FR 70828).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1210–0119.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on May 31, 2013. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. It should also be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review.

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 1210–0119. 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: Petition for Finding under Employee Retirement Income Security Act Section 3(40).

OMB Control Number: 1210–0119.

Affected Public: Private Sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 10.

Total Estimated Number of Responses: 10.

Total Estimated Annual Burden Hours: 50.

Total Estimated Annual Other Costs Burden: $38,454.

Dated: May 17, 2013.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2013–12378 Filed 5–23–13; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Employee Benefit Plan Claims Procedure Under the Employee Retirement Income Security Act

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Employee Benefit Plan Claims Procedure under the Employee Retirement Income Security Act,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before June 24, 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 free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201304–1210–006* (this link will only become active 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: 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: Employee Retirement Income Security Act section 503 and regulations 29 CFR 2560.503–1 require employee benefit plans to establish procedures for resolving benefit claims under the plan, including initial claims and appeal of denied claims. The regulation requires specific information to be disclosed at different stages of the claims process. The regulation also requires claims denial notices to be provided within specific time frames and that the notices include specific information. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on November 27, 2012 (77 FR 70828).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1210–0053.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on May 31, 2013. This ICR asks the OMB to extend PRA authorization for the information collection for three (3) more years, without any change to existing requirements. It should also be noted that existing information collection

requirements submitted to the OMB receive a month-to-month extension while they undergo review.

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 1210–0053. 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: Employee Benefit Plan Claims Procedure under the Employee Retirement Income Security Act.

OMB Control Number: 1210–0053.

Affected Public: Private Sector—businesses or other for profits and not-for-profit institutions.

Total Estimated Number of Respondents: 5,770,307.

Total Estimated Number of Responses: 333,612,550.

Total Estimated Annual Burden Hours: 523,000.

Total Estimated Annual Other Costs Burden: $568,700,000.

Dated: May 16, 2013.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2013–12488 Filed 5–23–13; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Registered Apprenticeship College Consortium

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) proposal titled, ''Registered Apprenticeship College Consortium,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before June 24, 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 free of charge from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks OMB approval for the information collection requirements related to the Registered Apprenticeship College Consortium (RACC) to facilitate awarding a registered apprenticeship completion certificate towards college credit. RACC post-secondary educational institution members agree to accept apprentice graduates from member registered apprenticeship sponsors with the approximate amount of credit towards college that has been designated by a third party evaluator. This consortium is based on the Service Members Opportunities Colleges Consortium supported by the Department of Defense. The information collection includes three application forms to join the consortium; there would be three types of membership and separate applications for each type of member.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. For additional information, see the related notice published in the **Federal Register** on January 11, 2013 (78 FR 2443).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB ICR Reference Number 121301–1205–001. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: Registered Apprenticeship College Consortium.

OMB ICR Reference Number: 121301–1205–001.

Affected Public: Federal Government; State, Local, and Tribal Governments; and Private Sector—businesses or other

for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 161.

Total Estimated Number of Responses: 657.

Total Estimated Annual Burden Hours: 122.

Total Estimated Annual Other Costs Burden: $0.

Dated: May 7, 2013.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2013–12427 Filed 5–23–13; 8:45 am]

BILLING CODE 4510–FR–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Certification by School Official

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) revision titled, ''Certification by School Official,'' (Form CM–981) to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before June 24, 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 free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201302–1240–002* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OWCP, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: In order to qualify as an eligible dependent for black lung benefits, a child aged 18- to 23-years must be a full-time student as described in the Black Lung Benefits Act, 30 U.S.C. 901 et. seq., and regulations 20 CFR 725.209. A school official completes a Certification by School Official (Form CM–981) to verify whether a Black Lung beneficiary's dependent between the ages of 18 to 23 years qualifies as a full-time student. This ICR has been characterized as a revision request under the PRA, because the OWCP has made formatting changes to make Form CM–981 electronically fillable. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on February 22, 2013 (78 FR 12364).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1240–0031. The current approval is scheduled to expire on July 31, 2013; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New information collection requirements would only take effect upon OMB approval.

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register.** In order to help ensure appropriate consideration, comments should mention OMB Control Number 1240–0031. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–OWCP.

Title of Collection: Certification by School Official.

OMB Control Number: 1240–0031.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 493.

Total Estimated Number of Responses: 493.

Total Estimated Annual Burden Hours: 82.

Total Estimated Annual Other Costs Burden: $0.

Dated: May 20, 2013.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2013–12431 Filed 5–23–13; 8:45 am]

BILLING CODE 4510–CK–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Statutory Exemption for Cross-Trading of Securities

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Statutory Exemption for Cross-Trading of Securities,'' to the Office of Management and Budget (OMB) for review and approval for continued use without change in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before June 24, 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 free of charge 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: 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 Regulation on Statutory Exemption for Cross-Trading of Securities, 29 CFR 2550.408b-19, implements the content requirements for written cross-trading policies and procedures required under Employee Retirement Income Security Act of 1974 (ERISA) section 408(b)(19)(H). ERISA section 408(b)(19) exempts cross-trading transactions involving the purchase and sale of a security between an account holding assets of a pension plan and any other account managed by the same investment manager from ERISA sections 406(a)(1)(A) and 406(b)(2) prohibitions, provided that certain conditions are satisfied.

Regulations 29 CFR 2550.408b–19 provides that policies and procedures for cross-trading under the statutory exemption must: (1) Be written in a manner calculated to be understood by the plan fiduciary authorizing cross-trading, (2) be sufficiently detailed to facilitate a periodic review of all cross-trades by a compliance officer designated by the investment manager and a determination by the compliance officer that the cross-trades comply with the investment manager's written cross-trading policies and procedures, and (3) include, at a minimum: (A) A statement of general policy describing the criteria that will be applied by the investment manager in determining whether execution of a securities transaction as a cross-trade will be beneficial to both parties to the transaction; (B) a description of how the investment manager will determine the price at which the securities are cross-traded, in a manner that is consistent with 17 CFR 270.17a–7(b) and Securities and Exchange Commission interpretations thereunder, including the identity of sources used to establish the price; (C) a description of how the investment manager's policies and procedures will mitigate any potentially conflicting division of loyalties and responsibilities to the parties involved in any cross-trade transaction; (D) a requirement that the investment manager allocate cross-trades among accounts participating in the cross-trading program in an objective and equitable manner and a description of the policies and procedures that will be used; (E) the identity of the compliance officer responsible for reviewing the investment manager's compliance with ERISA section 408(b)(19) and its written cross-trading policies and procedures and the compliance officer's qualifications for this position; (F) the steps to be performed by the compliance officer during its periodic review of the investment manager's purchases and sales of securities to ensure compliance with the written cross-trading policies and procedures; and (G) a description of the procedures by which the compliance officer will determine whether the requirements of section ERISA section 408(b)(19) are met.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1210–0130. OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on May 31, 2013. The DOL seeks OMB to extend PRA authorization for this information collection for three (3) more years without any change to existing requirements. 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 1210–0130. 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: Statutory Exemption for Cross-Trading of Securities.

OMB Control Number: 1210–0130.

Affected Public: Private Sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 315.

Total Estimated Number of Responses: 2,834.

Total Estimated Annual Burden Hours: 3,290.

Total Estimated Annual Other Costs Burden: $14,000.

Dated: May 15, 2013.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2013–12369 Filed 5–23–13; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application Number D–11716]

RIN 1210–ZA21

Notice of Proposed Amendment to Prohibited Transaction Exemption 80–26 (PTE 80–26) For Certain Interest Free Loans to Employee Benefit Plans

AGENCY: Employee Benefits Security Administration, U.S. Department of Labor.

ACTION: Notice of Proposed Amendment to PTE 80–26.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed amendment to PTE 80–26. PTE 80–26 is a class exemption that permits parties in interest with respect to employee benefit plans to make certain interest free loans and extensions of credit to such plans, provided the conditions of the exemption are met. The proposed amendment, if adopted, would give retroactive and temporary exemptive relief for certain guarantees of the payment of debits to plan investment accounts (including IRAs) by parties in interest to such plans as well as certain loans and loan repayments made pursuant to such guarantees. The proposed amendment would affect employee benefit plans described in section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act), and plans described in section 4975(e)(1) of the Internal Revenue Code of 1986, as amended (the Code), the participants and beneficiaries of such plans, and parties in interest with respect to those plans engaging in the described transactions.

DATES: If adopted, the proposed amendment will be effective from January 1, 1975, until the date that is six months after the date on which an adopted amendment is published in the **Federal Register**. Written comments and requests for a public hearing should be received by the Department on or before July 23, 2013.

ADDRESSES: All written comments and requests for a public hearing concerning the proposed amendment should be sent to the Office of Exemption Determinations, Employee Benefits Security Administration, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, Attention: PTE 80–26 Amendment. Interested persons are also invited to submit comments and hearing requests to EBSA, by the end of the scheduled comment period, via email to: *moffitt.betty@dol.gov* or by using the Federal eRulemaking portal at *http://regulations.gov*, Docket ID: EBSA–2012–0030 (following the instructions for the submission of comments found on this Web site). The comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue NW., Washington, DC 20210. Comments and hearing requests will also be available online at *www.regulations.gov* and *www.dol.gov/ebsa*, at no charge.

Warning: All comments will be made available to the public. Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

FOR FURTHER INFORMATION CONTACT: Chris Motta, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, (202) 693–8540 (this is not a toll-free number).

Executive Order 12866 and 13563 Statement

Under Executive Orders 12866 and 13563, the Department must determine whether a regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Executive Orders 13563 and 12866 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 and streamlining rules, and of promoting flexibility. It also requires federal agencies to develop a plan under which the agencies will periodically review their existing significant regulations to make the agencies' regulatory programs more effective or less burdensome in achieving their regulatory objectives.

Under Executive Order 12866, ''significant'' regulatory actions are subject to the requirements of the Executive Order and review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866, defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Pursuant to the terms of the Executive Order, it has been determined that this action is not ''significant'' within the meaning of section 3(f) of the Executive Order and therefore is not subject to review by OMB.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed amendment to PTE 80–26.[1] PTE 80–26 provides an exemption from the restrictions of section 406(a)(1)(B) and (D) and section 406(b)(2) of ERISA and from the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(B) and (D) of the Code.

The proposed amendment was requested by the Securities Industry and Financial Markets Association (SIFMA) pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, October 27, 2011).[2] SIFMA requests that the relief provided by this proposed amendment to PTE 80–26 include relief from section 406(b)(1) of ERISA and section 4975(c)(1)(E) of the Code.[3] In addition to proposing certain relief requested by SIFMA, the

[1] 45 FR 28545 (April 29, 1980), as corrected at 45 FR 35040 (May 23, 1980) and amended at: 65 FR 17540 (April 3, 2000); 67 FR 9483 (March 1, 2002); 67 FR 9485 (March 1, 2002); and 71 FR 17917 (April 7, 2006).

[2] Section 102 of the Reorganization Plan No. 4 of 1978 (5 U.S.C. App. 1 [1996]) generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975 of the Code to the Secretary of Labor.

[3] Hereinafter, references to specific provisions of ERISA should be read as referring also to the corresponding provisions of section 4975 of the Code.

Department is proposing on its own motion another amendment to PTE 80–26.

A. General Background

The prohibited transaction provisions of the Act generally prohibit transactions between a plan and a party in interest (including a fiduciary) with respect to such plan. Specifically, section 406(a)(1)(B) and (D) of the Act provides that a fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect—

(B) lending of money or other extension of credit between the plan and a party in interest; and

(D) transfer to, or use by or for the benefit of, a party in interest, of any assets of the plan.

Section 4975(c)(1)(B) and (D) of the Code contain parallel provisions with respect to plans described in section 4975(e)(1) of the Code.

Accordingly, unless a statutory or administrative exemption is applicable, loans, including interest free loans, extensions of credit, and repayment of such loans, between a plan and a party in interest, are prohibited.

In addition, section 406(b)(1) and (b)(2) of the Act prohibits a fiduciary with respect to a plan from dealing with the assets of the plan in his own interest or for his own account, and from acting in his individual capacity or any other capacity in any transaction involving the plan on behalf of a party (or representing a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries. Section 4975(c)(1)(E) of the Code contains a parallel provision to section 406(b)(1) of the Act. Section 4975 of the Code does not contain a parallel provision with respect to section 406(b)(2) of the Act.

Prohibited transactions that involve plans described in section 4975(e)(1) of the Code, including individual retirement accounts (IRAs), are generally subject to taxation under section 4975 of the Code. Additionally, section 408(e)(2) of the Code provides that if, during any taxable year of the individual for whose benefit any IRA is established, that individual or his or her beneficiary (hereinafter, an IRA Owner) engages in any transaction prohibited by section 4975 with respect to such account, such account ceases to be an IRA as of the first day of such taxable year.

B. Description of Class Exemption

The general exemption in PTE 80–26,[4] as amended effective December 15, 2004, permits the lending of money or other extension of credit from a party in interest or disqualified person to an employee benefit plan, and the repayment of such loan or other extension of credit in accordance with its terms or other written modifications thereof, if:

(a) No interest or other fee is charged to the plan, and no discount for payment in cash is relinquished by the plan, in connection with the loan or extension of credit;

(b) The proceeds of the loan or extension of credit are used only—

(1) for the payment of ordinary operating expenses of the plan, including the payment of benefits in accordance with the terms of the plan and periodic premiums under an insurance or annuity contract, or

(2) for a purpose incidental to the ordinary operation of the plan;

(c) The loan or extension of credit is unsecured;

(d) The loan or extension of credit is not directly or indirectly made by an employee benefit plan;

(e) The loan is not described in section 408(b)(3) of ERISA and the regulations promulgated thereunder (29 CFR 2550.408b–3) or section 4975(d)(3) of the Code and the regulations promulgated thereunder (26 CFR 54.4975–7(b)); and

(f)(1) Any loan described in section IV(b)(1) that is entered into on or after April 7, 2006 and that has a term of 60 days or longer must be made pursuant to a written loan agreement that contains all of the material terms of such loan;

(2) Any loan described in (b)(2) of this paragraph that is entered into for a term of 60 days or longer must be made pursuant to a written loan agreement that contains all of the material terms of such loan.

For transactions that meet these conditions, the restrictions of ERISA section 406(a)(1)(B) and (D) and ERISA section 406(b)(2), and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(B) and (D) of the Code, do not apply.

The most recent amendment to PTE 80–26 was finalized on April 7, 2006, but was generally effective December 15, 2004. The purpose of the amendment was to eliminate a requirement of the exemption that the proceeds of certain loans or extensions of credit be used only for a period of no more than three business days.[5] Additionally, as part of the amendment, the Department added conditions (e) and (f), above. The effective date of those conditions relates to the date of the publication of the final amendment as opposed to the effective date of the proposed amendment.

On March 1, 2002, the Department adopted an amendment affecting several class exemptions, including PTE 80–26.[6] The amendment defines the terms ''employee benefit plan'' and ''plan'' for purposes of the affected class exemptions as ''an employee benefit plan described in ERISA section 3(3) and/or a plan described in section 4975(e)(1) of the Code.'' Accordingly, the Department clarified that PTE 80–26 provided relief for transactions involving IRAs.

C. Background on This Proposed Amendment to PTE 80–26

On October 27, 2009, the Department issued Advisory Opinion 2009–03A, which states that the grant by an IRA Owner to a broker of a security interest in the IRA Owner's non-IRA accounts with the broker, in order to cover indebtedness of, or arising from, the IRA, would be an impermissible ''extension of credit'' under section 4975(c)(1)(B) of the Code. Thereafter, on October 20, 2011, the Department issued Advisory Opinion 2011–09A, which states that an IRA Owner's agreement to indemnify the broker for losses suffered by the IRA account with the broker (hereinafter, an indemnification agreement)[7] is not within the scope of relief provided by PTE 80–26. The Department opined that the proceeds of such an indemnification agreement would not be used to pay ordinary operating expenses of the plan or for a purpose incidental to the ordinary operation of the plan, as required by section IV(b) of the exemption.

Subsequent to the issuance of Advisory Opinion 2011–09A, several practitioners informally notified the Department that documents governing the investment of an IRA's or any other

[4] The general exemption is set forth in section IV of PTE 80–26. Sections I–III of the exemption provided relief for limited time periods, all of which have expired.

[5] See Amendment to Prohibited Transaction Exemption 80–26 (PTE 80–26) for Certain Interest Free Loans to Employee Benefit Plans, 71 FR 17917 (April 7, 2006).

[6] 67 FR 9483.

[7] The Department notes that various terms are used throughout this proposed amendment to PTE 80–26 to describe the types of provisions at issue. For example, there are references to ''security interests,'' ''indemnification agreements,'' and ''cross-collateralization agreements,'' discussed below. For simplicity, where possible, the Department uses the term indemnification agreement to refer generically to such provisions.

plan's assets frequently contain provisions that may raise issues under section 406(a)(1)(B) of the Act as well as section 4975(c)(1)(B) of the Code, both of which prohibit the lending of money or other extensions of credit between a plan and a party in interest or disqualified person. These practitioners state that account opening agreements, described below, contain standard ''cross-collateralization'' provisions which permit a broker or other financial institution (hereinafter, unless otherwise noted, a financial institution) to transfer assets between multiple accounts that an individual has established with the financial institution in order to cover investment-related losses or costs attributable to one such account. For example, where an IRA Owner opens an IRA and a personal investment account with a financial institution, and executes with the financial institution an account opening agreement that has a cross-collateralization provision covering both accounts, the financial institution would be authorized, pursuant to the cross-collateralization provision, to, thereafter, either: Transfer assets from the IRA Owner's personal investment account to the IRA to cover certain losses or costs or expenses attributable to the IRA; or transfer assets from the IRA to the IRA Owner's personal investment account to cover certain losses or costs or expenses attributable to the personal investment account. The Department understands the mechanics of the former arrangement to operate as follows: if an expense attributable to an IRA is debited to that account, and the amount of such debit exceeds the amount of assets held in the account, a cross-collateralization provision permits a financial institution to debit the IRA Owner's personal investment account for that expense, and make a corresponding credit of the same amount to the IRA account.

The practitioners expressed concern that, consistent with Advisory Opinion 2009–03A, a cross-collateralization provision that constitutes a grant to a financial institution of a security interest in an IRA Owner's non-IRA accounts with the financial institution in order to cover indebtedness of the IRA, may be an impermissible ''extension of credit'' under section 4975(c)(1)(B) of the Code. The practitioners expressed further concern that, consistent with Advisory Opinion 2011–09A, such impermissible ''extension of credit'' may not be within the scope of relief provided by PTE 80–26.

On December 12, 2011, the Internal Revenue Service (the IRS) issued Announcement 2011–81. The Announcement provides temporary relief with respect to IRAs in circumstances in which the IRA Owners have signed certain indemnification agreements or granted certain security interests that may have an effect on their IRAs. Specifically, in the Announcement the IRS states that ''[p]ending further action by the [Department] and until issuance of further guidance from the IRS superseding [the Announcement], the IRS will determine the tax consequences relating to an IRA without taking into account the consequences that might otherwise result from a prohibited transaction under section 4975 due to entering into any indemnification agreement or any cross-collateralization agreement similar to the agreements described in [the Department's] Advisory Opinions 2009–03A and 2011–09A, provided there has been no execution or other enforcement pursuant to the agreement against the assets of an IRA of the individual granting the security interest or entering into the cross-collateralization agreement.''

D. Request for Exemptive Relief by SIFMA

The Securities Industry and Financial Markets Association (SIFMA) submitted a letter to the Department dated December 12, 2011. In the letter, SIFMA states that, prior to Advisory Opinion 2009–03, most practitioners believed that indemnification agreements and other grants of security interests such as those described in Advisory Opinions 2009–03A and 2011–09A, if never called upon, did not violate the prohibited transaction provisions of ERISA or the Code. According to SIFMA, most practitioners believed further that even if these indemnification agreements were seen as prohibited transactions, PTE 80–26 extended exemptive relief to such transactions. SIFMA indicated that indemnification agreements were commonly used in futures, brokerage, options and other similar agreements.

In the December 12, 2011 letter, SIFMA states also that Code section 408(e)(2)(A) provides that if an individual who is an IRA Owner engages in any transaction with his or her IRA that is prohibited by Code section 4975, the IRA is treated as if it were distributed (and thus loses its tax-qualified status) as of the first day of the year in which the transaction took place. SIFMA expresses concern that after Advisory Opinion 2009–03A, the practical impact of Advisory Opinion 2011–09A is that, absent immediate relief, millions of IRA Owners may be concerned that their accounts could be disqualified and subject to taxation as of the date they entered into the indemnification agreement.

Likewise, according to SIFMA, relief is necessary for plans other than IRAs because of the Department's conclusion that an indemnification agreement, uncalled upon, violates section 4975(c)(1)(B) of the Code. Since the wording of section 406(a)(1)(B) of the Act contains nearly identical language, SIFMA expressed concern that standard indemnification agreements entered into with other types of plans may, in the Department's view, violate that section of the Act as well. In SIFMA's view, retroactive relief would eliminate concerns about potentially incorrect past Form 5500 filings, and eliminate questions from auditors with respect to past related party transactions.

SIFMA subsequently submitted an application for a class exemption or amendment to PTE 80–26. Therein, SIFMA states that brokerage, futures and other investment agreements (''Account Opening Agreements'') typically contain language requiring all ''related accounts'' to indemnify the service provider against debits in an account, regardless of whether those debits are caused by unpaid fees, unpaid taxes, unpaid third-party fees, or trading losses. According to SIFMA, indemnification language contained in Account Opening Agreements is not uniform, and the term ''related accounts'' may not be defined with specificity.

SIFMA provided several examples regarding the mechanics of an indemnification agreement. SIFMA describes a scenario, for instance, in which an IRA has an Account Opening Agreement with a broker-dealer which provides that if a debit arises in the IRA account that remains unpaid after demand, the IRA owner, who also has a personal account at the broker-dealer, guarantees the payment of the debit from that personal account. If, for example, the IRA account directs that a security be sold but fails to deliver the security for settlement, and there are costs to cancel the trade, there will be a debit to the IRA that could be charged to the IRA owner's personal account if insufficient funds exist in the IRA account. SIFMA also noted that indemnification agreements can involve situations in which funds are available in a plan account but would result in adverse consequences if they were used to pay the indebtedness. An IRA that owns a private fund interest that is not immediately liquid, but needs to pay an accountant to prepare a UBIT return is

an example. The accountant's fee causes a debit in the IRA account that cannot be satisfied without liquidating the private fund interest under unfavorable terms. Consequently, pursuant to the indemnification agreement, the debit may be charged to the IRA owner's personal account. Each of these examples could apply to a plan sponsor who establishes the plan's account and maintains a corporate account with the same financial institution.

SIFMA requests three categories of exemptive relief for IRAs and other plans. First, SIFMA requests a retroactive exemption, effective January 1, 1975, for indemnification agreements, as described herein, in favor of a financial institution entered into by an IRA or any other plan, regardless of whether the indemnification agreement has been called upon, executed or enforced.

Second, SIFMA requests a temporary exemption that would provide relief for such indemnification agreements until a date that is 12 months after final relief is issued. According to SIFMA, this temporary relief, if granted, would provide banks and nonbank custodians, brokers, futures commission merchants and other financial institutions the time necessary to determine how to amend their account documents to either eliminate the indemnification agreements or to revise the provisions in a way that will be compliant with the Department's position.

Third, SIFMA requests a prospective exemption to explicitly permit plan sponsors, the self-employed, and IRA Owners to indemnify their IRAs and other plans so that these entities may continue to engage in short sales, margin transactions, options and futures.

E. Scope and Purpose of the Proposed Amendment

As described in further detail below, this proposed amendment, if adopted, would provide retroactive and temporary relief, as requested by SIFMA. Such relief would be provided for a ''Covered Extension of Credit.'' The exemption defines this term as an indemnification agreement, cross-collateralization agreement or other grant of a security interest in favor of a financial institution, as set forth in an Account Opening Agreement between a plan and the financial institution, by which (1) assets in a Plan Account guarantee the payment of amounts debited to a Related Account, or (2) assets in a Related Account guarantee the payment of amounts debited to a Plan Account. The term Covered Extension of Credit does not include a loan or payment under such agreement or security interest. A Plan Account is an account established with a financial institution by an employee benefit plan as defined in section 3(3) of ERISA or a plan as defined in section 4975(e)(1) of the Code. A Related Account is an account established pursuant to an Account Opening Agreement with the financial institution that also covers a Plan Account and/or guarantees the payment of debits to the Plan Account.

Retroactive and temporary relief is additionally proposed for the lending of money (a Covered Loan) by a Related Account to a Plan Account, pursuant to a Covered Extension of Credit, if the Related Account is not itself a Plan Account. Thus, although exemptive relief is being proposed herein for a *Covered Extension of Credit* between a Plan Account and a Related Account, where such Related Account may itself be a Plan Account, exemptive relief for a *Covered Loan* would not apply to loans from Plan Accounts. Finally, the retroactive and temporary relief extends to the repayment by a Plan Account to a Related Account of a Covered Loan (Covered Repayment).

The Department is proposing the relief described above solely to enable financial institutions to remove Covered Extensions of Credit from Account Opening Agreements and conclude any outstanding Covered Loans that may exist. The Department believes that broad retroactive and temporary exemptive relief for Covered Extension of Credit arrangements is appropriate due to apparently widespread misunderstanding as to the application of the prohibited transaction provisions and PTE 80–26 to the subject transactions. The Department is of the view that, due to practitioners' good faith belief in their compliance with the prohibited transaction and class exemption provisions as applied to these transactions, it is appropriate to propose exemptive relief that, if adopted, would enable an IRA to maintain its status under the Code, notwithstanding that the IRA has been subject to a Covered Extension of Credit arrangement. Similarly, the Department believes that it is appropriate to propose relief that would enable a plan fiduciary to avoid the costs and uncertainties that may otherwise have arisen from the plan's participation in a Covered Extension of Credit arrangement. The Department has also included retroactive relief from section 406(b)(1) of ERISA and section 4975(c)(1)(E) of the Code to cover the situation in which a plan fiduciary entered into an indemnification agreement which would have permitted payment of debits by a Plan Account to a Related Account maintained by such plan fiduciary.[8]

The Department is not proposing permanent prospective exemptive relief herein for Covered Extensions of Credit (and loans and loan repayments resulting therefrom), as requested by SIFMA. In this regard, SIFMA has not proposed conditions that would address the proper oversight, monitoring, and reporting of a Covered Loan or a Covered Repayment, or that would otherwise support a finding that Covered Extension of Credit arrangements are protective of affected IRAs or other plans. The Department notes, however, that future exemptive relief may be available to the extent all of the requisite findings under section 408(a) of ERISA can be made.

F. Description of the Proposed Amendment

The proposed amendment, if adopted, would add a new section to PTE 80–26, entitled *Section V. Temporary Exemption,* and would also re-designate the *Definitions* section of PTE 80–26 as *Section VI. Definitions.* The proposed amendment does not otherwise affect the relief set forth in section IV of the existing class exemption.

As proposed, section V would contain relief from ERISA sections 406(a)(1)(B) and (D) and 406(b)(1) and (b)(2), as well as Code sections 4975(a) and (b), by reason of section 4975(c)(1)(B), (D) and (E), for: (1) A Covered Extension of Credit; (2) a Covered Loan to a Plan Account that is made in connection with a Covered Extension of Credit; and (3) a Covered Repayment. The terms Covered Extension of Credit, Covered Loan, Plan Account, Covered Repayment, Related Account and Account Opening Agreement are defined in section VI of the proposed amendment, and are also described below.

If adopted as proposed, the relief contained in section V would extend from January 1, 1975, until the date that is six months after the date a final amendment is adopted in the **Federal Register**. The Department believes that six months prospective relief provides financial institutions ample time to remove Covered Extensions of Credit

[8] The Department notes however, that a sponsor of a plan subject to Title I of ERISA who entered into an account opening agreement permitting indemnification by the plan of the sponsor's corporate accounts, where such plan sponsor actually maintained a corporate account with the same financial institution, may have engaged in a violation of section 404 of ERISA. Class exemptions, including the one proposed herein, if granted, do not provide relief for fiduciaries with respect to the fiduciary responsibility provisions of section 404.

from clients' Account Opening Agreements, particularly in light of the fact that financial institutions were put on notice of the Department's views on these indemnification agreements in 2011.

The transactions described in section V of this proposed amendment are subject to several of the existing conditions applicable to loans and extensions of credit described in section IV (b)(1) or (b)(2) of PTE 80–26. Section V provides that, in connection with a Covered Extension of Credit, Covered Loan or Covered Repayment: no interest or other fee may be charged to the IRA or plan; no discount for payment in cash is relinquished by the IRA or any other plan; and no Covered Loan is made by an IRA or any other plan. As noted previously, exemptive relief is being proposed herein for a Covered Loan only to the extent that, among other things, the Covered Loan is made to a Plan Account by a non-plan Related Account. Section V provides also that a Covered Loan may not be the type of loan described in section 408(b)(3) of ERISA and the regulations promulgated thereunder (29 CFR 2550.408b–3) or section 4975(d)(3) of the Code and the regulations promulgated thereunder (26 CFR 54.4975–7(b)).

The Department is proposing several additional conditions that would be applicable to the covered transactions. In this regard, section V of the proposed amendment requires that a Covered Extension of Credit be set forth in a written brokerage, futures and other investment agreement (*i.e.,* an Account Opening Agreement) between an IRA or any other plan and a financial institution, and that such financial institution be subject to oversight by a regulatory agency or a self-regulatory organization. The Department believes that such oversight is necessary given the lack of independent safeguards associated with Covered Extensions of Credit, as such arrangements are understood by the Department.

The Department believes also that a Covered Loan from a Related Account to a Plan Account should arise from an account debit to the Plan Account that is lawful under relevant federal laws, rules and regulations. Accordingly, section V requires that any Covered Loan by a Related Account to a Plan Account must result from a lawful Plan Account-incurred cost (including a fee, expense, investment loss, or tax). To ensure that the proposed amendment is administratively feasible, section V requires that, for purposes of the proposed amendment, the amount of a Covered Loan from a Related Account to a Plan Account shall be no greater than the amount of the cost, fee, expense, loss or tax incurred by the Plan Account (which must be, as noted above, a lawful cost under applicable law, rules and regulations) for which the Covered Loan is being made. The amount of any Covered Repayment of a Covered Loan by a Plan Account to a Related Account must be no greater than the original Covered Loan amount. Accordingly, where, for example, a Plan Account has incurred a $50 expense that meets the terms of the proposed amendment, the Covered Loan amount by a Related Account to the Plan Account must be no greater than $50, and any Covered Repayment by the Plan Account to the Related Account must also not exceed $50.

Section VI of the proposed amendment adds six defined terms to that section. The term Covered Extension of Credit is defined to mean an indemnification agreement, cross-collateralization agreement or other grant of a security interest in favor of a financial institution, as set forth in an Account Opening Agreement between a plan and the financial institution, which guarantees the payment of debits to (or by) a Plan Account by (or to) a Related Account. The Department notes that this definition is intended to provide broad relief for Plan Accounts that have been subject to a Covered Extension of Credit, and that remain subject to a Covered Extension of Credit until six months following the date on which this proposed amendment is adopted. The scope of the term Covered Loan is narrower. This term is defined in section VI to mean the lending of money by a Related Account to a Plan Account, including by means of a debit to the Related Account and a corresponding credit to the Plan Account, where the Covered Loan is made pursuant to a Covered Extension of Credit. As such, the term Covered Loan does not include a loan by a Plan Account to a Related Account, notwithstanding that such loan may be authorized by an Account Opening Agreement. A Covered Repayment is defined to mean a repayment by a Plan Account to a Related Account of a Covered Loan. A Plan Account is defined to mean an account established with a financial institution by an employee benefit plan as defined in section 3(3) of ERISA or a plan as defined in section 4975(e)(1) of the Code. The term Related Account is defined in section VI to mean an investment account established with a financial institution by a person or entity, where such account is subject to an Account Opening Agreement with the financial institution that also covers a Plan Account and/or guarantees the payment of debits to the Plan Account. Finally, the term Account Opening Agreement is defined as a written brokerage, futures or other investment agreement.

G. Additional Proposed Amendments on the Department's Own Motion

As noted above, PTE 80–26 was most recently amended effective December 15, 2004. Therein, the Department eliminated a previous requirement of the exemption that the proceeds of certain loans or extensions of credit be used only for a period of no more than three business days. The Department also added two new conditions, conditions IV(e) and (f). Condition IV(e) provides that: ''[t]he loan is not described in section 408(b)(3) of ERISA and the regulations promulgated thereunder (29 CFR 2550.408b–3) or section 4975(d)(3) of the Code and the regulations promulgated thereunder (26 CFR 54.4975–7(b))[.]''

To clarify that this condition applies equally to extensions of credit, the Department is proposing to amend condition IV(e) as follows:

> ''[t]he loan or other extension of credit is not described in section 408(b)(3) of ERISA and the regulations promulgated thereunder (29 CFR 2550.408b–3) or section 4975(d)(3) of the Code and the regulations promulgated thereunder (26 CFR 54.4975–7(b))[.]''

Additionally, for consistency, the Department is proposing to replace the phrase ''loan or extension of credit,'' wherever it is used in sections of PTE 80–26 that have not expired, with the phrase ''loan or other extension of credit.''

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA and section 4975(c)(2) of the Code does not relieve a fiduciary, or other party in interest or disqualified person with respect to a plan, from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of ERISA which require, among other things, that a fiduciary act prudently and discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan. Additionally, the fact that a transaction is the subject of an exemption does not affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the

employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption does not currently extend to transactions prohibited under section 406(b)(1) and (3) of the Act or section 4975(c)(1)(E) or (F) of the Code. If granted, the proposed amendment would provide limited relief to certain transactions prohibited under section 406(b)(1) of the Act and section 4975(c)(1)(E) of the Code;

(3) Before an exemption may be granted under section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(4) If granted, the proposed amendment is applicable to a particular transaction only if the transaction satisfies the conditions specified in the exemption; and

(5) The proposed amendment, if granted, will be supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Request

The Department invites all interested persons to submit written comments or requests for a public hearing on the proposed amendment to the address and within the time period set forth above. All comments received will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection at the above address.

Proposed Amendment

Under section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR 2570, Subpart B (76 FR 66637, 66644, October 27, 2011), the Department proposes to amend PTE 80–26 as set forth below:

Section I. Retroactive General Exemption

Effective January 1, 1975 until December 14, 2004 the restrictions of section 406(a)(1)(B) and (D) and section 406(b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(B) and (D) of the Code, shall not apply to the lending of money or other extension of credit from a party in interest or disqualified person to an employee benefit plan, nor to the repayment of such loan or other extension of credit in accordance with its terms or written modifications thereof, if:

(a) No interest or other fee is charged to the plan, and no discount for payment in cash is relinquished by the plan, in connection with the loan or extension of credit;

(b) The proceeds of the loan or extension of credit are used only—

(1) for the payment of ordinary operating expenses of the plan, including the payment of benefits in accordance with the terms of the plan and periodic premiums under an insurance or annuity contract, or

(2) for a period of no more than three business days, for a purpose incidental to the ordinary operation of the plan;

(c) The loan or extension of credit is unsecured; and

(d) The loan or extension of credit is not directly or indirectly made by an employee benefit plan.

Section II: Temporary Exemption

Effective November 1, 1999 through December 31, 2000, the restrictions of section 406(a)(1)(B) and (D) and section 406(b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(B) and (D) of the Code, shall not apply to the lending of money or other extension of credit from a party in interest or disqualified person to an employee benefit plan, nor to the repayment of such loan or other extension of credit in accordance with its terms or written modifications thereof, if:

(a) No interest or other fee is charged to the plan, and no discount for payment in cash is relinquished by the plan, in connection with the loan or extension of credit;

(b) The proceeds of the loan or extension of credit are used only for a purpose incidental to the ordinary operation of the plan which arises in connection with the plan's inability to liquidate, or otherwise access its assets or access data as a result of a Y2K problem.

(c) The loan or extension of credit is unsecured;

(d) The loan or extension of credit is not directly or indirectly made by an employee benefit plan; and

(e) The loan or extension of credit begins on or after November 1, 1999 and is repaid or terminated no later than December 31, 2000.

Section III. September 11, 2001 Market Disruption Exemption

Effective September 11, 2001 through January 9, 2002, the restrictions of section 406(a)(1)(B) and (D) and section 406(b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(B) and (D) of the Code, shall not apply to the lending of money or other extension of credit from a party in interest or disqualified person to an employee benefit plan, nor to the repayment of such loan or other extension of credit in accordance with its terms or written modifications thereof, if:

(a) No interest or other fee is charged to the plan, and no discount for payment in cash is relinquished by the plan, in connection with the loan or extension of credit;

(b) The proceeds of the loan or extension of credit are used only for a purpose incidental to the ordinary operation of the plan which arises in connection with difficulties encountered by the plan in liquidating, or otherwise accessing its assets, or accessing its data in a timely manner as a direct or indirect result of the September 11, 2001 disruption;

(c) The loan or extension of credit is unsecured;

(d) The loan or extension of credit is not directly or indirectly made by an employee benefit plan; and

(e) The loan or extension of credit begins on or after September 11, 2001, and is repaid or terminated no later than January 9, 2002.

Section IV. Prospective General Exemption

Effective as of December 15, 2004, the restrictions of section 406(a)(1)(B) and (D) and section 406(b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(B) and (D) of the Code, shall not apply to the lending of money or other extension of credit from a party in interest or disqualified person to an employee benefit plan, nor to the repayment of such loan or other extension of credit in accordance with its terms or written modifications thereof, if:

(a) No interest or other fee is charged to the plan, and no discount for payment in cash is relinquished by the plan, in connection with the loan or other extension of credit;

(b) The proceeds of the loan or other extension of credit are used only—

(1) for the payment of ordinary operating expenses of the plan, including the payment of benefits in

accordance with the terms of the plan and periodic premiums under an insurance or annuity contract, or

(2) for a purpose incidental to the ordinary operation of the plan;

(c) The loan or other extension of credit is unsecured;

(d) The loan or other extension of credit is not directly or indirectly made by an employee benefit plan;

(e) The loan or other extension of credit is not described in section 408(b)(3) of ERISA and the regulations promulgated thereunder (29 CFR 2550.408b–3) or section 4975(d)(3) of the Code and the regulations promulgated thereunder (26 CFR 54.4975–7(b)); and

(f)(1) Any loan described in section IV(b)(1) that is entered into on or after April 7, 2006 and that has a term of 60 days or longer must be made pursuant to a written loan agreement that contains all of the material terms of such loan;

(2) Any loan described in (b)(2) of this paragraph that is entered into for a term of 60 days or longer must be made pursuant to a written loan agreement that contains all of the material terms of such loan.

Section V: Temporary Exemption

The restrictions of section 406(a)(1)(B) and (D) and section 406(b)(1) and (b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(B), (D) and (E) of the Code, shall not apply, from January 1, 1975, until the date that is six months following the date a final amendment is published in the **Federal Register**, to: (1) A Covered Extension of Credit, as defined in section VI(e); (2) a Covered Loan, as defined in section VI(f); and (3) a Covered Repayment (as defined in section VI(g)) if:

(a) No interest or other fee is charged to the plan, and no discount for payment in cash is relinquished by the plan, in connection with the Covered Extension of Credit, Covered Loan, or Covered Repayment;

(b) The Covered Extension of Credit is set forth in an Account Opening Agreement between a plan and a financial institution, where the financial institution is subject to oversight by a regulatory agency or a self-regulatory organization;

(c) The Covered Loan is not directly or indirectly made by a plan;

(d) The Covered Extension of Credit and the Covered Loan are not described in section 408(b)(3) of ERISA and the regulations promulgated thereunder (29 CFR 2550.408b–3) or section 4975(d)(3) of the Code and the regulations promulgated thereunder (26 CFR 54.4975–7(b));

(e) The Covered Loan arose from a lawful cost (including a fee, expense, investment loss or tax); and

(f) The amount of a Covered Loan from a Related Account to a Plan Account is no greater than and relates to an amount debited to the Plan Account in connection with an expense described in paragraph (e) of this section. The amount of a Covered Repayment of a Covered Loan must not be greater than the original Covered Loan amount.

Section VI. Definitions

(a) For purposes of section II, a ''Y2K problem'' is a disruption of computer operations resulting from a computer system's inability to process data because such system recognizes years only by the last two digits, causing a ''00'' entry to be read as the year ''1900'' rather than the year ''2000.''

(b) For purposes of section III, the ''September 11, 2001 disruption'' is the disruption to the United States financial and securities markets and/or the operation of persons providing administrative services to employee benefit plans, resulting from the acts of terrorism that occurred on September 11, 2001;

(c) For purposes of this exemption, the terms ''employee benefit plan'' and ''plan'' refer to an employee benefit plan described in ERISA section 3(3) and/or a plan described in section 4975(e)(1) of the Code;

(d) For purposes of section V, the term ''Plan Account'' means an account established with a financial institution by an employee benefit plan described in section 3(3) of ERISA or a plan described in section 4975(e)(1) of the Code.

(e) For purposes of section V, the term ''Covered Extension of Credit'' means an indemnification agreement, cross-collateralization agreement or other grant of a security interest in favor of a financial institution, as set forth in an Account Opening Agreement between a plan and the financial institution, which guarantees the payment of debits to (or by) a Plan Account by (or to) a Related Account, but does not include a loan or payment under such agreement or security interest;

(f) For purposes of section V, the term ''Covered Loan'' means a loan to a Plan Account by a Related Account, including by means of a debit to a Related Account and a corresponding credit to the Plan Account, where the Covered Loan is made pursuant to a Covered Extension of Credit;

(g) For purposes of section V, the term ''Covered Repayment'' means the repayment by a Plan Account to a Related Account of a Covered Loan.

(h) For purposes of section V, the term ''Related Account'' means an investment account established with a financial institution by a person or entity, where such account is subject to an Account Opening Agreement with the financial institution that also covers a Plan Account and/or guarantees the payment of debits to the Plan Account.

(i) For purposes of section V, the term ''Account Opening Agreement'' means a written brokerage, futures or other investment agreement.

Signed at Washington, DC, this 20th day of May, 2013.

Lyssa E. Hall,

Director, Office of Exemption Determinations, Employee Benefits Security Administration, U. S. Department of Labor.

[FR Doc. 2013–12362 Filed 5–23–13; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–81,253]

Sears Holdings Management Corporation, A Division Of Sears Holdings Corporation, Hoffman Estates, Illinois; Notice of Negative Determination on Reconsideration

On August 3, 2012, the Department of Labor issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of Sears Holdings Management Corporation, Hoffman Estates, Illinois (subject firm). The Department's Notice of determination was published in the **Federal Register** on August 14, 2012 (77 FR 48550).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

During the initial investigation, the Department received information that the petitioners worked in different units of the subject firm: one petitioner worked in the marketing unit, another

petitioner worked in the analytics segment of the information and technology unit, and the third petitioner worked in the space management segment of the supply chain unit. The Department also received information from the subject firm that the services supplied by each of the petitioners did not shift to a foreign country as alleged in the petition.

In the request for reconsideration, one of the initial petitioners stated that the worker group was incorrect in the initial investigation (''My position at Sears had nothing to do with Analytics or space Management. I worked in Marketing''), that the correct worker group consist of workers supplying ''Accounting, Marketing, and inventory services'' and that worker separations was due to Sear's shift the supply of services to a foreign country (''The IMPACT program supported by (Sears Holding) India will be taking over'').

During the reconsideration investigation, the Department reviewed the petition; information supplied by the petitioners; information supplied by Sears' representative during the initial investigation; and information supplied in the request for reconsideration. The Department also requested that the subject firm confirm previously-submitted information and address the allegations in the request for reconsideration.

The subject firm clarified that one petitioner supplied print marketing management services, another petitioner supplied project coordinator analytics services, and the third petitioner supplied merchandise planning analysis services. The subject firm also confirmed that the services previously supplied by the petitioners were not being performed by Sears Holding India and that services supplied by Sears Holding India were not increasing while services decreased at Hoffman Estates, Illinois. The subject firm also provided information that the services supplied by the petitioning workers remain at Hoffman Estates, Illinois.

While there is a certification applicable to TA–W–73,244, each petition is determined based on facts specific to the petition. Therefore, facts relevant to one petition cannot be the basis for certification of another petition.

Conclusion

After careful review, I determine that the requirements of Section 222 of the Act, 19 U.S.C. 2272, have not been met and, therefore, deny the petition for group eligibility of Workers of Sears Holdings Management Corporation, Hoffman Estates, Illinois, to apply for adjustment assistance, in accordance with Section 223 of the Act, 19 U.S.C. 2273.

Signed in Washington, DC, on this 8th day of May, 2013.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2013–12386 Filed 5–23–13; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–81,929]

Joy Global, Inc., Also Known as Joy Technologies, Inc., Including On-Site Leased Workers From All Seasons Temporaries and Manpower Franklin, Pennsylvania; Notice of Negative Determination on Reconsideration

On December 6, 2012, the Department of Labor (Department) issued a Notice of Affirmative Determination Regarding Application for Reconsideration applicable to workers and former workers of Joy Global, Inc., also known as Joy Technologies, Inc., (subject firm), including on-site leased workers from All Seasons Temporaries and Manpower, Franklin, Pennsylvania (subject facility).

The group eligibility requirements for workers of a Firm under Section 222(a) of the Act, 19 U.S.C. 2272(a), can be satisfied if the following criteria are met:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated; and

(2)(A)(i) the sales or production, or both, of such firm have decreased absolutely;

(ii)(I) imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(II) imports of articles like or directly competitive with articles—

(aa) into which one or more component parts produced by such firm are directly incorporated, or

(bb) which are produced directly using services supplied by such firm, have increased; or

(III) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased; and

(iii) the increase in imports described in clause (ii) contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

(B)(i)(I) there has been a shift by such workers' firm to a foreign country in the production of articles or the supply of services like or directly competitive with articles which are produced or services which are supplied by such firm; or

(II) such workers' firm has acquired from a foreign country articles or services that are like or directly competitive with articles which are produced or services which are supplied by such firm; and

(ii) the shift described in clause (i)(I) or the acquisition of articles or services described in clause (i)(II) contributed importantly to such workers' separation or threat of separation.

Initial Investigation

On August 29, 2012, a representative from International Association of Machinists and Aerospace Workers, District Lodge 98, filed a petition for Trade Adjustment Assistance (TAA), dated August 25, 2012, on behalf of workers and former workers of the subject facility. Workers are engaged in the production of underground mining machines and component parts. The workers are not separately identifiable by product line.

The negative determination was based on the findings that the subject firm had not experienced a decline in the sales or production of mobile underground mining machines and repair components during the period under investigation (the representative base period is August through December 2010, full year 2011, and January through August 2012; hereafter referred to as ''period under investigation'' or ''relevant time period''); that the subject firm did not shift the production of these articles, or like or directly competitive articles, to a foreign country or acquire the production of these articles, or like or directly competitive articles, from a foreign country; that the subject firm is not a Supplier to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, 19 U.S.C. 2272(a); that the subject firm does not act as a Downstream Producer to a firm (or subdivision, whichever is applicable) that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, 19 U.S.C. 2272(a); and that the workers' firm has not been publically identified by name by the International Trade Commission as a member of a

domestic industry in an investigation resulting in an affirmative finding of serious injury, market disruption, or material injury, or threat thereof. As such, the Department issued a Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance on October 16, 2012.

Reconsideration investigation

By application dated November 8, 2012, the petitioner requested administrative reconsideration of the Department's negative determination regarding the eligibility of the subject worker group to apply for adjustment assistance.

In the application, the petitioner stated that foreign competition had an impact on the subject firm, as well as its suppliers and downstream vendors, and that the subject firm outsourced components and manufacturing mining equipment that were previously made in the United States. The petitioner also alleged that TA–W–81,929 is similar to TA–W–57,700 and TA–W–71,174. Additionally, the petitioner stated that the shift in manufacturing of parts to Mexico and China caused the cessation of manufacturing of these parts at the subject facility and referred to a vendor in Mexico that supplies the subject firm with component parts.

On December 6, 2012, the Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration in order to conduct further investigation to determine worker eligibility. The Department's Notice was published in the **Federal Register** on January 4, 2013 (78 FR 774).

In the course of the reconsideration investigation, the Department confirmed previously-collected information, sought clarification of previously-submitted information, and obtained additional facts and data from the subject firm.

The Department confirmed that Section 222(a)(1) has been met because a significant number or proportion of the workers at the subject facility have become totally separated.

The Department confirmed that Section 222(a)(2)(A)(i) was not met because sales and production at the subject facility did not decline during the period under investigation. Rather, sales and production either increased or remained stable in 2011 from 2010 levels and during January through August 2012 when compared to the corresponding period in 2011. As such, any increase in imports is irrelevant. Consequently, the Department did not conduct a survey of the subject firm's major customers and did not contact the vendor in Mexico identified in the request for reconsideration.

Further, the Department confirmed that Section 222(a)(2)(B) was not met because the subject firm did not shift the production of mining equipment or components, or like or directly competitive articles, to a foreign country or acquire the production of such articles, or like or directly competitive articles, from a foreign country. Although the subject firm confirmed the existence of affiliated production facilities in foreign countries, some foreign facilities did not produce like or directly competitive articles during the relevant period and others produced articles that are like or directly competitive with articles produced at the subject facility prior to the start of the period under investigation.

The petitioner alleges that the case at hand is similar to TA–W–57,700 (Joy Technologies, Inc., DBA Joy Mining Machinery, Mt. Vernon Plant, Mt. Vernon, Illinois; certification issued on January 26, 2009). The certification of TA–W–57,700 was based on a shift in production of mining machinery components (crawler track frames) to Mexico which contributed importantly to subject worker group separations.

During the reconsideration investigation, the Department confirmed that no shift in production of mobile underground mining machines or component parts (or the repair of component parts) to a foreign country contributed importantly to worker separations at the subject facility. Production at affiliated foreign facilities is either of neither like nor directly competitive articles, or exclusively for specific foreign markets. Additionally, the articles that shifted to Mexico in TA–W–57,700 (crawler track frames) are not like or directly competitive with those produced at the subject facility.

The petitioner also alleged that the case at hand is similar to TA–W–71,174 (General Electric Company, Transportation Division, Erie, Pennsylvania; certification issued on July 23, 2010). The certification of TA–W–71,174 was based on a relative shift in production of like or directly competitive articles to a foreign country which contributed importantly to subject worker group separations.

In TA–W–71,174, General Electric Company operated foreign facilities that produced articles like or directly competitive with those produced by the subject worker group and production at the foreign facilities increased during the same period that domestic production of these articles declined.

During the reconsideration investigation, the Department requested that the subject firm provides information regarding its foreign facilities that produce articles like or directly competitive with those manufactured by the workers of the subject facility during the relevant period.

The subject firm produced information that revealed that continuous miners are also produced at a facility of the subject firm in South Africa. Production at the South African facility, however, increased only marginally. As such, the Department determined that the production at the foreign facility did not contribute importantly to subject worker group separations at the subject facility.

During the reconsideration investigation, the Department did not receive information that either Joy Global, Inc. or Joy Technologies, Inc. was publically identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in an affirmative finding of serious injury, market disruption, or material injury, or threat thereof.

Conclusion

After careful review of the Trade Act of 1974, as amended, applicable regulation, and information obtained during the initial and reconsideration investigations, I determine that workers and former workers of Joy Global, Inc., also known as Joy Technologies, Inc., including on-site leased workers from All Seasons Temporaries and Manpower, Franklin, Pennsylvania, are ineligible to apply for adjustment assistance.

Signed in Washington, DC, on this 8th day of May, 2013.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2013–12383 Filed 5–23–13; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–82,371]

T-Mobile Usa, Inc., Core Fault Isolation Team, Engineering Division, Bethlehem, Pennsylvania; Notice of Affirmative Determination Regarding Application for Reconsideration

By application received on May 1, 2013, three workers requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade

Adjustment Assistance (TAA) applicable to workers and former workers of T-Mobile USA, Inc., Core Fault Isolation Team, Engineering Division, Bethlehem, Pennsylvania (subject firm). The determination was issued on March 15, 2013 and the Department's Notice of determination was published in the **Federal Register** on April 1, 2013 (78 FR 19533).

The negative determination is based on the Department's findings that the subject firm did not shift the provision of services for a foreign country; during the relevant period, imports of services like or directly competitive with those provided by the subject firm did not increase; the subject firm was neither a Supplier nor Downstream Producer to a firm (or subdivision, whichever is applicable) that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, 19 U.S.C. 2272(a); and the subject firm has not been publically identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in an affirmative finding of serious injury, market disruption, or material injury, or threat thereof.

The request for reconsideration alleges that the subject firm is a downstream producer to a firm who employed worker groups eligible to apply for TAA under TA–W–81,520 and TA–W–81,520G; and the worker separations are due to the shift in the supply of services to another country.

The Department has carefully reviewed the request for reconsideration and the existing record, and will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974, as amended.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 8th day of May, 2013.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2013–12381 Filed 5–23–13; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–82,388]

Aleris Recycling Bens Run, LLC, Including On-Site Leased Workers From Winans Extras Support Staffing and CDI Corporation, Friendly, West Virginia; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated April 24, 2013, United Steelworkers, Local 5724–2, requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of Aleris Recycling Bens Run, LLC, Friendly, West Virginia. The determination was issued on March 13, 2013. The workers' firm is engaged in activities related to the production of aluminum ingots, sows, cones, and salt cakes.

The initial investigation resulted in a negative determination based on the findings that imports of articles like or directly competitive with the articles produced by the workers did not increase during the relevant period; the subject firm or its major customers did not import articles like or directly competitive with the articles produced by the workers; the subject firm did not shift production of the articles produced by the workers to a foreign country, and did not acquire production of like or directly competitive articles from a foreign country; the subject firm is neither a Supplier nor Downstream Producer to a firm (or subdivision, whichever is applicable) that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, 19 U.S.C. 2272(a); and the subject firm has not been publically identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in an affirmative finding of serious injury, market disruption, or material injury, or threat thereof.

The request for reconsideration included new information regarding the articles produced at the subject firm and possible certification as secondarily-affected workers.

The Department has carefully reviewed the request for reconsideration and the existing record, and will conduct further investigation to determine if workers have met the eligibility requirements of the Trade Act of 1974, as amended.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 8th day of May, 2013.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2013–12382 Filed 5–23–13; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of *April 29, 2013 through May 3, 2013.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component

parts produced by such firm have increased;

(D) imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) the increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) there has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) the shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) the acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) a significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) either-

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) the workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) an affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) an affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) an affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) the petition is filed during the 1-year period beginning on the date on which—

(A) a summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) the workers have become totally or partially separated from the workers' firm within—

(A) the 1-year period described in paragraph (2); or

(B) notwithstanding section 223(b)(1), the 1- year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations For Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
82,596	Corning, Inc., Optical Fiber and Cable Division, Adecco Engineering & Technical, etc..	Corning, NY	March 13, 2012

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
82,417	Technicolor Creative Services USA, Inc., Media Services Division	Burbank, CA	January 17, 2012
82,495	YP Texas Region Yellow Pages LLC, Des Peres, Missouri Div., YP Subsidiary Holdings, YP LLC, YP Holdings LLC, Zerochaos.	Des Peres, MO	February 22, 2012
82,572	Hasbro, Inc.	East Longmeadow, MA	July 8, 2012
82,572A	Leased Workers from Reliable Temps, Vworkx/Tapfin Payroll, Silverman McGovern and Summit Technical, Working On-Site at Hasbro, Inc..	East Longmeadow, MA	March 15, 2012

TA–W No.	Subject firm	Location	Impact date
82,630	Astromed, Inc., Grass Technologies Division	Rockland, MA	April 3, 2012
82,657	Midwest Electric Products, Inc., General Electric, Manpower	Mankato, MN	April 16, 2012
82,660	Conmed Linvatec Endoscopy Division, Linvatec Corporation, Spherion, Crossroad Staffing and Kelly Services.	Goleta, CA	April 15, 2012
82,667	Chromalloy Gas Turbine, LLC, Sequa Corporation, Aerotech	Midwest City, OK	April 17, 2012

The following certifications have been issued. The requirements of Section 222(f) (firms identified by the International Trade Commission) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
82,588	Katana Summit LLC	Ephrata, WA	February 13, 2012
82,588A	Katana Summit LLC	Columbus, NE	February 13, 2012

Negative Determinations For Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criteria under paragraphs (a)(2)(A)(i) (decline in sales or production, or both) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
82,378	Joint Active Systems Inc.	Effingham, IL	
82,433	Robinson Nevada Mining Company, KGHM International	Ruth, NV	

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
82,313	ICG Knott County Coal, LLC, ICG, Inc.	Kite, KY	
82,410	Sabreliner Corporation	Perryville, MO	
82,410A	Sabreliner Corporation	St. Genevieve, MO	
82,410B	Sabreliner Corporation	St. Mary, MO	
82,442	Deluxe Laboratories, Inc., Deluxe Entertainment Services Group, Inc.	Hollywood, CA	
82,446	Ohio Gravure Technologies, Inc.	Miamisburg, OH	
82,613	Nestaway LLC, Leggett and Platt, Inc., Kelly Services	Beaver Dam, KY	

Determinations Terminating Investigations of Petitions For Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA–W No.	Subject firm	Location	Impact date
82,549	Core Systems, LLC	Painesville, OH	

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

TA–W No.	Subject firm	Location	Impact date
82,408	Bush Industries of Pennsylvania, Inc., Bush Industries, Inc., Labor Ready.	Erie, PA	

I hereby certify that the aforementioned determinations were issued during the period of *April 29, 2013 through May 3, 2013.* These determinations are available on the Department's Web site *tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Dated: May 7, 2013.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2013–12385 Filed 5–23–13; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 3, 2013.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 3, 2013.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 8th day of May 2013.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[9 TAA petitions instituted between 4/29/13 and 5/3/13]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
82697	AT&T (Union)	Pittsburgh, PA	04/29/13	04/26/13
82698	BI—LO LLC (Workers)	Mauldin, SC	04/30/13	04/29/13
82699	Medline Industries Inc. (State/One-Stop)	Clearwater, FL	04/30/13	04/29/13
82700	Dell Inc. (PNI Plant) (Workers)	Austin, TX	05/01/13	04/29/13
82701	Pfizer, Inc. (State/One-Stop)	Groton, CT	05/01/13	05/01/13
82702	Electrolux Home Products, Inc. (Company)	Webster City, IA	05/01/13	04/29/13
82703	Sanyo Solar of Oregon (Company)	Salem, OR	05/02/13	05/01/13
82704	YP Western Directory LLC (Workers)	Pleasanton, CA	05/02/13	05/01/13
82705	Boeing Commercial Aircraft (Union)	Everett, WA	05/02/13	04/26/13

[FR Doc. 2013–12384 Filed 5–23–13; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act of 1998 (WIA); Notice of Incentive Funding Availability Based on Program Year (PY) 2011 Performance

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), in collaboration with the Department of Education (ED), announces that 15 States are eligible to apply for Workforce Investment Act (WIA) (Pub. L. 105–220, 29 U.S.C. 2801 et seq.) incentive grant awards authorized by section 503 of the WIA.

DATES: The 15 eligible States must submit their applications for incentive funding to the Department of Labor by July 8, 2013.

ADDRESSES: Submit applications to the Employment and Training Administration, Office of Policy Development and Research, Division of Strategic Planning and Performance, 200 Constitution Avenue NW., Room N–5641, Washington, DC 20210, *Attention:* Karen Staha and Luke Murren. Telephone number: 202–693–3733 (this is not a toll-free number). Fax: 202–693–2766. Email: *staha.karen@dol.gov* and *murren.luke@dol.gov*. Information may also be found at the ETA Performance Web site: *http://www.doleta.gov/performance*. Additional information on how to apply can be found in Training and Employment Guidance Letter 20–01 Change 11, which will be forthcoming.

FOR FURTHER INFORMATION CONTACT: Luke Murren at Email *Murren.Luke@dol.gov.*

SUPPLEMENTARY INFORMATION: Fifteen States (see Appendix) qualify to receive a share of the $10,428,273 available for incentive grant awards under WIA section 503. These funds, which were contributed by the Department of Education from appropriations for the Adult Education and Family Literacy Act (AEFLA), are available for the eligible States to use through June 30, 2015, to support innovative workforce development and education activities that are authorized under title IB (Workforce Investment Systems) or title II (AEFLA) of WIA, or under the Carl D.

Perkins Career and Technical Education Act of 2006 (Perkins IV), 20 U.S.C. 2301 et seq., as amended by Pub. L. 109–270. In order to qualify for a grant award, a State must have exceeded its performance levels for WIA title IB and adult education (AEFLA). (Perkins IV removed the requirement that funds be reserved to carry out section 503 of WIA which only referenced P.L. 105–332 (Perkins III); thus, the Department of Labor (DOL) and the Department of Education (ED) no longer consider States' performance levels under Perkins IV in determining eligibility for incentive grants under Section 503 of WIA.) The performance related goals used to determine a State's eligibility status include: employment after training and related services, retention in employment, and improvements in literacy levels, among other measures. After review of the performance data submitted by States to DOL and to ED, each Department determined for its program(s) which States exceeded their performance levels (the Appendix at the bottom of this notice lists the eligibility of each State by program). These lists were compared, and States that exceeded their performance levels for both programs are eligible to apply for and receive an incentive grant award. Due to the fact that there were insufficient funds to award the minimum amount mentioned in WIA section 503, DOL used a formula where 95 percent of the total available funds were distributed evenly among all eligible states, and the additional five percent was determined by the Department of Labor and the Department of Education based on the provisions in 20 CFR 666.230(c)(1), and is proportional to the total funding received by these States for WIA title IB and AEFLA programs.

The States eligible to apply for incentive grant awards and the amounts they are eligible to receive are listed in the following chart:

State	Total award
Arizona	$696,551
Arkansas	674,924
Georgia	717,658
Idaho	667,885
Kentucky	688,486
Louisiana	683,255
Minnesota	683,360
Missouri	692,377
New Hampshire	665,342
New York	768,000
Ohio	729,340
Pennsylvania	724,355
Rhode Island	668,615
Tennessee	697,963
West Virginia	670,161

Signed in Washington, DC, this 17th day of May, 2013.

Jane Oates,

Assistant Secretary for Employment and Training.

APPENDIX

State	Incentive Grants PY 2011/FY 2012 Exceeded State Performance Levels		
	WIA (Title IB)	AEFLA (Adult Education)	WIA Title IB; AEFLA
Alabama			
Alaska			
Arizona	X	X	X
Arkansas	X	X	X
California			
Colorado	X		
Connecticut		X	
District of Columbia		X	
Delaware		X	
Florida			
Georgia	X	X	X
Hawaii	X		
Idaho	X	X	X
Illinois	X		
Indiana			
Iowa			
Kansas		X	
Kentucky	X	X	X
Louisiana	X	X	X
Maine			
Maryland	X		
Massachusetts	X		
Michigan	X		
Minnesota	X	X	X
Mississippi		X	
Missouri	X	X	X
Montana		X	
Nebraska			
Nevada	X		
New Hampshire	X	X	X
New Jersey	X		
New Mexico	X		
New York	X	X	X
North Carolina			
North Dakota	X		
Ohio	X	X	X
Oklahoma		X	
Oregon			
Pennsylvania	X	X	X

APPENDIX—Continued

State	Incentive Grants PY 2011/FY 2012 Exceeded State Performance Levels		
	WIA (Title IB)	AEFLA (Adult Education)	WIA Title IB; AEFLA
Puerto Rico			
Rhode Island	X	X	X
South Carolina	X		
South Dakota			
Tennessee	X	X	X
Texas	X		
Utah			
Vermont			
Virginia			
Washington	X		
West Virginia	X	X	X
Wisconsin			
Wyoming			

States in bold exceeded their performance levels for both AEFLA and WIA Title IB programs.

[FR Doc. 2013–12425 Filed 5–23–13; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Collection; Comment Request; Operations Under Water

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: 60-Day Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to assure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: All comments must be postmarked or received by midnight Eastern Standard Time on July 23, 2013.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below.

• *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments for docket number [MSHA–2013–0009].

• *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, 21st floor, Room 2350, Arlington, VA 22209–3939.

FOR FURTHER INFORMATION CONTACT: Sheila McConnell, Deputy Director, Office of Standards, Regulations, and Variances, MSHA, at *McConnell.Sheila.A@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Title 30 CFR 75.1716, 75.1716 1 and 75.1716 3 require operators of underground coal mines to provide MSHA notification before mining under bodies of water and to obtain a permit to mine under a body of water if, in the judgment of the Secretary, it is sufficiently large to constitute a hazard to miners. The regulation is necessary to prevent the inundation of underground coal mines with water that has the potential of drowning miners. Section 103(h) of the Mine Act, 30 U.S.C. 813, authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners.

The coal mine operator submits an application for the permit to the District Manager in whose district the mine is located. Applications contain the name and address of the mine; projected mining and ground support plans; a mine map showing the location of the river, stream, lake or other body of water and its relation to the location of all working places; and a profile map showing the type of strata and the distance in elevation between the coal bed and the water involved. MSHA has provided an exemption from notification and permit application for mine operators where the projected mining is under any water reservoir constructed by a Federal agency as of December 30, 1969, and where the operator is required by such agency to operate in a manner that adequately protects the safety of miners. The exemption for such mining is addressed by 30 CFR 75.1716 and 75.1717.

MSHA also encourages a mine operator to provide more information in an application. When the operator files an application for a permit, in addition to the information required under 30 CFR 75.1716–3, MSHA recommends mine operators include a map of the active areas of the mine under the body of water showing the following: Bottom of coal elevations (minimum 10-ft contour intervals); the limits of the body of water and the estimated quantity of water in the pool; the limits of the proposed ''safety zone'' within which precautions will be taken; overburden thickness (depth of cover) contours; corehole locations; and known faults, lineaments, and other geologic features.

If the body of water is contained within an overlying mine, then MSHA recommends a map of the overlying mine showing bottom of coal elevations (minimum 10-ft contour intervals), when available; corehole locations; the limits of the body of water with the estimated quantity of water in the pool; and, interburden to active mine below be provided. Operators are also encouraged to submit other information such as the methods used to estimate the quantity of water in the pool; borehole logs, including geotechnical information (RQD, fracture logs, etc.) if available; rock mechanics data on the overburden, interburden, mine roof, and mine floor, if available; mining height of the seam being mined; pillar and floor stability analyses for the active mine;

whether second mining is planned; whether mining will be conducted down-dip or up-dip; where water will flow to in the active mine if encountered; pumping capabilities for dewatering; a comprehensive evacuation plan for the miners, and a statement of what in-mine conditions would trigger the implementation of the evacuation plan; and training that will be provided to the miners regarding the potential hazards.

II. Desired Focus of Comments

The Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to Operations Under Water. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;
- Evaluate the accuracy of the MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Address the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses), to minimize the burden of the collection of information on those who are to respond.

The public may examine publicly available documents, including the public comment version of the supporting statement, at MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939. OMB clearance requests are available on MSHA's Web site at *http://www.msha.gov* under ''Federal Register Documents'' on the right side of the screen by selecting ''New and Existing Information Collections and Supporting Statements''. The document will be available on MSHA's Web site for 60 days after the publication date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection on regulations.gov. Because comments will not be edited to remove any identifying or contact information, MSHA cautions the commenter against including any information in the submission that should not be publicly disclosed. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

The information obtained from applicants will be used to determine compliance with safety and health standards. MSHA has updated the data in respect to the number of respondents and responses, as well as the total burden hours and burden costs supporting this information collection request.

MSHA does not intend to publish the results from this information collection and is not seeking approval to either display or not display the expiration date for the OMB approval of this information collection.

There are no certification exceptions identified with this information collection and the collection of this information does not employ statistical methods.

Summary

Type of Review: Extension without change of a currently approved collection.

Agency: Mine Safety and Health Administration.

Title: Operations Under Water.

OMB Number: 1219–0020.

Affected Public: Business or other for-profit.

Cite/Reference/Form/etc: 30 CFR 75.1716–3 and 75.1716–1.

Total Number of Respondents: 70.

Frequency: Various.

Total Number of Responses: 70.

Total Burden Hours: 385 hours.

Total Annual Respondent or Recordkeeper Cost Burden: $1,060.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Authority: 44 U.S.C. 3506(c)(2)(A).

Dated: May 20, 2013.

George F. Triebsch,

Certifying Officer.

[FR Doc. 2013–12398 Filed 5–23–13; 8:45 am]

BILLING CODE 4510–43–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 13–03]

Notice of Quarterly Report (January 2013—March 31, 2013)

AGENCY: Millennium Challenge Corporation.

SUMMARY: The Millennium Challenge Corporation (MCC) is reporting for the quarter January 1, 2013, through March 31, 2013, on assistance provided under section 605 of the Millennium Challenge Act of 2003 (22 U.S.C. 7701 *et seq.*), as amended (the Act), and on transfers or allocations of funds to other federal agencies under section 619(b) of the Act. The following report will be made available to the public by publication in the **Federal Register** and on the Internet Web site of the MCC (*www.mcc.gov*) in accordance with section 612(b) of the Act.

Dated: May 20, 2013.

Paul C. Weinberger,

Vice President, Congressional and Public Affairs, Millennium Challenge Corporation.

Projects	*Obligated*	*Objective*	*Cumulative Expenditures*	*Measures*
Country: Armenia [5] *Year:* 2013 *Quarter 2* *Total Obligation:* $176,550,239 *Entity to which the assistance is provided:* MCA Armenia *Total Quarterly Expenditures[1]:*				
Irrigated Agriculture Project (Agriculture and Water).	$153,716,023	*Increase agricultural productivity Improve and Quality of Irrigation.*	$153,716,023	Training/technical assistance provided for On-Farm Water Management. Training/technical assistance provided for Post-Harvest Processing. Loans Provided. Value of irrigation feasibility and/or detailed design contracts signed. Value of irrigation feasibility and/or detailed design contracts disbursed.

Projects	*Obligated*	*Objective*	*Cumulative Expenditures*	*Measures*
				Number of farmers using better on-farm water management. Number of enterprises using improved techniques. Value of irrigation feasibility and/or detailed design contracts signed. Additional Land irrigated under project. Value of irrigation feasibility and/or detailed design contracts signed. Value of irrigation feasibility and/or detailed design contracts disbursed.
Rural Development Project	.....	.....	.....	
Rural Road Rehabilitation Project.	$8,441,028	*Better access to economic and social infrastructure.*	$8,441,028	Average annual daily traffic on Pilot Roads. International roughness index for Pilot Roads. Road Sections Rehabilitated—Pilot Roads. Pilot Roads: Percent of Contracted Roads Works Disbursed of Works Completed.
Program Administration [2], Due Diligence, Monitoring and Evaluation.	$14,393,188	.....	$14,393,188	
Pending subsequent reports [3]				

Projects	*Obligated*	*Objective*	*Cumulative Disbursements*	*Measures* [2]
Country: Burkina Faso *Year:* 2013 *Quarter 2* *Total Obligation:* $478,585,879 *Entity to which the assistance is provided:* MCA Burkina Faso *Total Quarterly Disbursements* [1]*:* $28,561,283				
Roads Project	$ 194,039,560	*Enhance access to markets through investments in the road network.*	$ 47,804,584	International Roughness Index: Sabou-Koudougou-Perkoa-Didyr. International Roughness Index: Dedougou-Nouna-Bomborukuy-Nouna Border. International Roughness Index: Banfora-Sindou. Kilometers of road under works contract (Primary roads). Access time to the closest market via paved roads in the Sourou and Comoe (minutes). Kilometers of road under works contract (Rural roads). Personnel trained in procurement, contract management and financial systems. Periodic road maintenance coverage rate (for all funds) (percent).
Rural Land Governance Project.	$59,915,356	*Increase investment in land and rural productivity through improved land tenure security and land management.*	$20,996,240	Trend in incidence of conflict over land rights reported in the 17 pilot communes (annual rate of change in the occurrence of conflicts over land rights). Legal and regulatory reforms adopted. Stakeholders reached by public outreach efforts. Personnel trained. Rural land service offices installed and functioning (Services Fonciers Ruraux). Rural hectares formalized. Extent of confidence in land tenure security.
Agriculture Development Project.	$141,910,059	*Expand the productive use of land in order to increase the volume and value of agricultural production in project zones.*	$63,201,001	New irrigated perimeters developed in Di (hectares). Value of contracts for irrigation systems works disbursed.

Projects	*Obligated*	*Objective*	*Cumulative Disbursements*	*Measures* [2]
				Water Users' Associations leaders trained in the Sourou. Farmers trained. Households that have applied improved techniques. Agro-sylvo-pastoral groups that receive technical assistance. Loans provided by the rural finance facility. Volume of loans made to end borrowers by participating financial institutions using Rural Finance Facility funds ($ million).
Bright II Schools Project	$26,582,359	*Increase primary school completion rates.*	$ 26,840,570	Girls and boys graduating from BRIGHT II primary schools. Percent of girls regularly attending (90 percent attendance) BRIGHT II schools. Girls enrolled in the MCC/USAID-supported BRIGHT II schools. Boys enrolled in the MCC/USAID-supported BRIGHT II schools. Educational facilities constructed or rehabilitated. Teachers trained through 10 provincial workshops.
Program Administration [3] and Control, Monitoring and Evaluation.	$56,138,546	.....	$36,404,898	
Pending Subsequent Report [4].	.....	.....	$583,505	

Projects	*Obligated*	*Objective*	*Cumulative Disbursements*	*Measures*
Country: Cape Verde *Year:* 2013 *Quarter 2* *Total Obligation: $66,230,000* *Entity to which the assistance is provided:* MCA Cape Verde *Total Quarterly Disbursements:* $336,963				
Land Management for Investment Projects.	$17,260,000	*Increased investments in and value of property; improved ease of doing business; increased investments and value added in tourism; increased employment.*	$227,964	Number of legal and regulatory reforms adopted. Number of stakeholders receiving formal on the job training or technical assistance regarding roles, responsibilities or new technologies. Field test of ''Fieldwork Operations Manual'' and methodology completed on Sal.
Water, Sanitation, and Hygiene Project.	$41,030,000	*Increased access to improved water and sanitation; reduced household costs for water; reduced incidence of waterborne disease; improved capital accumulation; increase productive government spending.*	$ 4,254	Value of implicit subsidy reduction. Service coverage by corporatized utilities (percent). Operating cost coverage (percent) (operational revenue/annual operating costs). Continuity of service (average hours of service per day for water supply). Objective measure of water quality (randomized water samples, fecal coliform counts, number per 100 mL). Non-revenue water for Multiple Municipal Utility(s). Individuals adopting improved WASH behaviors and practices (percent). Value of signed water and sanitation construction contracts. Percent disbursed of water and sanitation construction contracts.
Program Administration and Control.	$6,550,000	.....	$711,678	
Program Monitoring and Evaluation.	$1,390,000	.....	$2,536	
Not Applicable	.....	.....	$100,992	

Projects	*Obligated*	*Objective*	*Cumulative Disbursements*	*Measures* [2]
Country: El Salvador *Year:* 2013 *Quarter 2* *Total Obligation:* $449,566,762 *Entity to which the assistance is provided:* MCA El Salvador *Total Quarterly Disbursements* [1]*:* $332,435				
Human Development Project.	$84,210,866	*Increase human and physical capital of residents of the Northern Zone to take advantage of employment and business opportunities.*	$84,210,865	Non-formal trained students that complete the training. Students participating in MCC-supported education activities. Additional school female students enrolled in MCC-supported activities. Instructors trained or certified through MCC-supported activities. Educational facilities constructed/rehabilitated and/or equipped through MCC-supported activities. Households with access to improved water supply. Households with access to improved sanitation. Persons trained in hygiene and sanitary best practices. Households benefiting with a connection to the electricity network. Households benefiting with the installation of isolated solar systems. Kilometers of new electrical lines with construction contracts signed. Population benefiting from strategic infrastructure (number of people).
Connectivity Project	$270,051,380	*Reduce travel cost and time within the Northern Zone, with the rest of the country, and within the region.*	$270,051,380	Average annual daily traffic on the Northern Transnational Highway. Travel time from Guatemala to Honduras through the Northern Zone (hours and minutes). Kilometers of roads completed.
Productive Development Project.	$65,973,922	*Increase production and employment in the Northern Zone.*	$65,973,922	Employment created (number of jobs). Investment in productive chains by selected beneficiaries (US $). Hectares under production with MCC support. Beneficiaries of technical assistance and training. Amount of Investment Support Fund (FIDENORTE) approved. Value of agricultural loans to farmers/agribusiness. Value of loans guaranteed. Guarantees granted.
Program Administration [3] and Control, Monitoring and Evaluation.	$29,330,595	.....	$29,982,435	
Pending Subsequent Report [4]				
Projects	*Obligated*	*Objective*	*Cumulative Expenditures*	*Measures*
Country: Georgia [5] *Year:* 2013 *Quarter 2* *Total Obligation:* $387,178,520 *Entity to which the assistance is provided:* MCA Georgia *Total Quarterly Disbursements* [1]*:* $0				
Regional Infrastructure Rehabilitation Project.	$309,899,714	*Key Regional Infrastructure Rehabilitated.*	$309,899,714	Household savings from Infrastructure Rehabilitation Activities. Savings in vehicle operating costs (VOC). International roughness index (IRI).

Projects	*Obligated*	*Objective*	*Cumulative Expenditures*	*Measures*
Regional Enterprise Development Project.	$52,040,800	*Enterprises in Regions Developed.*	$52,040,699	Annual average daily traffic (AADT). Travel Time. Kilometers of road completed. Signed contracts for feasibility and/or design studies. Percent of contracted studies disbursed. Kilometers of roads under design. Signed contracts for road works. Kilometers of roads under works contracts. Sites rehabilitated (phases I, II, III)—pipeline. Construction works completed (phase II)—pipeline. Savings in household expenditures for all RID subprojects. Population Served by all RID subprojects. RID Subprojects completed. Value of Grant Agreements signed. Value of project works and goods contracts Signed. Subprojects with works initiated. Jobs Created by Agribusiness Development Activity (ADA) and by Georgia Regional Development Fund (GRDF). Household net income—ADA and GRDF. Jobs created—ADA. Firm income—ADA. Household net income—ADA. Beneficiaries (direct and indirect)—ADA. Grant agreements signed—ADA. Increase in gross revenues of portfolio companies. Increase in portfolio company employees. Increase in wages paid to the portfolio company employees. Portfolio companies. Funds disbursed to the portfolio companies.
Program Administration[2], Due Diligence, Monitoring and Evaluation.	$25,238,005	.....	$25,238,005	
Pending subsequent reports[3].	.....	.....	$101	

Projects	*Obligated*	*Objective*	*Cumulative Disbursements*	*Measures*[2]
Country: Ghana *Year:* 2013 *Quarter 2* *Total Obligation:* $547,009,001 *Entity to which the assistance is provided:* MCA Ghana *Total Quarterly Disbursements*[1]*:* $3,218,877				
Agriculture Project	$195,650,409	*Enhance profitability of cultivation, services to agriculture and product handling in support of the expansion of commercial agriculture among groups of smallholder farms.*	$188,504,431	Farmers trained in commercial agriculture. Additional hectares irrigated. Hectares under production. Kilometers of feeder road completed. Percent of contracted feeder road works disbursed. Value of loans disbursed to clients from agriculture loan fund Portfolio-at-risk of Agriculture Loan Fund (percent). Cooling facilities installed. Percent of contracted irrigation works disbursed. Total parcels registered in the Pilot Land Registration Areas. Volume of products passing through post-harvest treatment.

Projects	*Obligated*	*Objective*	*Cumulative Disbursements*	*Measures* [2]
Rural Development Project.	$76,030,565	*Strengthen the rural institutions that provide services complementary to, and supportive of, agricultural and agriculture business development.*	$75,903,274	Students enrolled in schools affected by Education Facilities Sub-Activity. Additional female students enrolled in schools affected by Education Facilities Sub-Activity. Individuals completing internships at Ministries, Departments and Agencies and Metropolitan, Municipal and District Assemblies. Schools rehabilitated. School blocks constructed. Distance to collect water. Households with access to improved water supply. Water points constructed. Kilometers of electricity lines identified and diligence. Inter-bank transactions. Rural banks automated under the Automation/Computerization and Interconnectivity of Rural Banks activity. Rural banks connected to the wide area network.
Transportation Project ...	$227,748,133	*Reduce the transportation costs affecting agriculture commerce at sub-regional levels.*	$224,364,904	Agricultural processing plants in target districts with electricity due to Rural Electrification Sub-Activity. N1 Highway: annualized average daily traffic. N1 Highway: kilometers of road upgraded. Trunk roads kilometers of roads completed. Percent of contracted trunk road works disbursed. Ferry Activity: annualized average daily traffic vehicles. Ferry Activity: annual average daily traffic (passengers). Percent of contracted road works disbursed: N1 Highway, Lot 2. Percent of contracted road works disbursed: N1 Highway, Lot 2. Percent of contracted work disbursed: ferry and floating dock. Percent of contracted work disbursed: landings and terminals.
Program Administration [3], Due Diligence, Monitoring and Evaluation.	$47,579,894	.....	$43,816,360	
Pending subsequent reports [4].	.....	.....	$3,700,000	

The negative disbursement relates to a return of funds to MCC upon MCA Ghana's closing.

Projects	*Obligated*	*Objective*	*Cumulative Disbursements*	*Measures* [2]
Country: Jordan *Year:* 2013 *Quarter 2* *Total Obligation:* $275,100,000 *Entity to which the assistance is provided:* MCA Jordan *Total Quarterly Disbursements* [1]*:* $7,757,405				
	.....	*Zarqa Governorate*	.....	Network water consumption per capita (residential and non-residential); liters/capita/day. Operating cost coverage—Water Authority Jordan Zarqa. Non-revenue water (percent). Continuity of supply time; hours per week. Restructure and rehabilitate primary and secondary pipelines (kilometers). Restructure and rehabilitate tertiary pipelines (kilometers). Value disbursed of water construction contracts—Infrastructure Activity and Water Smart Homes Activity. Number of National Aid Fund households with improved water and wastewater network.

Projects	*Obligated*	*Objective*	*Cumulative Disbursements*	*Measures* [2]
Wastewater Network Project.	$54,274,261	*Improve the overall waste water system efficiency in Jordan's Zarqa Governorate.*	$5,510,980	Sewer blockage events (annual). Volume of wastewater collected; cubic meters/year/million. Residential population connected to the sewer system. Expand Network (kilometers). Value disbursed of sanitation construction contracts.
As Samra Wastewater Treatment Plant Expansion Project.	$98,703,598	*Increase the volume of treated waste water available as a substitute for fresh water in agriculture use.*	$26,358,889	Treated wastewater used in agriculture (as a percent of all water used for irrigation in Northern and Middle Jordan Valley). Value disbursed of construction contracts. Total engineering, procurement and construction cost of As-Samra Expansion.
Program Administration [3] and Control, Monitoring and Evaluation.	$19,552,107	.....	$1,131,364	
Pending subsequent reports [4].	.....	.....	$60,545	

Projects	*Obligated*	*Objective*	*Cumulative Disbursements*	*Measures* [2]
Country: Lesotho *Year:* 2013 *Quarter 2* *Total Obligation:* $362,551,000 *Entity to which the assistance is provided:* MCA Lesotho *Total Quarterly Disbursements* [1]*:* $19,499,883				
Water Project	$167,886,999	*Improve the water supply for industrial and domestic needs, and enhance rural livelihoods through improved watershed management.*	$102,736,452	Physical completion of Metolong water treatment works contract (percent). Physical completion of Urban Water supply works contracts (percent). People with access to rural water supply. Ventilated improved pit latrines built. Households with provisions to connect to water networks. Non-revenue water (percent). Knowledge of good hygiene practices (percent). Water points constructed.
Health Project	$121,377,822	*Increase access to life-extending antiretroviral therapy and essential health services by providing a sustainable delivery platform.*	$84,177,336	People with HIV still alive 12 months after initiation of treatment. Health centers with required staff complement (full-time employees). Tuberculosis notification (per 100,000 people). Health centers equipped. Deliveries conducted in the health facilities. Physical completion of health center facilities (percent). Physical completion of outpatient departments (percent). Physical completion of the Botsabelo facilities (percent).
Private Sector Development Project.	$27,386,470	*Stimulate investment by improving access to credit, reducing transaction costs and increasing the participation of women in the economy..*	$18,926,853	Time required to resolve commercial disputes (number of days). Cases filed at the commercial court. Debit/smart cards issued. Bonds registered. Urban land parcels regularized and registered. People trained on gender equality and economic rights. Stakeholders trained. Change in time for property transactions (percent). Women holding titles to land.
Program Administration [3] and Control, Monitoring and Evaluation.	$45,899,709	.....	$33,093,336	
Pending Subsequent Report [4].	.....	.....	$392,606	

Projects	*Obligated*	*Objective*	*Cumulative Disbursements*	*Measures* [2]
Country: Mali *Year:* 2013 *Quarter 2* *Total Obligation:* $435,628,223 *Entity to which the assistance is provided:* MCA Mali *Total Quarterly Disbursements* [1]*:* $0				
Bamako-Senou Airport Improvement Project.	$143,403,391	.....	$143,403,391	Annual foreign visitors, non-residents. Percent of work completed on the airside infrastructure. Percent of work completed on the landside infrastructure. Security and safety deficiencies corrected at the airport.
Alatona Irrigation Project	$252,895,691	*Increase the agricultural production and productivity in the Alatona zone of the Office du Niger.*	$252,895,691	Cultivation intensity during the dry season (percent). Value of agricultural products sold by farmers (millions of francs CFA). Percent of works completed on Niono-Goma Coura road. Hectares under new irrigation. Percent of contracted irrigation construction works disbursed. Market gardens allocated in Alatona zones to populations affected by the project or New Settler women. Five-hectare farms distributed to new settlers. Rural hectares formalized. Net primary school enrollment rate (in Alatona zone). Functional producer organization. Hectares under production (rainy season). Hectares under production (dry season). *Organisation d'exploitation des reseaux secondaires* or water user associations established. Active microfinance institution clients.
Industrial Park Project ...	$2,637,472	*Terminated*	$2,637,472	
Program Administration [3] and Control, Monitoring and Evaluation.	$36,691,668	.....	$36,691,668	
Pending Subsequent Report [4].				
On May 4, 2012, the MCC Board of Directors concurred with the recommendation of MCC to terminate the Mali Compact following the undemocratic change of government in the country.				
Projects	*Obligated*	*Objective*	*Cumulative Disbursements*	*Measures* [2]
Country: Moldova *Year:* 2013 *Quarter 2* *Total Obligation:* $262,000,000 *Entity to which the assistance is provided:* MCA Moldova *Total Quarterly Disbursements* [1]*:* $6,168,932				
Road Rehabilitation Project.	$132,840,000	*Enhance transportation conditions.*	$16,447,783	Reduced cost for road users. Average annual daily traffic. Road maintenance expenditure. Kilometers of roads completed. Percent of contracted roads works disbursed. Children participants in the road safety trainings. Resettlement action plans implemented. Final design (date received). Trafficking in persons training participants.
Transition to High Value Agriculture Project.	$101,773,402	*Increase incomes in the agricultural sector; create models for transition to high value agriculture in centralized irrigation system areas and an enabling environment (legal, financial and market) for replication.*	$14,944,816	Hectares under improved or new irrigation. Centralized irrigation systems rehabilitated. Percent of contracted irrigation feasibility and/or design studies disbursed.

Projects	*Obligated*	*Objective*	*Cumulative Disbursements*	*Measures* [2]
				Value of irrigation feasibility and/or detailed design contracts signed. Water user associations achieving financial sustainability. Management transfer agreements signed. Revised water management policy framework—with long-term water rights defined—established. Contracts of association signed. New HVA (High Value Agriculture) infrastructure in place (metric tonnes of cold storage capacity). Loans past due. Value of agricultural and rural loans. Loan borrowers. Loan borrowers (female). Value of sales facilitated. Farmers that have applied improved techniques (Growing High Value Agriculture Sales [GHS]). Farmers that have applied improved techniques (GHS) (female). Farmers trained. Farmers trained (female). Enterprises assisted. Enterprises assisted (female).
Program Administration [3] and Monitoring and Evaluation.	$27,386,598	.....	$7,532,575	
Pending Subsequent Report [4].	.....	.....	$93,201	

Projects	*Obligated*	*Objective*	*Cumulative Disbursements*	*Measures* [2]
Country: Mongolia *Year:* 2013 *Quarter 2* *Total Obligation:* $284,911,363 *Entity to which the assistance is provided:* MCA Mongolia *Total Quarterly Disbursements* [1]*:* $8,095,943				
Property Rights Project	$27,802,619	*Increase security and capitalization of land assets held by lower-income Mongolians, and increased peri-urban herder productivity and incomes.*	$22,501,193	Wells completed. Legal and regulatory reforms adopted. Stakeholders trained (Peri-Urban and Land Plots). Herder groups limiting their livestock population to the carrying capacity of their leases on semi-intensive farms. Cost for property transactions (first time) (US $). Urban parcels formalized. Stakeholders trained (Ger Area Land Plots). Leaseholds Awarded.
Vocational Education Project.	$46,946,824	*Increase employment and income among unemployed and underemployed Mongolians.*	$42,796,523	Students participating in MCC-supported educational facilities. Nongovernmental funding of vocational education (percent). Instructors trained or certified through MCC-supported activities. Educational facilities constructed/rehabilitated or equipped through MCC-supported activities.
Health Project	$39,525,259	*Increase the adoption of behaviors that reduce noncommunicable diseases and injuries (NCDIs) among target populations and improved medical treatment and control of NCDIs.*	$30,030,971	Screening for hypertension (percent). Early detections of cervical cancer—early diagnosis. Training of health staff by MCA Mongolia. Improved services in Non-Communicable Disease-Primary Health Care facilities (percent).
Roads Project	$88,440,123	*More efficient transport for trade and access to services.*	$39,893,934	Kilometers of roads completed. Kilometers of roads under design. Percent of contracted roads works disbursed.
Energy and Environmental Project.	$44,828,019	*Increased wealth and productivity through greater fuel use efficiency and decreasing health costs from air.*	$38,905,090	Wind power dispatched from substation (million kilowatt hours). Heat only boilers sites upgraded. Stoves distributed by MCA Mongolia.

Projects	*Obligated*	*Objective*	*Cumulative Disbursements*	*Measures* [2]
Rail Project	$369,560	*Terminated*	$369,560	Terminated.
Program Administration [3] and Control, Monitoring and Evaluation.	$36,998,960		$27,240,540	
Pending subsequent reports [4].			$103,174	

Projects	*Obligated*	*Objective*	*Cumulative Disbursements*	*Measures* [2]
Country: Morocco *Year:* 2013 *Quarter 2* *Total Obligation:* $697,500,000 *Entity to which the assistance is provided:* MCA Morocco *Total Quarterly Disbursements* [1]*:* $62,081,670				
Fruit Tree Productivity Project.	$337,737,281	*Reduce volatility of agricultural production and increase volume of fruit agricultural production.*	$238,600,706	Farmers trained. Olive and date producers assisted. Percent of virgin and extra virgin olive oil of total olive oil production in targeted areas. Number of Catalyst Fund proposals approved. Disbursements under the Catalyst Fund (US $). Average agricultural revenue per farm in rehabilitation rain-fed areas (U.S. dollars). Area planted and delivered to farmers (hectares). Area in expansion perimeters for which water and soil conservation measures have been implemented (hectares). Yield of rehabilitated olive trees in rain-fed areas (metric tons per hectare) (“mt/ha”). Average agricultural revenue per farm in irrigated areas. Cumulative area of irrigated perimeters rehabilitated (hectares). Yield of rehabilitated olive trees in irrigated areas (mt/ha). Average agricultural revenue per farm in oasis areas. Hectares under improved irrigation. Yield of rehabilitated date palms in oasis areas (mt/ha). Number of in-vitro seedlings successfully planted.
Small Scale Fisheries Project.	$124,916,716	*Improve quality of fish moving through domestic channels and assure the sustainable use of fishing resources.*	$69,431,892	Boats benefitting from landing sites and ports. Number of artisan fishers who received a training certificate. Number of jobs created in wholesale fish markets. Per capita fish consumption in areas of new market construction (kg/year). Active mobile fish vendors trained and equipped by the project. Average price of fish at auction markets. Net annual income of mobile fish vendors.
Artisan and Fez Medina Project.	$95,529,344	*Increase value added to tourism and artisan sectors.*	$44,556,090	Total receiving literacy training. Graduates of MCC-supported functional literacy program (female). Graduates of MCC-supported functional literacy program (male). Total receiving professional training.

Projects	*Obligated*	*Objective*	*Cumulative Disbursements*	*Measures* [2]
				Females receiving professional training. Graduates vocational training program (residential, apprenticeship and continuing education). Drop-out rates of participants of residential and apprenticeship programs. Potters trained. MCC-subsidized gas kilns bought by artisans. Adoption rate of improved production practices promoted by the project (percent). Tourist circuits improved or created. Number of small and medium enterprises (SMEs) that append the label on their products. Number of SMEs participating in promotion events. Sites constructed or rehabilitated (4 Fondouks, Place Lalla Ydouna, Ain Nokbi). Beneficiaries of Ain Nokbi construction and artisan resettlement program.
Enterprise Support Project.	$15,124,722	*Improved survival rate of new small and medium enterprises (SMEs) and National Initiative for Human Development (INDH)-funded income generating activities; increased revenue for new SMEs and INDH-funded income generating activities.*	$14,479,013	Survival rate after two years (percent). Days of individual coaching (total days). Beneficiaries trained.
Financial Services Project.	$42,633,565	*To be determined*	$29,768,858	Portfolio at risk at 30 days (percent). Value of loans granted through mobile branches (U.S. dollars). Clients of microcredit associations reached through mobile branches. Value of loan agreements between Micro credit associations and Jaida (millions of dirhams). Value of loan disbursements to Jaida.
Program Administration [3] and Control, Monitoring and Evaluation. Pending Subsequent Report [4].	$81,558,382	.....	$56,104,881	
Projects	*Obligated*	*Objective*	*Cumulative Disbursements*	*Measures* [2]
Country: Mozambique *Year:* 2013 *Quarter 2* *Total Obligation:* $506,924,053 *Entity to which the assistance is provided:* MCA Mozambique *Total Quarterly Disbursements* [1]*:* $37,595,260				
Water Supply and Sanitation Project.	$207,385,393	*Increase access to reliable and quality water and sanitation facilities.*	$122,740,900	Value of municipal sanitation and drainage systems construction contracts signed. Amount disbursed for municipal sanitation and drainage construction contracts. Volume of water produced. Value of contracts signed for construction of water systems. Percent of construction contract disbursed for water systems. Rural water points constructed. Percent of rural population of the six intervention districts with access to improved water sources. Amount disbursed for rural water points construction contracts. Persons trained in hygiene and sanitary best practices.
Road Rehabilitation Project.	$176,307,480	*Increase access to productive resources and markets.*	$76,178,321	Percent of roads works contracts disbursed. Kilometers of roads issued ''Take-over Certificates''.

Projects	*Obligated*	*Objective*	*Cumulative Disbursements*	*Measures* [2]
Land Tenure Project	$40,068,307	*Establish efficient, secure land access for households and investors.*	$28,762,316	People trained (paralegal courses at Centre for Juridical and Judicial Training, general training at National Directorate of Land and Forest, *etc.*). Land administration offices established or upgraded. Rural hectares mapped. Urban parcels mapped. Rural hectares formalized. Urban parcels formalized. Communities delimited.
Farmer Income Support Project.	$19,250,117	*Improve coconut productivity and diversification into cash crop.*	$15,733,113	Coconut seedlings planted. Survival rate of coconut seedlings (percent). Hectares of alternate crops under production. Farmers trained in surveillance and pest and disease control for coconuts. Farmers trained in alternative crop production and productivity enhancing strategies. Farmers trained in planting and post-planting management of coconuts. Farmers using alternative crop production and productivity enhancing strategies. Businesses receiving Business Development Fund grants.
Program Administration [3] and Control, Monitoring and Evaluation.	$63,912,756	.....	$37,699,449	
Pending Subsequent Report [4].	.....	.....	$1,696,023	
Projects	*Obligated*	*Objective*	*Cumulative Disbursements*	*Measures* [2]
Country: Namibia *Year:* 2013 *Quarter 2* *Total Obligation:* $304,477,815 *Entity to which the assistance is provided:* MCA Namibia *Total Quarterly Disbursements* [1]*:* $14,957,484				
Education Project	$141,602,809	*Improve the quality of the workforce in Namibia by enhancing the equity and effectiveness of basic.*	$68,755,417	Learners (any level) participating in the 47 schools sub-activity. Educational facilities constructed, rehabilitated, equipped in the 47 schools sub-activity. Percent of contracted construction works disbursed for 47 schools. Textbooks delivered. Educators trained to be textbook management trainers. Educators trained to be textbook utilization trainers. Percent disbursed against works contracts for Regional Study Resource Centers Activity. Visits to MCA Namibia assisted Regional Study and Resource Centres. Compliance rate for National Training Fund (NTF) levy. Graduates from MCC-supported education activities. Percent disbursed against construction, rehabilitation, and equipment contracts for Community Skills and Development Centres. Namibia Student Financial Assistance Fund Policy in place (date).
Tourism Project	$68,631,170	*Grow the Namibian tourism industry with a focus on increasing income to households in communal.*	$18,976,380	Tourists to Etosha National Park (ENP). Galton Gate Plan implemented (percent). Percent disbursed against construction, rehabilitation and equipment contracts for ENP housing units/management structures. Number of game translocated with MCA Namibia support.

Projects	*Obligated*	*Objective*	*Cumulative Disbursements*	*Measures* [2]
Agriculture Project	.....	*Enhance the health and marketing efficiency of livestock in the NCAs of Namibia and to increase income.*	.....	Unique visits on Namibia Tourism Board website. Leisure tourist arrivals. North American tourism businesses (travel agencies and tour operators) that offer Namibian tours or tour packages. Value of grants issued by the conservancy grant fund (Namibian dollars). Amount of new private sector investment secured by MCA Namibia assisted conservancies (Namibian dollars). Annual gross revenue to conservancies receiving MCA Namibia assistance. Participating households registered in the Community-Based Rangeland and Livestock Management sub-activity. Grazing areas with documented combined management plans. Parcels corrected or incorporated in land system. Stakeholders trained. Cattle tagged with radio frequency identification tags. Percent disbursed against works contracts for State Veterinary Offices. Value of grant agreements signed under Livestock Market Efficiency Fund. Farmers trained. Value of grant agreements signed under Indigenous Natural Product Innovation Fund.
Program Administration [3] and Control, Monitoring and Evaluation.	$42,957,491	.....	$23,850,449	
Pending Subsequent Report [4].	.....	.....	$2,212,249	

Projects	*Obligated*	*Objective*	*Cumulative Disbursements*	*Measures* [2]
Country: Philippines *Year:* 2013 *Quarter 2* *Total Obligation:* $433,910,000 *Entity to which the assistance is provided:* MCA Philippines *Total Quarterly Disbursements* [1]*:* $18,335,082				
Kalahi-CIDSS Project	.....	*Improve the responsiveness of local governments to community needs, encourage communities to engage in development activities.*	.....	Percent of Municipal Local Government Units that provide funding support for Kalahi-CIDSS (KC) subproject operations and maintenance. Completed KC subprojects implemented in compliance with technical plans and within schedule and budget. Barangays that have completed specific training on subproject management and implementation.
Secondary National Roads Development Project.	$214,493,000	*Reduce transportation costs and improve access to markets and social services.*	$27,440,528	Kilometers of road sections completed. Bridges replaced. Bridges rehabilitated. Value of road construction contracts signed. Value of road construction contracts disbursed.
Revenue Administration Reform Project.	$54,300,000	*Increase tax revenues over time and support the Department of Finance's initiatives to detect and deter corruption within its revenue agencies.*	$4,543,663	Number of Audits. Revenue District Offices using the electronic tax information system. Percent of audit completed in compliance with prescribed period of 120 days. Percent of audit cases performed using automated audit tool. Successful case resolutions. Personnel charged with graft, corruption, lifestyle and/or criminal cases. Time taken to complete investigation (average).
Program Administration [3] and Control, Monitoring and Evaluation.	$45,117,000	.....	$7,563,152	
Pending Subsequent Reports [4].	.....	.....	$2,729,195	
Community Development Grants Project.	$120,000,000	.....	$9,775,519.47	

Projects	*Obligated*	*Objective*	*Cumulative Disbursements*	*Measures* [2]
Pending Subsequent Reports [4].	.....	.....	$4,550,234	
Projects	*Obligated*	*Objective*	*Cumulative Disbursements*	*Measures* [2]
Country: Senegal *Year:* 2013 *Quarter 2* *Total Obligation:* $540,000,000 *Entity to which the assistance is provided:* MCA Senegal *Total Quarterly Disbursements* [1]*:* $29,626,253				
Road Rehabilitation Project.	$324,705,422	*Expand access to markets and services.*	$29,656,839	Value of contracts signed for the feasibility, design, supervision and program management of the RN2 and RN6 National Roads. Percent of disbursements for the contract signed for the constructions of the RN 2 and RN6. Kilometers of roads rehabilitated on the RN2. Annual Average Daily Traffic (AADT) Richard-Toll—Ndioum. Percent change in travel time on the RN2. International Roughness Index on the RN2. Kilometers of roads covered by the contract for the studies, the supervision and management of the RN2. Kilometers of roads rehabilitated on the RN6. Annual Average Daily Traffic (AADT) Ziguinchor—Tanaff. Annual Average Daily Traffic (AADT) Tanaff—Kolda. Annual Average Daily Traffic (AADT) Kolda—Kounkané. Percent change in travel time on the RN6. International Roughness Index on the RN6 (lower number = smoother road). Kilometers of roads covered by the contract for the studies, the supervision and management of the RN6.
Irrigation and Water Resources Management Project.	$170,008,860	*Improve productivity of the agricultural sector.*	$3,396,533	Tons of irrigated rice production. Potentially irrigable lands area (Delta and Ngallenka). Hectares under production. Percent of the disbursements on the contracts signed for the studies in the Delta and the Ngallenka. Value of the construction contracts signed for the irrigation infrastructure in the Delta and the Ngallenka. Cropping intensity (hectares under production per year/cultivable hectares) (Delta and Ngallenka). Hectares mapped. New conflicts resolved (percent). People trained on land security tools. Women trained on land security tools.
Program Administration [3] and Monitoring and Evaluation.	$45,285,718	.....	$11,773,489	
Pending Subsequent Report [4].	.....	.....	$819,236	

Projects	*Obligated*	*Objective*	*Cumulative Disbursements*	*Measures* [2]
Country: Tanzania *Year:* 2013 *Quarter 2* *Total Obligation:* $698,135,990 *Entity to which the assistance is provided:* MCA Tanzania *Total Quarterly Disbursements* [1]*:* $37,330,101				
Energy Sector Project ...	$207,821,396	*Increase value added to businesses.*	$150,742,745	Number of current power customers (Zanzibar). Transmission and distribution substations capacity (megawatt-peak) (Zanzibar). Technical and non-technical losses (Zanzibar) (percent). Kilometers of 132 kilovolt (KV) lines constructed (Zanzibar). Percent disbursed on overhead lines contract (Zanzibar). Number of Current power customers (Malagarasi/Kigoma). Capacity of systems installed (kilowatt-peak) (Malagarasi/Kigoma). Current power customers (all six project regions) (Mainland). Kilometers of 132 KV lines constructed (Mainland). Kilometers of 33/11KV lines constructed(Mainland). Transmission and distribution substations capacity (Megavolt Ampere) (all six project regions) (Mainland). Technical and nontechnical losses (Mainland) (percent). Cost recovery ratio (Mainland).
Transport Sector Project	$372,638,379	*Increase cash crop revenue and aggregate visitor spending.*	$222,253,662	Percent disbursed on construction contracts. Surfacing complete: Tunduma—Sumbawanga (percent). Surfacing complete: Tanga—Horohoro (percent). Surfacing complete: Namtumba—Songea (percent). Surfacing complete: Permiho—Mbinga (percent). Kilometers of roads completed (taken over). Pemba: Percent disbursed on construction contract. Surfacing complete: Pemba (percent). Kilometers of roads completed (taken over): Zanzibar. Road maintenance expenditures: Mainland trunk roads (percent). Road maintenance expenditures: Zanzibar rural roads (percent). Runway surfacing complete (percent).
Water Sector Project	$65,692,145	*Increase investment in human and physical capital and to reduce the prevalence of water-related disease.*	$40,756,921	Volume of water produced—Lower Ruvu (millions of liters per day). Operations and maintenance cost recovery—Lower Ruvu (percent). Volume of water produced—Morogoro (millions of liters per day). Operations and maintenance cost recovery—Morogoro (percent).
Program Administration [3] and Control, Monitoring and Evaluation.	$51,984,071	.....	$28,763,895	
Pending Subsequent Report [4]				

619(b) Transfer or Allocation of Funds

United States agency to which funds were transferred or allocated	*Amount*	*Description of program or project*
None	None	None

[1] Disbursements are cash outlays rather than expenditures.
[2] These measures are the same Key Performance Indicators that MCC reports each quarter. The Key Performance Indicators may change over time to more accurately reflect compact implementation progress. The unit for these measures is ''a number of'' unless otherwise indicated.
[3] Program administration funds are used to pay items such as salaries, rent, and the cost of office equipment.
[4] These amounts represent disbursements made that will be allocated to individual projects in the subsequent quarter(s) and reported as such in subsequent quarterly report(s).
[5] These compacts are closed; however, deobligations took place during the reporting period.

The following MCC compacts are closed and, therefore, do not have any quarterly disbursements: Benin, Cape Verde I, Honduras, Madagascar, Nicaragua and Vanuatu.

[FR Doc. 2013–12371 Filed 5–23–13; 8:45 am]

BILLING CODE 9211–03–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Corporate Administration Committee Board of Directors Meeting; Sunshine Act

TIME & DATE: 11:00 a.m., Thursday, May 24, 2012,

PLACE: 999 North Capitol St. NE., Suite 800, Boardroom, Washington, DC 20002.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Erica Hall, Assistant Corporate Secretary, (202) 220–2376; *ehall@nw.org.*

AGENDA:

I. Call To Order
II. Executive Session
III. Board Elections & Appointments
IV. Corporate Administration Committee Charter
V. DC Office Move Debrief
VI. Human Resources Updates
VII. Benefits Activities
VIII. Adjournment

Erica Hall,

Assistant Corporate Secretary.

[FR Doc. 2013–12540 Filed 5–22–13; 11:15 am]

BILLING CODE 7570–02–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0001]

Sunshine Act Meeting

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Week of May 27, 2013.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of May 27, 2013

Tuesday, May 28, 2013

1:00 p.m. Discussion of Management and Personnel Issues (Closed—Ex. 2 and 6).

* * * * *

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0727, or by email at *kimberly.meyer-chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *darlene.wright@nrc.gov.*

Dated: May 21, 2013.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2013–12571 Filed 5–22–13; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0247]

Implementation of Regulatory Guide 1.221 on Design-Basis Hurricane and Hurricane Missiles

AGENCY: Nuclear Regulatory Commission.

ACTION: Interim staff guidance; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) staff is issuing its Final Interim Staff Guidance (ISG) DC/COL–ISG–024. The purpose of this ISG is to provide the staff guidance regarding the application of Regulatory Guide (RG) 1.221, ''Design-Basis Hurricane and Hurricane Missiles for Nuclear Power Plants,'' in support of NRC reviews of early site permit (ESP), standard design certification (DC), and combined license (COL) applications being performed under the March 2007 version of NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition.'' This ISG applies to reviews of ESP, DC and COL applications where the resolution of the applicant's conformance with RG 1.221 has not already been achieved as of the effective date of this guidance.

DATES: The effective date of this COL–ISG is June 24, 2013.

ADDRESSES: Please refer to Docket ID NRC–2012–0247 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0247. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The Final ISG is under ADAMS Accession No. ML13015A693.

• ADAMS Accession No.	Document title
ML13015A688	Interim Staff Guidance-024 on Implementation of Regulatory Guide 1.221 on Design-Basis Hurricane and Hurricane Missiles (Package).
ML13015A693	Interim Staff Guidance-024 on Implementation of Regulatory Guide 1.221 on Design-Basis Hurricane and Hurricane Missiles.

• ADAMS Accession No.	Document title
ML13015A696	Comment Response Document—Interim Staff Guidance-024 on Implementation of Regulatory Guide 1.221 on Design-Basis Hurricane and Hurricane Missiles.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Colaccino, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7102 or by email at *joseph .colaccino@nrc.gov*

SUPPLEMENTARY INFORMATION: The staff issues DC/COL–ISGs to facilitate staff activities associated with its review of ESP, DC, and COL applications. This ISG supplements the guidance contained in RG 1.206, Revision 0, ''Combined License Applications for Nuclear Power Plants, (LWR Edition)'' (ML070630003) In addition, this ISG supplements the guidance provided for staff review of ESP, DC, and COL applications contained in NUREG–0800, Standard Review Plan (SRP), dated March 2007 (ML070630003). On October 22, 2012 (77 FR 64564), the staff issued the proposed DC/COL–ISG–024 ''Interim Staff Guidance Implementation of Regulatory Guide 1.221 on Design-Basis Hurricane and Hurricane Missiles,'' ADAMS Accession No. ML12132A508. The staff received questions and editorial comments from three commenters which were considered in the development of the final ISG–024. The questions, comments, and staff answers and resolutions of those questions and comments are contained in ''ISG–024 Comment Resolution'' which can be found in ADAMS under Accession No. ML13015A696.

The NRC posts all final ISGs on the NRC's public Web page at *http://www.nrc.gov/reading-rm/doc-collections/isg/,* which is where the public may easily obtain access to ISG DC/COL–ISG–024.

Backfitting and Issue Finality

Issuance of this final ISG does not constitute backfitting as defined in Section 50.109 of Title 10 of the *Code of Federal Regulations* (10 CFR) (the Backfit Rule), and is not otherwise inconsistent with the issue finality provisions in 10 CFR Part 52, with respect to current and future applicants other than COL applicants referencing one of the four current final design certification rules. The NRC staff's position is based upon the following considerations:

• The ISG positions do not constitute backfitting, inasmuch as the ISG is internal guidance directed at the NRC staff with respect to their regulatory responsibilities.

• Backfitting and issue finality do not protect these current or future applicants.

Issuance of this final ISG may be viewed as constituting backfitting as defined in 10 CFR 50.109 (the Backfit Rule) and may be considered to be inconsistent with the issue finality provisions in 10 CFR Part 52, with respect to current and future COL applicants referencing the ABWR design certification rule (10 CFR Part 52, Appendix A), or the AP1000 design certification rule (10 CFR Part 52, Appendix D). Backfitting and issue finality concerns are limited to the ISG discussion of consideration of hurricane winds and hurricane missiles. The NRC staff has determined that the guidance in the ISG with respect to consideration of hurricane wind and hurricane missiles, when imposed on COL applicants referencing these two design certification rules, would be necessary to provide adequate protection to public health and safety with respect to hurricane winds and missiles. In addition, the imposition would correct an omission where two approved design certifications do not have site parameters for hurricane winds and hurricane missiles, which are needed to provide compliance with General Design Criterion (GDC) 2 and GDC 4 in 10 CFR Part 50, Appendix A. If a nuclear power plant using these certified designs is located at a site where the hurricane loads and/or the hurricane-generated missile spectra are not bounded by tornado loads and tornado missile spectra, then safety-related structures required to withstand hurricane loads and hurricane-generated missiles may not be adequate and therefore would be in non-compliance with GDC 2 and GDC 4, and would not provide adequate protection to public health and safety against hurricanes of credible intensity that might impact the site. Therefore, any future action to impose this ISG on current and future COL applicants referencing the ABWR design certification rule (10 CFR Part 52, Appendix A), or the AP1000 design certification rule (10 CFR Part 52, Appendix D) would meet the Backfit Rule and would be permitted under the issue finality provisions in 10 CFR 52.63(a).

Congressional Review Act

This interim staff guidance is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, OMB has not found it to be a major rule as designated in the Congressional Review Act.

SUPPLEMENTARY INFORMATION: The agency posts its issued staff guidance in the agency external Web page (*http://www.nrc.gov/reading-rm/doc-collections/isg/*).

Dated at Rockville, Maryland, this 14th day of May 2013.

For the Nuclear Regulatory Commission.

Joseph Colaccino,

Chief, Policy Branch, Division of Advanced Reactors and Rulemaking, Office of New Reactors.

[FR Doc. 2013–12422 Filed 5–23–13; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, May 30, 2013 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Paredes, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Consideration of amicus participation;

An adjudicatory matter; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: May 22, 2013.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–12629 Filed 5–22–13; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69605; File No. SR–NSCC–2013–802]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Extension of Review Period of Advance Notice, as Modified by Amendment No. 1, To Institute Supplemental Liquidity Deposits to Its Clearing Fund Designed to Increase Liquidity Resources To Meet Its Liquidity Needs

May 20, 2013.

On March 21, 2013, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') advance notice SR–NSCC–2013–802 (''Advance Notice'') pursuant to Section 806(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act'') [1] and Rule 19b-4(n)(1)(i) [2] thereunder.[3] On April 19, 2013, NSCC filed with the Commission Amendment No. 1 to the Advance Notice.[4] The Advance Notice, as modified by Amendment No. 1, was published for comment in the **Federal Register** on May 1, 2013.[5] As of May 14, 2013, the Commission has received eight comment letters on the proposal contained in the Advance Notice and its related proposed rule change.[6] Additionally, on March 19, 2013, prior to filing the Advance Notice, NSCC received a comment letter on the proposal directly from an NSCC member.[7]

Section 806(e)(1)(G) of the Clearing Supervision Act provides that NSCC may implement the changes if it has not received an objection to the proposed changes within 60 days of the later of (i) the date that the Commission receives the advance notice or (ii) the date that any additional information requested by the Commission is received,[8] unless extended as described below.

Pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act, the Commission may extend the review period of an advance notice for an additional 60 days, if the changes proposed in the advance notice raise novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension.[9]

Here, as the Commission has not requested any additional information, the date that is 60 days after NSCC filed the Advance Notice with the Commission is May 20, 2013. However, the Commission finds it appropriate to extend the review period of the Advance Notice, as modified by Amendment No. 1, for an additional 60 days under Section 806(e)(1)(H) of the Clearing Supervision Act.[10] The Commission finds the Advance Notice, as modified by Amendment No. 1, both novel and complex because it proposes a rule change that is particularly detailed, intricate, multifaceted, and is the first of its kind for a registered clearing agency.

Accordingly, the Commission, pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act,[11] extends the review period for an additional 60 days so that the Commission shall have until July 19, 2013 to issue an objection or non-objection to the Advance Notice, as modified by Amendment No. 1 (File No. SR–NSCC–2013–802).

By the Commission.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–12404 Filed 5–23–13; 8:45 am]

BILLING CODE 8011–01–P

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] NSCC also filed the proposal contained in the Advance Notice as a proposed rule change (File No. SR–NSCC–2013–02) under Section 19(b)(1) of the Securities and Exchange Act of 1934 (''Exchange Act'') and Rule 19b–4 thereunder. Release No. 34–69313 (Apr. 4, 2013), 78 FR 21487 (Apr. 10, 2013). Pursuant to Section 19(b)(2) of the Exchange Act, generally, not later than 45 days after the date of publication of the proposed rule change in the **Federal Register** or such longer period up to 90 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination or the self-regulatory organization consents, the Commission will either: (i) by order approve or disapprove the proposed rule change, or (ii) institute proceedings to determine whether the proposed rule change should be disapproved. 17 U.S.C. 78s(b)(2)(A). *See* Release No. 34–69313 (Apr. 4, 2013), 78 FR 21487 (Apr. 10, 2013). The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

[4] *See* Release No. 34–69451 (Apr. 25, 2013), 78 FR 25496 (May 1, 2013).

[5] *Id.*

[6] *See* Comments Received on File Nos. SR–NSCC–2013–802 (*http://sec.gov/comments/sr-nscc-2013-802/nscc2013802.shtml*) and SR–NSCC–2013–02 (*http://sec.gov/comments/sr-nscc-2013-02/nscc201302.shtml*). Since the proposal contained in the Advance Notice was also filed as a proposed rule change, *see* Release No. 34–69313, *supra* note 3, the Commission is considering all public comments received on the proposal regardless of whether the comments are submitted to the Advance Notice or the proposed rule change.

[7] *See* Exhibit 2 to File No. SR–NSCC–2013–802 (*http://sec.gov/rules/sro/nscc/2013/34-69451-ex2.pdf*).

[8] *See* 12 U.S.C. 5465(e)(1)(G).

[9] *See* 12 U.S.C. 5465(e)(1)(H).

[10] *Id.*

[11] *Id.*

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69611; File No. SR–NASDAQ–2013–077]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 4751(f)(15)

May 20, 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 May 10, 2013, The NASDAQ Stock Market LLC (''NASDAQ'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a 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

NASDAQ proposes to amend Rule 4751(f)(15). The text of the proposed rule change is below. Proposed deletions are in brackets; new language is italicized.

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4751. Definitions

The following definitions apply to the Rule 4600 and 4750 Series for the trading of securities listed on Nasdaq or a national securities exchange other than Nasdaq.

(a)–(e) No change.

(f) The term ''Order Type'' shall mean the unique processing prescribed for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

designated orders that are eligible for entry into the System, and shall include:

(1)–(14) No change.

(15) ''Market Maker Peg Order'' is a limit order that, upon entry, the bid or offer is automatically priced by the System at the Designated Percentage away from the then current National Best Bid and National Best Offer, or if no National Best Bid or National Best Offer, at the Designated Percentage away from the last reported sale from the responsible single plan processor in order to comply with the quotation requirements for Market Makers set forth in Rule 4613(a)(2). Upon reaching the Defined Limit, the price of a Market Maker Peg Order bid or offer will be adjusted by the System to the Designated Percentage away from the then current National Best Bid and National Best Offer, or, if no National Best Bid or National Best Offer, to the Designated Percentage away from the last reported sale from the responsible single plan processor. If a Market Maker Peg Order bid or offer moves away from the Designated Percentage towards the then current National Best Bid or National Best Offer, as appropriate, by [the greater of (a)]4 percentage points[, or, (b) one-quarter the applicable percentage necessary to trigger an individual stock trading pause as described in Rule 4120(a)(11), or expands to within that same percentage less 0.5%], the price of such bid or offer will be adjusted to the Designated Percentage away from the then current National Best Bid and National Best Offer, or if no National Best Bid or National Best Offer, to the Designated Percentage away from the last reported sale from the responsible single plan processor. In the absence of a National Best Bid or National Best Offer and if no last reported sale, the order will be cancelled or rejected. If, after entry, the Market Maker Peg Order is priced based on the consolidated last sale and such Market Maker Peg Order is established as the National Best Bid or National Best Offer, the Market Maker Peg Order will not be subsequently adjusted in accordance with this rule until either there is a new consolidated last sale, or a new National Best Bid or new National Best Offer is established by either a national securities exchange or NASDAQ. Market Maker Peg Orders are not eligible for routing pursuant to Rule 4758 and are always displayed on NASDAQ. Notwithstanding the availability of Market Maker Peg Order functionality, a Market Maker remains responsible for entering, monitoring, and resubmitting, as applicable, quotations that meet the requirements of Rule 4613. A new timestamp is created for the order each time that it is automatically adjusted. For purposes of this paragraph, NASDAQ will apply the Designated Percentage and Defined Limit as set forth in Rule 4613, subject to the following exception. Nothing in this rule shall preclude a Market Maker from designating a more aggressive offset from the National Best Bid or National Best Offer than the given Designated Percentage for any individual Market Maker Peg Order. If a Market Maker designates a more aggressive offset from the National Best Bid or National Best Offer, the price of a Market Maker Peg Order bid or offer will be adjusted by the System to maintain the Market Maker-designated offset from the National Best Bid or National Best Offer, or if no National Best Bid or National Best Offer, the order will be cancelled or rejected.

(g)–(i) No change.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of 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

NASDAQ is proposing to simplify the calculation of the price adjustment trigger of the Market Maker Peg Order (''MMPO'') under Rule 4751(f)(15). The MMPO is an order type available only to Exchange market makers that provides a means by which a market maker may comply with its market making obligations under Rule 4613(a), but also maintain an order price a certain percentage from the National Best Bid or National Best Offer. The MMPO was adopted as a replacement to the Exchange's automated quotation functionality, which was retired in February 2013.[3] When NASDAQ adopted the MMPO, it applied the same triggering percentages used by AQR to initiate a repricing of the market maker's quote. Specifically, MMPO price adjustment occurs if upon entry and at any time the order exceeds either the Defined Limit[4], as described in Rule 4613(a)(2)(E), or moves away from the Designated Percentage[5] towards the then current National Best Bid or National Best Offer, as appropriate, by the greater of (a) 4 percentage points, or, (b) one-quarter the applicable percentage necessary to trigger an individual stock trading pause as described in Rule 4120(a)(11), or expands to within that same percentage less 0.5 percent. Once price adjustment is triggered, the MMPO is priced by the Exchange at the Designated Percentage away from the then current National Best Bid and National Best Offer, or, if no National Best Bid or National Best Offer, to the Designated Percentage away from the last reported sale from the responsible single plan processor. In the absence of a National Best Bid or National Best Offer and last reported sale, the order will be cancelled or rejected. Adjustment to the Designated Percentage is designed to avoid an execution against a MMPO that would initiate a single stock circuit breaker.

In an effort to simplify the calculation of the price adjustment trigger of the MMPO when it moves toward the National Best Bid or National Best Offer, NASDAQ is proposing to eliminate the trigger based on a one quarter of the applicable percentage necessary to trigger an individual stock trading pause. As currently written, once a market maker enters a MMPO Rule 4751(f)(15) requires NASDAQ to constantly compare the 4 percent threshold to ¼ of the applicable Rule 4120(a)(11) percentage in order to

[3] The automated quotation functionality was previously under Rules 4613(a)(2)(F) and (G). *See* Securities Exchange Act Release No. 68528 (December 21, 2012), 77 FR 77165 (December 31, 2012) (SR–NASDAQ–2012–140).

[4] The term Defined Limit is defined by Rule 4613(a)(2)(E) as 9.5% for securities subject to Rule 4120(a)(11)(A), 29.5% for securities subject to Rule 4120(a)(11)(B), and 31.5% for securities subject to Rule 4120(a)(11)(C), except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, when Rule 4120(a)(11) is not in effect, the Defined Limit shall be 21.5% for securities subject to Rule 4120(a)(11)(A), 29.5% for securities subject to Rule 4120(a)(11)(B), and 31.5% for securities subject to Rule 4120(a)(11)(C).

[5] The Designated Percentage is the individual stock pause trigger percentage under Rule 4120(a)(11) less two (2) percentage points and is defined by Rule 4613(a)(2)(D) as 8% for securities subject to Rule 4120(a)(11)(A), 28% for securities subject to Rule 4120(a)(11)(B), and 30% for securities subject to Rule 4120(a)(11)(C), except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, when Rule 4120(a)(11) is not in effect, the Designated Percentage shall be 20% for securities subject to Rule 4120(a)(11)(A), 28% for securities subject to Rule 4120(a)(11)(B), and 30% for securities subject to Rule 4120(a)(11)(C). The Designated Percentage for rights and warrants shall be 30%.

determine whether repricing to the Designated Percentage must occur. For example, if a market maker enters a bid MMPO at 11am in a security subject to Rule 4120(a)(11)(A) when the market is $10 x $10.01, it would initially be priced at $9.20 (the Designated Percentage for such securities is 8%). If the NBB moves within 4% of the MMPO to $9.57 (4% is greater than ¼ of the 10% Rule 4120(a)(11)(A) trigger, which is 2.5%) the MMPO should reprice to the Designated Percentage away from the then current NBB, which in this case would result in the MMPO repricing to $8.80 ($9.57 × 92%). If, instead, the security was subject to Rule 4120(a)(11)(B), it would be initially priced at $7.20 (the Designated Percentage for such securities is 28%). If the NBB moves within 7.5% of the MMPO to $7.74 (¼ of the 30% Rule 4120(a)(11)(B) trigger is 7.5%, which is greater than 4%) the MMPO should reprice to the Designated Percentage away from the then current NBB, which in this case would result in the MMPO repricing to $5.57 ($7.74 × 72%). Under the proposed language, the MMPO in this last example would not reprice when the NBB reaches $7.74, but rather reprice when the NBB reached $7.49, which is within 4% of the MMPO. In this example, the MMPO would then reprice to $5.39, which is the Designated Percentage from the NBB of $7.49.

NASDAQ believes that applying a 4 percent threshold to all securities is a better method because it reduces complexity in calculating the repricing trigger price by repricing only when the NBB or NBO moves to within 4% of the MMPO price.[6] NASDAQ notes that the MMPO will operate unchanged for the larger, more liquid securities covered by Rule 4120(a)(11)(A). Securities subject to Rule 4120(a)(11)(A) are always subject to the 4 percent threshold, since ¼ of the Rule 4120(a)(11)(A) threshold of 10 percent equals 2.5 percent. Securities covered by Rules 4120(a)(11)(B) and (C) are less liquid and, in the case of securities covered by subparagraph (C), are below a dollar. Rules 4120(a)(11)(B) and (C) apply 30 and 50 percent thresholds, respectfully, in triggering a single stock circuit breaker. Therefore, the MMPO threshold for such securities, is ¼ of 30 and 50 percent, or 7.5 and 12.5 percent, respectively. As a consequence, under the proposed change, the MMPO will not reprice to the Designated Percentage until the price move percentage is closer to the National Best Bid or National Best Offer than is currently the case (*i.e.,* 4 percent as compared to 7.5 or 12.5 percent). NASDAQ does not believe that this will in any way negatively affect trading in these securities. A MMPO is not typically executed against and NASDAQ does not believe that applying a 4 percent threshold to all securities will materially increase the likelihood of an MMPO being executed. NASDAQ will continue to adjust the price of a MMPO that reaches the Defined Limit.

NASDAQ is also proposing to eliminate language from the rule text that is duplicative of other descriptive language. Specifically, NASDAQ is deleting the language that follows subparagraph (b) of the rule, which states ''or expands to within that same percentage less 0.5%.'' This language summarizes the repricing of the MMPO upon reaching the Defined Limit, which is described in the preceding sentence. Accordingly, the proposed deletion does not change how the MMPO operates, but rather deletes text that is redundant and could be confusing.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[7] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule meets these requirements in that it reduces complexity in making the determination to adjust the price of a MMPO. The Exchange notes that the calculation that it is proposing will have no effect on securities subject to Rule 4120(a)(11)(A), but will result in securities covered by Rules 4120(a)(11)(B) and (C) to reprice to the Designated Percentage at a point closer to the National Best Bid or National Best Offer. NASDAQ does not believe that repricing at 4 percent for all securities will result in a material increase in executions of MMPOs. Accordingly, removing the price adjustment threshold based on a calculation of ¼ of the percentages under Rules 4120(a)(11)(B) and (C) will reduce the complexity of calculations under the rule without reducing the effectiveness of the order. Last, NASDAQ believes that removing duplicative, and possibly confusing, language from the rule will promote the public interest by clarifying the operation of the MMPO.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is designed to reduce the complexity of the price adjustment triggers under the rule while continuing to maintain a market maker's quote so that it meets its market making obligations. Moreover, the proposed change will align the rule text with the current operation of the order type. As such, the Exchange does not believe that the rule will impact competition in any way.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and subparagraph (f)(6) of Rule 19b–4 thereunder.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[6] NASDAQ notes that the MMPO currently operates in the manner proposed by this rule change. As such, the proposed change will align the rule text with the current operation of the MMPO.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(a)(ii).

[9] 17 CFR 240.19b–4(f)(6).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2013–077 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2013–077. 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 offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NASDAQ–2013–077, and should be submitted on or before June 14, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

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[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69608; File No. SR–NYSEMKT–2013–12]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, Amending Rule 975NY In Part and Adding a New Section To Address Errors That Involve Complex Orders

May 20, 2013.

I. Introduction

On February 1, 2013, NYSE MKT LLC (''NYSE MKT'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's Obvious Error Rule in part and add a new section to address errors that involve Complex Orders. The proposed rule change was published for comment in the **Federal Register** on February 21, 2013.[3] The Commission received no comment letters on the proposal. On April 23, 2013, the Exchange filed Amendment No. 1 to the proposed rule change.[4]

The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of Proposal

The Exchange proposes several changes to its Obvious Error Rule, Rule 975NY. First, the Exchange is proposing to change the portion of the rule that addresses errors in series with zero or no bid. Specifically, the Exchange proposes replacing reference to ''series quoted no bid on the Exchange'' with ''series where the NBBO bid is zero.'' The Exchange believes that this change ensures consistency with other relevant parts of the rule.

Second, the Exchange proposes to increase the amount of time in which Market Makers are required to notify the Exchange in order to have transactions reviewed under Rule 975NY. Under the proposal, the time would increase from five minutes to ten minutes. The Exchange represents that this additional time accommodates the potential need for Market Makers to potentially call multiple exchanges to have transactions reviewed.

Third, the Exchange proposes to extend the time ATP Holders acting as agent for a Customer[5] have to notify the Exchange of a potential error from twenty minutes to thirty minutes. Under the proposed rule, however, the time extension would not apply to ATP Holders acting as agent for Professional Customers.[6] The Exchange states that because Customers are far removed from the execution of the trade, it believes that it is appropriate to give Customers more time for their requests for review to pass from their broker-dealer to the Exchange. In contrast, the Exchange notes that other market participants, such as firms, non-member Market Makers, and Professional Customers, tend to route their own order flow directly to the Exchange and are not as far removed from the actual execution. The Exchange further explains that it is fairly common for broker-dealers that receive a Customer order to route that order to another broker-dealer that uses a router that evaluates best execution factors to determine where to ultimate route the order. In these situations, if a Customer chooses to request an Obvious Error review, Customers may need more than 20 minutes for their requests for review to reach the Exchange. The Exchange acknowledges that extending the notification period can increase the uncertainty of the standing of the trade, however, it believes that such uncertainty will be limited to trades that are so outside the bounds of normal trading that they might qualify for Obvious Error treatment.

Finally, the Exchange is proposing to add a new section to Rule 975NY to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 68926 (February 14, 2013), 78 FR 12123 (''Notice'').

[4] In Amendment No. 1, the Exchange proposed to modify Rule 975NY to provide that the proposed changes to Rule 975NY(b)(1) extending to thirty minutes the time for which a Customer must notify the Exchange that it participated in a transaction that may be subject to adjustment or nullification pursuant to provisions of the Obvious Error Rule shall not apply to Professional Customers, as defined by Rule 900.2NY(18A), and to add a corresponding internal reference to Rule 900.2NY(18A) that specifies that Professional Customers will be treated in the same manner as a Broker/Dealer (or non-Customer) for purposes of the Obvious Error Rule.

[5] Under NYSEMKT Rule 900.2NY(18) ''Customer'' means an individual or organization that is not a Broker/Dealer; when not capitalized, ''customer'' refers to any individual or organization whose order is being represented, including a Broker/Dealer.

[6] *See* Amendment No. 1, *supra* note 4. Under NYSEMKT Rule 900.2NY(18A) ''Professional Customer'' means individual or organization that (i) is not a Broker/Dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

address Complex Orders in the Obvious Error context, as its current rule is silent on how such Complex Orders are handled. According to the Exchange, Complex Orders are often used by market participants to enter positions known as spreads that entail limited risk relative to an outright naked sale of a put or call. The Exchange believes that the best approach for dealing with Complex Orders in the Obvious Error context is to preserve the spread whenever possible to mitigate the risk of such trades. Therefore, in the situation where a Complex Order trades with another Complex Order in the Complex Order Book, and one of the legs qualifies for Obvious Error treatment under Rule 975NY, then all legs of the Complex Order will be busted unless both parties mutually agree to an adjustment price.

The Exchange also believes that it is appropriate not to permit Obvious Error treatment in situations where the only error in the trade occurred in a no-bid series. Therefore, in situations where a Complex Order trades with another Complex Order in the Complex Order Book where one leg qualifies for the no-bid provision of Rule 975NY, the trade will stand as executed, unless both parties to the trade mutually agree otherwise. The Exchange believes that this provision will prevent manipulation and a potential increase in nullified trades, particularly because it prevents parties from being able to enter a spread price slightly away from the market, thus increasing the chance that one of the legs will qualify for no-bid treatment, and providing the party entering the order with a window of time to evaluate the market and decide if it would be to its benefit to nullify the trade.

Finally, the Exchange is codifying its current practice for handling situations in which a Complex Order trades with individual orders or quotes in the Consolidated Book. Pursuant to the proposed rule, each executed leg will be reviewed separately under Rule 975NY. The Exchange notes that while it prefers to avoid the partial execution of a Complex Order, pursuant to this provision, it is possible that after a Complex Order trade, only one leg qualifies for Obvious Error treatment, resulting in the residual position of a single leg. The Exchange explains that is will not seek to nullify a valid execution in the Consolidated Order Book of an ATP Holder who unknowingly interacted with a leg of a Complex Order.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act[7] and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,[9] 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 Exchange is replacing reference to ''series quoted no bid on the Exchange'' with ''series where the NBBO bid is zero'' because it believes that the NBBO provides greater accuracy in determining the value of an option because it takes into account interest from participants across all markets, not just those active on the Exchange. The Exchange also believes that this change will promote just and equitable principles of trade by adding more certainty and consistency to the Exchange's Obvious Error rule. This consistency, according to the Exchange, is important to help avoid investor confusion.

The Exchange believes that the change to increase the time limit for Market Makers to request review of transactions protects investors and the public interest because it will ensure they are comfortable meeting the deadline, thereby allowing Market Makers to continue to aggressively provide liquidity in a transparent and nondiscriminatory manner to all participants. Further, the Exchange notes that increasing the time limit for ATP Holders acting as agent for Customers (but not acting as agent for Professional Customers) to request review of transactions should give those Customers that are not Professional Customers sufficient time to request a review for trades, which is also consistent with investor protection and furthering the public interest as it allows those market participants furthest removed from the point of execution time to evaluate each trade and have adequate time to notify the Exchange of a potential error.

The Exchange believes that the proposed rule changes that address the handling of Complex Orders under the Obvious Error rule are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Exchange notes that detailing the treatment of Complex Orders involved in Obvious Errors provides investors with greater certainty. The Exchange also believes that the best approach for dealing with Complex Orders in the context of the Obvious Error rule is to preserve the spread whenever possible. Second, the Exchange believes that preventing market participants from busting trades solely the result of a leg(s) of a Complex Order executing in a no-bid series furthers the protection of investors and the public interest by preventing potential abuse. Finally, the Exchange believes that the proposed rule change provides objective guidelines for the determination of whether an obvious price error has occurred, as it notes that the determination of whether an ''Obvious Error'' has occurred should be based on specific and objective criteria and subjective to specific and objective procedures.

The Commission notes that, in approving past proposals relating to Obvious Errors, it has emphasized the importance of specific and objective criteria to determine how and when to nullify or adjust trades involving Obvious Errors.[10] The Commission believes the changes that comprise this current proposal further this objective. For the reasons noted above, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[11] 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

[7] 15 U.S.C. 78f.

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] *See, e.g.,* Securities Exchange Release Nos. 54228 (July 27, 2006), 71 FR 44066 (August 3, 2006) (SR–CBOE–2006–14) and 58778 (October 14, 2008), 73 FR 62577 (October 21, 2008) (SR–CBOE–2008–90) (both approving revisions to CBOE's Obvious Error Rules).

[11] 15 U.S.C. 78f(b)(5).

general, to protect investors and the public interest.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–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 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–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 publicly available. All submissions should refer to File Number SR–NYSEMKT–2013–12 and should be submitted on or before June 14, 2013.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

As discussed above, Amendment No. 1 revised the proposed rule change with respect to what types of entities would benefit from the proposed time extension for ATP Holders acting as agent for Customers to notify the Exchange of a potential error. The proposed rule change increases such time from twenty minutes to thirty minutes. In Amendment No. 1, the Exchange specifies that the extension would not apply to Professional Customers. The Commission believes that the amendment addresses potential concerns about whether the Exchange's justification for this proposed change applies to Professional Customers. The Exchange states that because Customers, a broadly defined term in the Exchange's rules that includes Professional Customers, are typically further removed from the trade execution and slower to receive information about the status of their orders and executions, it is appropriate to afford them more time to notify the Exchange of a potential error. Professional Customers, however, are frequent traders that are potentially more likely to closely follow their trade execution than other types of Customers according to the Exchange. The Exchange explained that Professional Customers tend to route their own order flow directly to the Exchange and are not as far removed from the actual execution. By revising the proposed rule change to specify that the time extension would not apply to Professional Customers, the Commission believes the Exchange has adequately addressed this potential inconsistency between the proposed change and its justification. Accordingly, the Commission also finds good cause, pursuant to Section 19(b)(2) of the Act,[12] for approving the proposed rule change, as modified by Amendment No. 1, prior to the 30th day after the date of publication of notice in the **Federal Register**.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–NYSEMKT–2013–12), as modified by Amendment No. 1, is hereby approved on an accelerated basis.

[12] 15 U.S.C. 78s(b)(2).

[13] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–12405 Filed 5–23–13; 8:45 am]

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[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69610; File No. SR–Phlx–2013–54]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 3306 and Rule 3303 To Stipulate How Participants in NASDAQ OMX PSX May Modify Previously Entered Orders and To Describe How Modified Orders Are Processed

May 20, 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 May 10, 2013, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 3306 (Entry and Display of Quotes and Orders) and Rule 3303 (Short Sale Price Test Pursuant to Rule 201 of Regulation SHO) to stipulate how Participants in NASDAQ OMX PSX (''PSX'') may modify previously entered orders and to describe how modified orders are processed. The text of the proposed rule change is below; proposed new language is italicized, and proposed deletions are in brackets.

3303. Short Sale Price Test Pursuant to Rule 201 of Regulation SHO

(a)–(c) No change.

(d) Re-pricing of Orders during Short Sale Period. *Except as provided below,* [D]*d*uring the Short Sale Period, short sale orders that are limited to the national best bid or lower and short sale market orders will be re-priced by the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

System one minimum allowable price increment above the current national best bid (''Permitted Price''). To reflect declines in the national best bid, the Exchange will continue to re-price a short sale order at the lowest Permitted Price down to the order's original limit price, or if a market order, until the order is filled. Non-displayed orders between the PSX bid and offer at the time of receipt will also be re-priced upward to a Permitted Price to correspond with a rise in the national best bid.

(1) No change.

(2) During the Short Sale Period, if an order was entered as a long sale order or a short sale exempt order but is subsequently marked pursuant to Phlx Rule 3306(a)(3) as a short sale order, the System will cancel the order unless it is priced at a Permitted Price or higher.

(e)–(f) No change.

* * * * *

3306. Entry and Display of Quotes and Orders

(a) Entry of Orders—Participants can enter orders into the System, subject to the following requirements and conditions:

(1)–(2) No change.

(3) Orders can be entered into the System (or previously entered orders cancelled *or modified*) from 8:00 a.m. until 5:00 p.m. Eastern Time. *Participants may modify a previously entered order without cancelling it or affecting the priority of the order on the book solely for the purpose of modifying the marking of a sell order as long, short, or short exempt; provided, however, that if an order is redesignated as short, a Short Sale Period is in effect under Rule 3303, and the order is not priced at a Permitted Price or higher under Rule 3303(d), the order will be cancelled. In addition, a partial cancellation of an order to reduce its share size will not affect the priority of the order on the book. All other modifications of orders will result in the replacement of the original order with a new order with a new time stamp.*

(b)–(c) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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 purpose of the proposed rule change is to stipulate how Participants in PSX may modify previously entered orders and to describe how modified orders are processed. Currently, Rule 3306 permits previously entered orders to be cancelled, a fact that has been interpreted by Phlx to allow a Participant to cancel an order in full or in part. However, new language is being added to the rule to make it clear that a partial cancellation of an order (*i.e.,* a reduction in the share size of the order) does not cause the order to lose priority on the PSX book. Phlx believes that it is reasonable to allow the partial cancellation of an order without the order losing priority because the Participant that entered the order continues to express its willingness to trade at the price entered when the order first came onto the book. Moreover, if the order is displayed, other Participants quoting at the same price are aware of the priority of their orders relative to the partially cancelled order. While a partial cancellation may provide these other Participants with greater opportunities to provide a fill, Phlx does not believe that it would be reasonable for the Participants to jump ahead of an order with time priority merely because the size of the order has been reduced. Similarly, if the partially cancelled order is non-displayed, other Participants would have no awareness of its price, its original size, or its reduced size. Again, while other Participants at that price may have an increased opportunity to provide a fill when the order's size is reduced, they would not have an expectation that the priority of their orders would change vis-à-vis that of an order that arrived on the book at an earlier time. Finally, with respect to Participants seeking to access liquidity, the reduced size of the order would be disseminated (if a displayed order) or not disseminated (if a non-displayed order) via market data feeds, but these Participants would be indifferent as to the order's priority vis-à-vis other orders with the same price.

In addition, Phlx is modifying Rule 3303 to provide that a sell order may be modified in order to change its marking as long, short, or short exempt without affecting its priority on the book.[3] Participants sometimes wish to modify the marking of a sell order on the book due to changes in the Participant's holdings of the security in question. At present, such a modification may only be achieved by the cancellation of the existing order and its replacement with a new order with a different time stamp. Phlx believes that it is reasonable to allow the modification of an order for this purpose without affecting its priority, since the order's marking has no bearing on the timing of its entry onto the book vis-à-vis other orders at the same price.[4] In the event, however, that a long or short exempt order is redesignated as a short sale order and the security that is the subject of the order is in a Short Sale Period, as provided for in Rule 3303 and Rule 201 under Regulation SHO,[5] the order will be evaluated to determine whether its price would be a Permitted Price within the meaning of Rule 3303(d). If not, the order will be cancelled rather than repriced.[6] Phlx believes that cancelling the order under these circumstances is preferable to repricing it, because it alerts the Participant entering the order to the existence of the Short Sale Period and forces the Participant to evaluate its intentions with regard to the order.

Finally, Phlx is amending Rule 3303 to make it clear that all other modifications of previously submitted orders, including increases in size[7] and changes in price, will result in the cancellation of the original order and its replacement with a new order with a new time stamp. Although the addition of this rule language does not reflect a change in the way the Phlx system currently operates, Phlx believes that the clarity of the rule will be enhanced by including the new language. Phlx further believes that the functionality described by the rule language is important to ensuring that Participants cannot use an existing order unfairly to

[3] The proposed rule does not affect Participants' obligations contained in Regulation SHO under the Act, and Participants must continue to comply with such obligations, including the order marking and locate requirements. *See* 17 CFR 242.200 *et seq.*

[4] A change to the marking of the order would be effected through the submission of a ''modify order'' message.

[5] 17 CFR 242.201.

[6] If an order originally marked as long or short is marked as short exempt, the order will not be cancelled or repriced. Rule 3303(f).

[7] Phlx reminds Participants that if a seller increases the size of a pending sell order, the resulting modified order is considered a new order and must be marked by the broker-dealer to reflect the seller's net position at the time of order modification pursuant to Rule 200 of Regulation SHO.

retain priority with respect to a materially different order.

2. Statutory Basis

Phlx believes that its proposal is consistent with Section 6(b) of the Act [8] in general, and furthers the objectives of Section 6(b)(5) of the Act [9] 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. Specifically, Phlx believes that permitting Participants to change the marking of sell orders without affecting their priority on the Phlx book will eliminate an aspect of PSX that had unnecessarily made it more difficult for posted sell orders to execute. Thus, the change will enhance the fairness and efficiency of PSX without affecting the ability of Participants to comply with applicable regulatory requirements. In addition, the changes to the rule that describe the effect of a partial order cancellation promote the clarity of the rule with respect to the ability of a Participant to reduce the size of an existing order without affecting its priority. Phlx further believes that allowing an order to retain priority under these conditions is consistent with the operation of a free and open market and the protection of investors and the public interest, since the Participant that entered an order that is partially cancelled has nevertheless expressed a continued willingness to trade at a specified price, and therefore should retain priority over Participants that joined that price at a later time. Finally, Phlx believes that the proposed addition of language to clearly stipulate that all other order modifications will result in the cancellation and replacement of the original order with a new order with new time priority is consistent with the protection of investors and the public interest because the new language will make clear an existing feature of the market that Phlx believes is important to ensuring that Participants cannot use an existing order unfairly to retain priority with respect to a materially different order.

B. Self-Regulatory Organization's Statement on Burden on Competition

Phlx does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, Phlx believes that the change with respect to allowing Participants to modify the long, short, or short exempt marking of a sell order without affecting its priority will assist Phlx in competing with the BATS Exchange and the BATS Y-Exchange, which already allow their Participants to do so. Phlx further believes that the other changes will not have any effect 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 either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [10] and subparagraph (f)(6) of Rule 19b–4 thereunder.[11] 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–Phlx–2013–54 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–Phlx–2013–54. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).*

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–Phlx–2013–54 and should be submitted on or before June 14, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–12437 Filed 5–23–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69609; File No. SR–NYSEArca–2013–15]

Self-Regulatory Organizations; NYSE Arca Inc.; Order Granting Approval of Proposed Rule Change, Modified by Amendment No. 1, Amending Rule 6.87 In Part and Adding a New Section To Address Errors That Involve Complex Orders

May 20, 2013.

I. Introduction

On February 1, 2013, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(a)(ii).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 200.30–3(a)(12).

Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's Obvious Error Rule in part and add a new section to address errors that involve Complex Orders. The proposed rule change was published for comment in the **Federal Register** on February 21, 2013.[3] The Commission received no comment letters on the proposal. On April 23, 2013, the Exchange filed Amendment No. 1 to the proposed rule change.[4] This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of Proposal

The Exchange proposes several changes to its Obvious Error Rule, Rule 6.87. First, the Exchange is proposing to change the portion of the rule that addresses errors in series with zero or no bid. Specifically, the Exchange proposes replacing reference to ''series quoted no bid on the Exchange'' with ''series where the NBBO bid is zero.'' The Exchange believes that this change ensures consistency with other relevant parts of the rule.

Second, the Exchange proposes to increase the amount of time in which Market Makers are required to notify the Exchange in order to have transactions reviewed under Rule 6.87. Under the proposal, the time would increase from five minutes to ten minutes. The Exchange represents that this additional time accommodates the potential need for Market Makers to call multiple exchanges to have transactions reviewed.

Third, the Exchange proposes to extend the time OTP Holders acting as agent for Customer orders have to notify the Exchange of a potential error from twenty minutes to thirty minutes.[5] The Exchange states that because Customers are far removed from the execution of the trade, it believes that it is appropriate to give Customers more time for their requests for review to pass from their broker-dealer to the Exchange. In contrast, the Exchange notes that other market participants, such as firms and non-member Market Makers tend to route their own order flow directly to the Exchange and are not as far removed from the actual execution. The Exchange further explains that it is fairly common for broker-dealers that receive a Customer order to route that order to another broker-dealer that uses a router that evaluates best execution factors to determine where to ultimate route the order. In these situations, if a Customer chooses to request an Obvious Error review, Customers may need more than 20 minutes for their requests for review to reach the Exchange. The Exchange acknowledges that extending the notification period can increase the uncertainty of the standing of the trade, however, it believes that such uncertainty will be limited to trades that are so outside the bounds of normal trading that they might qualify for Obvious Error treatment.

Finally, the Exchange is proposing to add a new section to Rule 6.87 to address Complex Orders in the Obvious Error context, as its current rule is silent on how such Complex Orders are handled. According to the Exchange, Complex Orders are often used by market participants to enter positions known as spreads that entail limited risk relative to an outright naked sale of a put or call. The Exchange believes that the best approach for dealing with Complex Orders in the Obvious Error context is to preserve the spread whenever possible to mitigate the risk of such trades. Therefore, in the situation where a Complex Order trades with another Complex Order in the Complex Order Book, and one of the legs qualifies for Obvious Error treatment under Rule 6.87, then all legs of the Complex Order will be busted unless both parties mutually agree to an adjustment price.

The Exchange also believes that it is appropriate not to permit Obvious Error treatment in situations where the only error in the trade occurred in a no-bid series. Therefore, in situations where a Complex Order trades with another Complex Order in the Complex Order Book where one leg qualifies for the no-bid provision of Rule 6.87, the trade will stand as executed, unless both parties to the trade mutually agree otherwise. The Exchange believes that this provision will prevent manipulation and a potential increase in nullified trades, particularly because it prevents parties from being able to enter a spread price slightly away from the market, thus increasing the chance that one of the legs will qualify for no-bid treatment, and providing the party entering the order with a window of time to evaluate the market and decide if it would be to its benefit to nullify the trade.

Finally, the Exchange is codifying its current practice for handling situations in which a Complex Order trades with individual orders or quotes in the Consolidated Book. Pursuant to the proposed Rule, each executed leg will be reviewed separately under Rule 6.87. The Exchange notes that while it prefers to avoid the partial execution of a Complex Order, pursuant to this provision, it is possible that after a Complex Order trade, only one leg qualifies for Obvious Error treatment, resulting in the residual position of a single leg. The Exchange explains that is will not seek to nullify a valid execution in the Consolidated Order Book of an OTP Holder who unknowingly interacted with a leg of a Complex Order.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act [6] and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,[8] 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 Exchange is replacing reference to ''series quoted no bid on the Exchange'' with ''series where the NBBO bid is zero'' because it believes that the NBBO provides greater accuracy in determining the value of an option because it takes into account interest from participants across all markets, not just those active on the Exchange. The Exchange also believes that this change will promote just and equitable principles of trade by adding more certainty and consistency to the Exchange's Obvious Error rule. This consistency, according to the Exchange,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 68927 (February 14, 2013), 78 FR 12117 (''Notice'').

[4] In Amendment No. 1, NYSE Arca deleted an erroneous reference to ''Professional Customers'' in the proposal because the Exchange's rules do not include ''Professional Customer'' as a defined category. The Commission believes the amendment is technical in nature and not subject to notice and comment.

[5] The Commission notes that NYSE Arca Rule 6.87, Commentary .06 states that ''for the purposes of Rule 6.87, the term Customer, as defined in Rule 6.1(b)(29) or Rule 6.1A(a)(4), shall not include a broker or dealer.''

[6] 15 U.S.C. 78f.

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

is important to help avoid investor confusion.

The Exchange believes that the change to increase the time limit for Market Makers to request review of transactions protects investors and the public interest because it will ensure they are comfortable meeting the deadline, thereby allowing Market Makers to continue to aggressively provide liquidity in a transparent and nondiscriminatory manner to all participants. Further, the Exchange notes that increasing the time limit for OTP Holders acting as agent for Customers to request review of transactions should give Customers sufficient time to request a review for trades, which is also consistent with investor protection and furthering the public interest as it allows those market participants furthest removed from the point of execution time to evaluate each trade and have adequate time to notify the Exchange of a potential error.

The Exchange believes that the proposed rule changes that address the handling of Complex Orders under the Obvious Error rule are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Exchange notes that detailing the treatment of Complex Orders involved in Obvious Errors provides investors with greater certainty. The Exchange also believes that the best approach for dealing with Complex Orders in the context of the Obvious Error rule is to preserve the spread whenever possible. Second, the Exchange believes that preventing market participants from busting trades solely the result of a leg(s) of a Complex Order executing in a no-bid series furthers the protection of investors and the public interest by preventing potential abuse. Finally, the Exchange believes that the proposed rule change provides objective guidelines for the determination of whether an obvious price error has occurred, as it notes that the determination of whether an ''Obvious Error'' has occurred should be based on specific and objective criteria and subjective to specific and objective procedures.

The Commission notes that, in approving past proposals relating to Obvious Errors, it has emphasized the importance of specific and objective criteria to determine how and when to nullify or adjust trades involving Obvious Errors.[9] The Commission believes the changes that comprise this current proposal further this objective. For the reasons noted above, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[10] 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.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–NYSEArca-2013–15), as modified by Amendment No. 1, is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–12438 Filed 5–23–13; 8:45 am]

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[9] *See, e.g.,* Securities Exchange Release Nos. 54228 (July 27, 2006), 71 FR 44066 (August 3, 2006) (SR–CBOE–2006–14) and 58778 (October 14, 2008), 73 FR 62577 (October 21, 2008) (SR–CBOE–2008–90) (both approving revisions to CBOE's Obvious Error Rules).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Bloggerwave, Inc., Cardima, Inc. (n/k/a CLI Liquidating Corporation), Innuity, Inc., Kaleidoscope Venture Capital, Inc., Lipid Sciences, Inc., Radix Marine, Inc., SBS Interactive Co., and VersaTech, Inc. (n/k/a VersaTech USA), Order of Suspension of Trading

May 22, 2013.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Bloggerwave, Inc. because it has not filed any periodic reports since the period ended September 30, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Cardima, Inc. (n/k/a CLI Liquidating Corporation) because it has not filed any periodic reports since the period ended June 30, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Innuity, Inc. because it has not filed any periodic reports since the period ended September 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Kaleidoscope Venture Capital, Inc. because it has not filed any periodic reports since the period ended September 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Lipid Sciences, Inc. because it has not filed any periodic reports since the period ended June 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Radix Marine, Inc. because it has not filed any periodic reports since the period ended March 31, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of SBS Interactive Co. because it has not filed any periodic reports since the period ended June 30, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of VersaTech, Inc. (n/k/a VersaTech USA) because it has filed only one periodic report since the period ended September 30, 2005.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on May 22, 2013, through 11:59 p.m. EDT on June 5, 2013.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2013–12555 Filed 5–22–13; 11:15 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 8330]

Notice of Public Meeting of the President's Emergency Plan for AIDS Relief (PEPFAR) Scientific Advisory Board

SUMMARY: In accordance with the Federal Advisory Committee Act (FACA), the PEPFAR Scientific Advisory Board (hereinafter referred to as ''the Board'') will hold a conference call on Thursday, June 20th at 10:00 am–12:00 pm. The call will be operator assisted and is open to the public.

The meeting will be hosted by the Office of the U.S. Global AIDS Coordinator, and led by Dr. Amy DuBois, who is the Acting Director of the Office of Research and Science, and the Designated Federal Officer for the SAB.

The Board serves the Global AIDS Coordinator in a solely advisory capacity concerning scientific, implementation, and policy issues related to the global response to HIV/AIDS. These issues are of concern as they influence the priorities and direction of PEPFAR evaluation and research, the content of national and international strategies and implementation, and the role of PEPFAR in international discourse regarding an evidence-based HIV response. Topics for the meeting will include an update on PEPFAR-funded combination prevention studies and implementation science awards; recommendations to Ambassador Goosby on lubricant safety, and data management.

The public may call into this conference call at the following number: (800) 260–0702 with Confirmation Number: 293699. To ensure that an adequate number of lines are provided, please pre-register by emailing *PEPFAR_SAB@state.gov.* To view the documents which will be discussed on this call, please visit *http://www.pepfar.gov/sab/index.htm.* If you would like to submit a written public comment, please email your comments to *PEPFAR_SAB@state.gov.* While the call is open to public attendance, the Board will determine procedures for public participation.

For further information about the meeting, please contact Dr. Amy DuBois, Acting Director of the Office of Research and Science, Office of the U.S. Global AIDS Coordinator at (202) 663–2706 or *duboisa@state.gov.*

Dated: May 20, 2013.

Amy Dubois,

Acting Director, Office of Research and Science, Office of the U.S. Global AIDS Coordinator, Department of State.

[FR Doc. 2013–12455 Filed 5–23–13; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Anti-Drug Program for Personnel Engaged in Specified Aviation Activities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. Information is collected to determine program compliance or non-compliance of regulated aviation employers, oversight planning, to determine who must provide annual Management Information System testing information, and to communicate with entities subject to the program regulations. This notice corrects a reference within a notice for public comment that was published on Monday, May 20, 2013 (78 FR 29427). That notice cited the regulation for drug and alcohol testing as 14 CFR Part 121, appendices I and J. Effective July 13, 2009, that regulation is now a part of 14 CFR Part 120.

DATES: Written comments should be submitted by July 23, 2013.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, AES–200, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0535.

Title: Anti-Drug Program for Personnel Engaged in Specified Aviation Activities

Form Numbers: There are no FAA forms associated with this collection of information.

Type of Review: Renewal of an information collection.

Background: The FAA mandates specified aviation entities to conduct drug and alcohol testing under its regulations, Drug and Alcohol Testing Program (14 CFR Part 120), 49 U.S.C .31306 (Alcohol and controlled substances testing), and the Omnibus Transportation Employee Testing Act of 1991 (the Act). The FAA uses information collected for determining program compliance or non-compliance of regulated aviation employers, oversight planning, determining who must provide annual MIS testing information, and communicating with entities subject to the program regulations. In addition, the information is used to ensure that appropriate action is taken in regard to crew members and other safety-sensitive employees who have tested positive for drugs or alcohol, or have refused to submit to testing.

Respondents: Approximately 7,000 affected entities annually.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 5 minutes.

Estimated Total Annual Burden: 22,902 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on May 20, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–12473 Filed 5–23–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Information for the Prevention of Aircraft Collisions on Runways at Towered Airports

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for to renew an information collection. Feedback from surveys to be conducted under this generic information collection will be used in the prevention of runway collisions and in the medication of the severity and frequency of runway incursions.

DATES: Written comments should be submitted by July 23, 2013.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, AES–200, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0692

Title: Information for the Prevention of Aircraft Collisions on Runways at Towered Airports

Form Numbers: There are no FAA forms associated with this generic collection of information.

Type of Review: Renewal of a generic information collection.

Background: Information to be collected will focus on pilot, controller, or vehicle driver practices and/or feedback on specific runway safety initiatives, such as training programs, Runway Safety Action Team meetings, changes to procedures, changes to infrastructure made to enhance runway safety (such as changes to paint, signs, lights, and markings), or aspects of airport design. Feedback gathered on the perceived effectiveness of specific strategies to prevent runway incursions will be used by the FAA to refine current intervention strategies and to develop new strategies to help reduce the severity and frequency of runway incursions.

Respondents: An estimated 8,900 pilots, aircraft support vehicle drivers, airport/airfield maintenance staff, management, and other personnel engaged in the operations of aircraft or airports.

Frequency: Information will be collected on occasion.

Estimated Average Burden per Response: 10 minutes.

Estimated Total Annual Burden: 1,480 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on May 20, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–12476 Filed 5–23–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Thirteenth Meeting: RTCA Special Committee 222, Inmarsat AMS(R)S.

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Meeting Notice of RTCA Special Committee 222, Inmarsat AMS(R)S.

SUMMARY: The FAA is issuing this notice to advise the public of the thirteenth meeting of the RTCA Special Committee 222, Inmarsat AMS(R)S

DATES: The meeting will be held June 10–11 from 9:00 a.m.–5:00 p.m.

ADDRESSES: The meeting will be held at the Hilton San Diego Resort & Spa, 1775 East Mission Bay Drive, San Diego, CA 92109.

FOR FURTHER INFORMATION CONTACT: This meeting will be held in conjunction with the 2013 Inmarsat Aero Conference. Participants who will be traveling to the meeting should contact Alan Schuster-Bruce, *alan.schuster-bruce@inmarsat.com* for information about accommodation. In addition, Jennifer Iversen may also be contacted directly at email: *jiversen@rtca.org* or by The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC, 20036, or by telephone at (202) 330–0662/(202) 833–9339, fax (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 222. The agenda will include the following:

June 10–11

- Greetings & Attendance.
- Review summary of February 2103 meeting (12th Plenary)
- Report on the status of the DO–343 MASPS approval process
- The primary focus of the meeting will be working sessions dedicated to advancing the DO–262 generic and SwiftBroadband-specific material. Attendees should be prepared to contribute to this effort.
- Other items as appropriate.
- Review action items from 11th and 12th Plenary.
- Schedule 14th Plenary.
- Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 15, 2013.

Paige Williams,

Management Analyst, NextGen, Business Operations Group, Federal Aviation Administration.

[FR Doc. 2013–12464 Filed 5–23–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Twenty-Second Meeting: RTCA Special Committee 224, Airport Security Access Control Systems

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Meeting Notice of RTCA Special Committee 224, Airport Security Access Control Systems.

SUMMARY: The FAA is issuing this notice to advise the public of the twenty-second meeting of the RTCA Special Committee 224, Airport Security Access Control Systems.

DATES: The meeting will be held on June 20, 2013 from 9:00 a.m.–5:00 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 224. The agenda will include the following:

June 20, 2013

- Welcome, Introductions & Administrative Remarks
- Review and Approve Summary of the Twenty-first Meeting
- Updates from TSA (as required)
- Document Detailed Review
- Document Finalization Process
- Time and Place of Next Meeting
- Any Other Business
- Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 15, 2013.

Paige Williams,

Management Analyst, NextGen, Business Operations Group, Federal Aviation Administration.

[FR Doc. 2013–12460 Filed 5–23–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Environmental Impact Statement for the Milwaukee, WI to Minneapolis, MN Rail Corridor

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

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: On December 9, 2010, FRA published a notice of intent to advise the public that a Tier I environmental impact statement (EIS) would be prepared for the Milwaukee, WI to Minneapolis-St. Paul, MN (Milwaukee-Twin Cities) High-Speed Rail Corridor Program. The original project included passenger stations, maintenance facilities, and the construction of a high-speed rail line between Milwaukee and the Twin Cities. Alternatives originally under consideration included taking no action (No Build), as well as several build alternatives along a variety of corridors between Milwaukee and the Twin Cities. However, to prioritize the limited funding available for the EIS, the Minnesota Department of Transportation (MnDOT) now intends to focus the Tier 1 EIS on improvements to existing service using the existing route on the Milwaukee to Twin Cities passenger rail corridor (the Corridor) from Milwaukee Intermodal Station to the Minneapolis Transportation Interchange.

Purpose and Need: The purpose of the current proposed action is to meet future regional travel demand and provide intermodal connectivity to existing and planned transportation systems in Minnesota and Wisconsin. The proposed action offers an opportunity to provide reliable and competitive passenger rail service as an attractive alternative transportation choice between Milwaukee and the Twin Cities by: decreasing travel times, increasing frequency of service, and providing safe and reliable service. The need for the proposed action is based on the limitations and vulnerabilities of available travel modes between Milwaukee and the Twin Cities. Existing transportation modes, including highway, bus, and air travel, have inherent problems including congested highways near the Milwaukee, Madison, and Twin Cities metro areas and airport capacity issues at Minneapolis-St. Paul International Airport and Milwaukee's General Mitchell International Airport. Improved and expanded passenger rail service can provide an alternative mode and/or relief to these congested roadways and airports.

The environmental process will identify improvements to infrastructure that would allow for increased train frequency and reduced travel times for passenger rail service along the existing route on the Corridor. The existing route currently has passenger service; Amtrak's *Empire Builder* serves the Corridor, and, therefore, provides the best opportunity to implement a phased approach for infrastructure improvements.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Krom, Director, Passenger Rail Office, Minnesota Department of Transportation (MnDOT), 395 John Ireland Boulevard, MS 480, St. Paul, MN 55155, telephone (651) 366–3193; or Ms. Colleen Vaughn, Office of Railroad Policy and Development, Federal Railroad Administration (FRA), 1200 New Jersey Avenue SE., MS–20/W38–303, Washington, DC 20590, telephone (202) 493–6096.

SUPPLEMENTARY INFORMATION: The Vision of the Minnesota Comprehensive Statewide Freight and Passenger Rail Plan is to develop a robust intrastate and interstate intercity passenger rail system which results in improved travel options, costs and speeds for Minnesota and interstate travelers. One of the priority program elements identified in the Statewide Rail Plan is to advance corridors incrementally and simultaneously with MnDOT's support, sequencing corridors and improvements depending on financing, right-of-way (ROW) acquisition and agreements with freight railroads.

MnDOT is cognizant of hurdles faced in completely funding the vision for the Corridor in a single funding cycle in favor of partial or incremental funding and building of a passenger rail route in phases allowing for incremental increases in frequency as well as ''phased'' reduction in travel time. The existing passenger rail service route between Milwaukee and the Twin Cities provides the best opportunity to implement a phased approach for infrastructure improvements due to its potential to incrementally implement a reduction in travel time and increase in frequency. This phased approach recognizes the constraints associated with funding requirements for major infrastructure improvements at the state and federal levels and is consistent with the Minnesota Statewide Rail Plan.

Currently, MnDOT and the Wisconsin Department of Transportation (WisDOT) are coordinating with Amtrak to determine the feasibility of increasing the frequency of the current service from one round-trip per day to two with the introduction of the second *Empire Builder* train between the Twin Cities and Chicago via Milwaukee.

Environmental Review Process

The EIS will be developed in accordance with Council on Environmental Quality (CEQ) regulations (40 CFR part 1500 et seq.) implementing the National Environmental Policy Act (NEPA), and FRA's Procedures for Considering Environmental Impacts (64 FR 28545; May 26, 1999). FRA and MnDOT will use a tiered process, as provided for in 40 CFR 1508.28 and in accordance with FRA guidance, in the completion of the environmental review of the Program. The Tier 1 EIS will address broad corridor-level issues. Subsequent Tier 2 reviews would analyze, at a greater level of detail, narrower site-specific projects based on the decisions made in the Tier 1 EIS.

The Tier 1 EIS will result in a NEPA document with the appropriate level of

detail for corridor-level decisions and will address broad overall issues of concern, including but not limited to:

- Confirming the purpose and need for the proposed action.
- Identifying the infrastructure and equipment investment requirements for the reasonable and feasible alternatives.
- Identifying the operational changes required for the reasonable and feasible alternatives.
- Describing the environmental impacts associated with proposed changes in passenger rail train frequency, speed, and on-time performance.
- Characterizing the environmental consequences of the reasonable and feasible alternatives.
- Establishing the timing and sequencing of independent actions to maintain a state of good repair and to implement the proposed action.
- Selecting component projects for Tier 2 NEPA documentation.

Additional information on the Project can be obtained by visiting the Project Web site at *http://www.dot.state.mn.us/passengerrail/mwrri/phase7.html* or sending an email to *MWRRIPhase7@state.mn.us.*

Issued in Washington, DC, on May 17, 2013.

Corey Hill,

Director, Passenger and Freight Programs, Federal Railroad Administration.

[FR Doc. 2013–12435 Filed 5–23–13; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 21, 2013.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before June 24, 2013 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request maybe found at *www.reginfo.gov.*

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0059.

Type of Review: Revision of a currently approved collection.

Title: Usual and Customary Business Records Relating to Tax-Free Alcohol (TTB REC 5150/3).

Abstract: Tax-free alcohol is used for nonbeverage purposes by educational organizations, hospitals, laboratories, etc. These records maintain accountability of spirits and protect tax revenue and public safety.

Affected Public: Private Sector: Not-for-profit institutions; Federal Government; State, Local, and Tribal Governments.

Estimated Annual Burden Hours: 1.

OMB Number: 1513–0061.

Type of Review: Extension without change of a currently approved collection.

Title: Letterhead Applications and Notices Relating to Denatured Spirits (TTB REC 5150/2).

Abstract: Denatured spirits are used for nonbeverage industrial purposes in the manufacture of personal and household products. Permits, applications, and notices control the authorized uses and flow of denatured spirits, and protect the tax revenue and public safety.

Affected Public: Private Sector: Businesses or other for-profits, Not-for-profit institutions; State, Local and Tribal Governments.

Estimated Annual Burden Hours: 1,890.

OMB Number: 1513–0071.

Type of Review: Extension without change of a currently approved collection.

Title: Tobacco Products Importer or Manufacturer—Records of Large Cigar Wholesale Prices (TTB REC 5230/1).

Abstract: Because the tax on large cigars is based on the sales price, these records are needed to verify that the correct tax has been determined by the manufacturer or importer.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 1,906.

OMB Number: 1513–0127.

Type of Review: Extension without change of a currently approved collection.

Title: Petition for the establishment of an American Viticultural Area.

Abstract: TTB establishes American Viticultural Areas (AVAs) through the regulatory process based on petitions submitted from the public. TTB regulations in 27 CFR Part 9 specify the information that must be included in the petition for TTB to be able to evaluate the petition and consider creating a new AVA or amending the name, boundary, or other terms of an existing AVA.

Affected Public: Private Sector: Businesses or other for-profits, Farms.

Estimated Annual Burden Hours: 1,430.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2013–12446 Filed 5–23–13; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Treasury Order Establishing the Bureau of the Fiscal Service

AGENCY: Bureau of the Fiscal Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury is publishing Treasury Order 136–01 that formally establishes within the Department the Bureau of the Fiscal Service, consolidating the Financial Management Service (''FMS'') and the Bureau of the Public Debt (''BPD'').

DATES: Treasury Order 136–01 was effective October 7, 2012.

FOR FURTHER INFORMATION CONTACT: Marc Seldin, Senior Counsel, 202–874–6863 or marc.seldin@fms.treas.gov; or David Copenhaver, Senior Attorney, at 304–480–6665 or *david.copenhaver@bpd.treas.gov.*

SUPPLEMENTARY INFORMATION: On October 7, 2012, the Secretary of the Treasury issued Treasury Order 136–01. The Order consolidated and redesignated the bureaus formerly known as the Bureau of the Public Debt and the Financial Management Service as the Bureau of the Fiscal Service. The Order delegates to the Commissioner, Bureau of the Fiscal Service, the authority that was previously delegated to the Commissioner of the Public Debt and the Commissioner, Financial Management Service. The Order also provides for the continuation of all

administrative actions completed by the Bureau of the Public Debt and the Financial Management Service on or before October 7, 2012. Treasury Order 136–01 ensures that the Commissioner, Bureau of the Fiscal Service, may exercise the functions and carry out the duties of the Secretary with respect to applicable Treasury authorities.

The text of the Order reads as follows.

Dated: May 14, 2013.

Richard L. Gregg,

Fiscal Assistant Secretary.

Treasury Order 136–01

Date: October 7, 2012

Subject: Bureau of the Fiscal Service

1. Establishment. By virtue of the authority vested in the Secretary of the Treasury (''Secretary'') under 31 U.S.C. section 321(b), the Bureau of the Fiscal Service is established within the Department.

2. Designation of the Bureau of the Fiscal Service. The Bureaus formerly known as the Bureau of the Public Debt (''BPD'') and the Financial Management Service (''FMS'') (previously known as the Bureau of Government Financial Operations) shall be consolidated and redesignated as the Bureau of the Fiscal Service (''BFS''). The head of the BFS is the Commissioner, who is appointed by the Secretary, and who shall perform duties as assigned by the Secretary or his designee. The Commissioner, BFS, shall report to the Fiscal Assistant Secretary.

3. Authorities, Functions and Duties of the Commissioner, BFS. The Commissioner, BFS, shall have all authorities, functions, and duties delegated to the Commissioner of the Public Debt, and the Commissioner, FMS, in effect on October 7, 2012, and any other authorities, functions, and duties assigned by the Secretary or his designee. The Commissioner, BFS, shall possess the full authority to administer the affairs of and to perform the functions and duties of BFS, including, without limitation, all management and administrative authorities and duties similarly granted and assigned to Bureau Heads or Heads of Bureaus in Treasury Orders and Treasury Directives.

4. Administrative Actions and Regulations.

a. All administrative actions of BPD and FMS, including but not limited to orders, determinations, rules, regulations, personnel actions, agreements, contracts, certificates, adopted or executed in connection with the administration and implementation of the authorities, functions, and duties specified in paragraph 3 that are in effect on October 7, 2012 shall continue in effect in accordance with their terms.

b. The terms ''Commissioner of the Public Debt, Commissioner, FMS,'' and similar references wherever used in completed administrative actions issued, adopted or executed in connection with the administration and implementation of the authorities, functions, and duties specified in paragraph 3 on or before October 7, 2012 shall mean the Commissioner, BFS. All references to officers or employees of BPD or FMS in completed administrative actions issued, adopted or executed in connection with the administration and implementation of the authorities, functions, and duties specified in paragraph 3 on or before October 7, 2012 shall apply to officers or employees of BFS.

c. Regulations for the purposes of carrying out the authorities, functions, and duties delegated to the Commissioner, BFS, may be issued by that Commissioner with the approval of the Secretary or his designee.

5. Redelegation. The Commissioner, BFS, may delegate any of the authority vested under this Order, unless otherwise specified by the Secretary or his designee. All delegations of authority in existence on October 7, 2012 related to the administration and implementation of the authorities, functions, and duties specified in paragraph 3 to positions established within BFS shall remain in effect in accordance with their terms.

6. Ratification. Any action heretofore taken that is consistent with this Order is hereby affirmed and ratified.

7. Authority of Inspectors General. The provisions of this Order shall not be construed to interfere with or impede the authorities or independence of the Department's inspectors general.

8. Cancellation. Treasury Order 145–06, ''Designation as Financial Management Service,'' dated October 10, 1984, is superseded.

9. Office of Primary Interest. Bureau of the Fiscal Service

Timothy Geithner,

Secretary of the Treasury.

[FR Doc. 2013–12056 Filed 5–23–13; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of One (1) Entity Pursuant to Executive Order 13582 of August 17, 2011, ''Blocking Property of the Government of Syria and Prohibiting Certain Transactions With Respect to Syria''

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of one (1) entity whose property and interests in property are blocked pursuant to Executive Order 13582 of August 17, 2011, ''Blocking Property of the Government of Syria and Prohibiting Certain Transactions With Respect to Syria.''

DATES: The designation by the Director of OFAC of the one (1) entity identified in this notice, pursuant to Executive Order 13582, is effective on May 16, 2013.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue NW (Treasury Annex), Washington, DC 20220, Tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, Tel.: 202/622–0077.

Background

On August 17, 2011, the President issued Executive Order 13582, ''Blocking Property of the Government of Syria and Prohibiting Certain Transactions With Respect to Syria,'' (the ''Order'') pursuant to, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–06). In the Order, the President took additional steps with respect to the national emergency declared in Executive Order 13338 of May 11, 2004, which was modified in scope and relied upon for additional steps taken in Executive Order 13399 of April 25, 2006, Executive Order 13460 of February 13, 2008, Executive Order 13572 of April 29, 2011, and Executive Order 13573 of May 18, 2011.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, including any overseas branch, of (1) the Government of Syria; (2) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, (a) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, any person whose property and interests in property are blocked pursuant to the Order; or (b) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

On May 16, 2013, the Director of OFAC, in consultation with the Department of State, designated, pursuant to one or more of the criteria set forth in subsection 1(b) of the Order, one (1) entity whose property and interests in property are blocked pursuant to Executive Order 13582.

The listing for the entity on OFAC's list of Specially Designated Nationals and Blocked Persons appear as follows:

Entity

1. AL-DUNYA TELEVISION (a.k.a. ADDOUNIA TV; a.k.a. AL DOUNIA; a.k.a. AL–DONYA TELEVISION CHANNEL; a.k.a. DUNIA LIMITED LIABILITY COMPANY FOR INFORMATION; a.k.a. DUNIA TELEVISION), Information Free Zone, Damascus, Syria [SYRIA].

Dated: May 16, 2013.

John H. Battle,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2013–12448 Filed 5–23–13; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of One (1) Individual Pursuant to Executive Orders 13572 of April 29, 2011, ''Blocking Property of Certain Persons With Respect to Human Rights Abuses in Syria'' and 13573 of May 18, 2011, ''Blocking Property of Senior Officials of the Government of Syria''

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of one (1) individual whose property and interests in property are blocked pursuant to Executive Order 13572 of April 29, 2011, ''Blocking Property of Certain Persons with Respect to Human Rights Abuses in Syria'' and Executive Order 13573 of May 18, 2011, ''Blocking Property of Senior Officials of the Government of Syria.''

DATES: The designation by the Director of OFAC of this individual identified in this notice, pursuant to Executive Order 13572 and Executive Order 13573, is effective on May 16, 2013.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue NW. (Treasury Annex), Washington, DC 20220, Tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, Tel.: 202/622–0077.

Background

On May 16, 2013, the Director of OFAC, in consultation with the Department of State, designated one (1) individual pursuant to one or more of the criteria set forth in subsection 1(b) of Executive Order 13572, and designated, pursuant to one or more of the criteria set forth in subsection 1 (b) of Executive Order 13573.

The listing for the individual on OFAC's list of Specially Designated Nationals and Blocked Persons appears as follows:

Individual

1. AL-A-FREIJ, Fahd Jassem (a.k.a. Al-Freij, Fahad Jassim; a.k.a. Al-Furayj, Fahd Jasim); DOB 01 Jan 1950; alt. DOB 1947; POB Hama, Syria; nationality Syria; Deputy Commander-in-Chief of the Army and the Armed Forces and Minister of Defense (individual) [SYRIA].

Dated: May 16, 2013.

John H. Battle,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2013–12449 Filed 5–23–13; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of Three (3) Individuals Pursuant to Executive Order 13573 of May 18, 2011, ''Blocking Property of Senior Officials of the Government of Syria''

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of three (3) individuals whose property and interests in property are blocked pursuant to Executive Order 13573 of May 18, 2011, ''Blocking Property of Senior Officials of the Government of Syria.''

DATES: The designation by the Director of OFAC of the three (3) individuals identified in this notice, pursuant to Executive Order 13573, is effective on May 16, 2013.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue NW. (Treasury Annex), Washington, DC 20220, Tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, Tel.: 202/622–0077.

Background

On May 18, 2011, the President issued Executive Order 13573, ''Blocking Property of Senior Officials of the Government of Syria,'' (the ''Order'') pursuant to, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–06). In the Order, the President took additional steps with respect to the national emergency declared in Executive Order 13338 of May 11, 2004, which was expanded in scope in Executive Order 13572 of April 29, 2011.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, of persons listed in the Annex to the Order and of persons determined by the Secretary of the

Treasury, in consultation with the Secretary of State: (1) To be a senior official of the Government of Syria; (2) to be an agency or instrumentality of the Government of Syria, or owned or controlled, directly or indirectly, by the Government of Syria or by an official or officials of the Government of Syria; (3) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, any person whose property an interests in property are blocked pursuant to this order; or (4) to be owned or controlled by, or to have acted or purported to act for or on behalf of directly or indirectly, any person whose property and interest are blocked pursuant to this order.

On May 16, 2013, the Director of OFAC, in consultation with the Department of State, designated, pursuant to one or more of the criteria set forth in subsection 1(b) of the Order, (3) three individuals whose property and interests in property are blocked pursuant to Executive Order 13573.

The listings for those individuals on OFAC's list of Specially Designated Nationals and Blocked Persons appear as follows:

Individuals

1. AL-AHMAD, NAJM HAMAD; DOB 1969; POB Aleppo, Syria; Minister of Justice (individual) [SYRIA].
2. AL-NAYEF, SA'AD ABDEL-SALAM; DOB 1959; POB Aleppo, Syria; Minister of Health (individual) [SYRIA].
3. AL-SUKHNI, ADNAN ABDO; DOB 1961; POB Aleppo, Syria; Minister of Industry (individual) [SYRIA].

Dated: May 16, 2013.

John H. Battle,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2013–12442 Filed 5–23–13; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of (1) One Individual Designated Pursuant to Executive Order 13573

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is removing the name of one (1) individual whose property and interests in property are blocked pursuant to Executive Order 13573 of May 18, 2011, ''Blocking Property of Senior Officials of the Government of Syria'' from the list of Specially Designated Nationals and Blocked Persons (''SDN List'').

DATES: The removal of this individual from the SDN List is effective as of May 16, 2013.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue NW. (Treasury Annex), Washington, DC 20220, Tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, Tel.: 202/622–0077.

Background

On May 18, 2011, the President issued Executive Order 13573, ''Blocking Property of Senior Officials of the Government of Syria,'' (the ''Order'') pursuant to, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–06). In the Order, the President took additional steps with respect to the national emergency declared in Executive Order 13338 of May 11, 2004, which was expanded in scope in Executive Order 13572 of April 29, 2011. The Order authorizes the Secretary of the Treasury, in consultation with the Secretary of State, to designate additional persons or entities determined to meet certain criteria set forth in Executive Order 13573.

The Department of the Treasury's Office of Foreign Assets Control has determined that this individual should be removed from the SDN List.

The following designation is removed from the SDN List:

Individual

1. RAJIHA, Dawood (a.k.a. RAJHA, Daood; a.k.a. RAJHA, Davoud; a.k.a. RAJHA, Dawood; a.k.a. RAJHA, Dawoud; a.k.a. RAJIHA, Dawood Abdukllah; a.k.a. RAJIHAH, Dawud); DOB 1947; POB Damascus, Syria; Minister of Defense; General (individual) [SYRIA].

The removal of this individual from the SDN List is effective as of May 16, 2013. All property and interests in property of the individual that are in or hereafter come within the United States or the possession or control of United States persons are now unblocked.

Dated: May 16, 2013.

John H. Battle,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2013–12454 Filed 5–23–13; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–INT

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 1099–INT, Interest Income.

DATES: Written comments should be received on or before July 23, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, 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: Interest Income.

OMB Number: 1545–0112.

Form Number: 1099–INT.

Abstract: Form 1099–INT is used for reporting interest income paid, as required by sections 6049 and 6041 of the Internal Revenue Code. The IRS uses the form to verify compliance with the reporting rules and to verify that the recipient has included the proper amount of interest on his or her income tax return.

Current Actions: There are no significant changes to the form previously approved by OMB. However, based on updated filing estimates, the burden has decreased by 598,234 hours.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, Federal Government, individuals or households, and not-for-profit institutions.

Estimated Number of Responses: 243,536,300.

Estimated Time per Response: 17 minutes.

Estimated Total Annual Burden Hours: 63,079,438.

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: May 14, 2013.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 2013–12374 Filed 5–23–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Meeting of Citizen Coinage Advisory Committee

ACTION: Notification of Citizens Coinage Advisory Committee May 30, 2013, Public Meeting.

SUMMARY: Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for May 30, 2013.

Date: May 30, 2013.

Time: 1:00 p.m. to 2:00 p.m.

Location: CCAC members will participate *via teleconference.* Interested members of the public may attend the meeting at the United States Mint, 801 9th Street NW., Washington, DC, Conference Room A.

Subject: Review and consideration of themes for the proposed Congressional Gold Medal for Addie Mae Collins, Denise McNair, Carole Robertson, and Cynthia Wesley to commemorate the lives they lost 50 years ago in the bombing of the Sixteenth Street Baptist Church.

Interested persons should call the CCAC HOTLINE at (202) 354–7502 for the latest update on meeting time and room location.

In accordance with 31 U.S.C. 5135, the CCAC:

- Advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.
- Advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Makes recommendations with respect to the mintage level for any commemorative coin recommended.

FOR FURTHER INFORMATION CONTACT: William Norton, United States Mint Liaison to the CCAC; 801 9th Street NW., Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6525.

Authority: 31 U.S.C. 5135(b)(8)(C).

Dated: May 20, 2013.

Richard A. Peterson,

Acting Director, United States Mint.

[FR Doc. 2013–12474 Filed 5–23–13; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 78 Friday,

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Part II

Department of the Interior

Bureau of Land Management

43 CFR Part 3160

Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[WO–300–L13100000.FJ0000]

RIN 1004–AE26

Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Supplemental notice of proposed rulemaking and request for comment.

SUMMARY: On May 11, 2012, the Bureau of Land Management (BLM) published in the **Federal Register** a proposed rule entitled Oil and Gas; Well Stimulation, Including Hydraulic Fracturing, on Federal and Indian Lands. The BLM has used the comments on that draft to make improvements and is now seeking additional comment on a revised proposed rule. Key issues in this updated draft include: the use of an expanded set of cement evaluation tools to help ensure that usable water zones have been isolated and protected from contamination; and more detailed guidance on how trade secrets claims will be handled, modeled on the procedures promulgated by the State of Colorado. The revised proposed rule would also provide opportunities for the BLM to coordinate standards and processes with individual States and tribes to reduce administrative costs and to improve efficiency.

DATES: Send your comments on this supplemental notice of proposed rulemaking (SNPR) to the BLM on or before June 24, 2013. The BLM need not consider, or include in the administrative record for the final rule, comments that the BLM receives after the close of the comment period or comments delivered to an address other than those listed below (see **ADDRESSES**). If you wish to comment on the information collection requirements in this SNPR, please note that the Office of Management and Budget (OMB) is required to make a decision concerning the collection of information contained in this SNPR between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of being considered if OMB receives it by June 24, 2013.

ADDRESSES: *Mail:* U.S. Department of the Interior, Director (630), Bureau of Land Management, Mail Stop 2134 LM, 1849 C St. NW., Washington, DC 20240, Attention: 1004–AE26. *Personal or messenger delivery:* Bureau of Land Management, 20 M Street SE., Room 2134 LM, Attention: Regulatory Affairs, Washington, DC 20003. *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions at this Web site.

Comments on the information collection requirement: *Fax:* Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, Desk Officer for the Department of the Interior, fax 202–395–5806. *Electronic mail: oira_submission@omb.eop.gov*. Please indicate ''Attention: OMB Control Number 1004–0203,'' regardless of the method used to submit comments on the information collection burdens. If you submit comments on the information collection burdens, please provide the BLM with a copy of your comments, at one of the addresses shown above.

FOR FURTHER INFORMATION CONTACT: Steven Wells, Division Chief, Fluid Minerals Division, 202–912–7143 for information regarding the substance of the rule or information about the BLM's Fluid Minerals Program. 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. 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:

Executive Summary

''Hydraulic fracturing,'' a process used to stimulate production from oil and gas wells, has been a growing practice in recent years. Public awareness of hydraulic fracturing has grown as new horizontal drilling technology has allowed increased access to shale oil and gas resources across the country, sometimes in areas that have not previously or recently experienced significant oil and gas development. The rapid expansion of this practice has caused public concern about whether fracturing can lead to or cause the contamination of underground water sources, whether the chemicals used in fracturing should be disclosed to the public, and whether there is adequate management of well integrity and the ''flowback'' fluids that return to the surface during and after fracturing operations.

The Bureau of Land Management (BLM) oversees approximately 700 million subsurface acres of Federal mineral estate and 56 million subsurface acres of Indian mineral estate across the United States. This revised proposed rule and the initial proposed rule would modernize BLM's management of hydraulic fracturing operations by ensuring that hydraulic fracturing operations conducted on the public mineral estate (including split estate where the Federal Government owns the subsurface mineral estate) follow certain best practices, including: (1) The public disclosure of chemicals used in hydraulic fracturing operations on Federal and Indian lands; (2) Confirmation that wells used in fracturing operations meet appropriate construction standards; and (3) A requirement that operators put appropriate plans in place for managing flowback waters from fracturing operations.

Like the initial proposed rule, this revised proposed rule would apply to Indian lands so that these lands and communities receive the same level of protection provided on public lands. In most cases, the requirements in this rule can be satisfied by submitting additional information during the existing process that the BLM currently applies to operators when reviewing and approving an operator's Application for Permit to Drill (APD) on public or Indian lands. The rule would require that disclosure of the chemicals used in the fracturing process be provided to the BLM after the fracturing operation is completed. This information may be submitted to the BLM through an existing Web site known as FracFocus.org, already used by some states for reporting mandatory chemical disclosure of hydraulic fracturing chemicals. Submission of this information through this Web site allows an operator to provide the public and many State and tribal regulators with prompt access. This approach also has the benefit of reducing reporting burdens for oil and gas operators by avoiding duplicative reporting requirements and administrative duties for the BLM in many instances.

The BLM developed this revised proposed rule and the initial proposed rule with the intention of improving public awareness and strengthening oversight of hydraulic fracturing operations without introducing unnecessary new procedures or delays in the process of developing oil and gas resources on public and Indian lands. Some states, like Colorado, Wyoming, Arkansas, and Texas, have issued their own regulations addressing disclosures and oversight for oil and gas drilling operations. Operators with leases on Federal lands must comply with both BLM's regulations and with State

operating requirements, including State permitting and notice requirements to the extent they do not conflict with BLM regulations. State regulations pertaining to hydraulic fracturing operations are not uniform. The States that have regulated hydraulic fracturing typically require some notification to a state agency and some require reporting on FracFocus. Other States have not taken action in this area. This revised proposed rule seeks to create a consistent oversight and disclosure model that will apply across all public and Indian lands that are available for oil and gas development, and aims to streamline and minimize the efforts required to comply with any new requirements, while also protecting Federal and tribal interests and resources. Currently nearly 36 million acres of Federal land are under lease for potential oil and gas development. These leases can be found on public land and for public minerals in 24 states The BLM has revised the proposed rule to reduce some of the information requirements to avoid duplication with the requirements of States (on Federal land) and tribes (on tribal land). The BLM has considered various options to encourage streamlining, flexibility, and more efficient operation on both BLM and tribal leases.

The BLM has for many years had a number of agreements with certain States and tribes concerning implementation of the various regulatory programs in logical and effective ways. The BLM will work with States and tribes to establish formal agreements that will leverage the strengths of partnerships, and reduce duplication of efforts for agencies and operators, particularly in implementing the revised proposed rule as consistently as possible with State or tribal regulations.

Similarly, the BLM has been looking to State regulations governing hydraulic fracturing for elements that should be incorporated into the revised proposed rule. Examples include allowing disclosure of chemical constituents of fracturing fluids through FracFocus, as required by several states, and adoption of the Colorado system of having operators submit an affidavit that undisclosed information about chemicals is entitled to protection as trade secrets.

Regarding Indian lands, the BLM fully embraces the statutes, Executive Orders, and other statements of governmental or departmental policy in favor of promoting tribal self-determination and control of resources. The Indian Mineral Leasing Act (IMLA), however, subjects all oil and gas operations on trust or restricted Indian lands to the Secretary's regulations and does not authorize the Secretary to allow tribes to opt out of these regulations. Nonetheless, the BLM is actively addressing ways to use tribal rules in the implementation of the revised proposed rule. For example, the proposed rule recognizes the authority that may be delegated to the States and the tribes to implement various environmental programs under the Safe Drinking Water Act to protect underground sources of drinking water and has been revised to defer to State (on Federal land) or tribal (on tribal land) designations of aquifers as either requiring protection from oil and gas operations, or as exempt from any requirement to isolate water-bearing zones in section 3162.3–3(b).

The revised proposed rule also adds a provision allowing the BLM to approve a variance that would apply to all lands within the boundaries of a State, a tribe, or described as field-wide or basin-wide, that is commensurate with the state or tribal regulatory scheme. The BLM must determine that the variance would meet or exceed the effectiveness of the revised proposed rule. State and tribes would be invited to work with the BLM to craft variances that would allow technologies, processes or standards required or allowed by the State or tribe to be accepted as compliance with the rule. Such variances would allow the BLM and the States and tribes to improve efficiency and reduce costs for operators and for the agencies.

The proposed changes to existing hydraulic fracturing oversight are partly in response to recommendations put forward by the Shale Gas Production Subcommittee of the Secretary of Energy's Advisory Board in 2011. Also, current BLM regulations governing hydraulic fracturing operations on public lands are more than 30 years old and were not written to address modern hydraulic fracturing technologies and practices. In preparing this revised proposed rule, the BLM received input from members of the public and stakeholders, and consulted with tribal representatives.

The changes from the original proposed well stimulation rule are discussed in greater detail below, but some of the notable changes include the following. This revised proposed rule would require use of cement evaluation logs (CELs) in the place of the originally proposed cement bond logs (CBL). The use of the broader term of CEL is intended to allow a variety of logging methods to be used to show the adequacy of cementing, including technologies such as ultrasonic logs, variable density logs, micro-seismograms, standard CBLs, CBLs with directional receiver array, ultrasonic pulse echo technique, and isolation scanners. CBLs would be accepted because they are one of the technologies included in CELs. However, if a State (on Federal land) or tribe (on Indian land) designates some other technology to meet its requirements for hydraulic fracturing wells that is at least as effective in assuring adequate cementing, the BLM may allow use of that technology as a variance from the CEL requirement.

The revised proposed rule would also change the operation of the trade secrets provision. The revised proposed rule allows operators to submit to the BLM an affidavit asserting exemption from disclosure of certain information having to do with the hydraulic fracturing fluid. The rule also gives the BLM the ability to demand the specific chemical details of any materials being proposed for trade secret exemption.

Further, although the BLM is not proposing a material change in the provision that allows hydraulic fracturing flowback fluids to be stored either in tanks or in lined pits, the BLM seeks comments on the costs and benefits of requiring flowback fluids to be stored only in closed tanks. Other provisions of the initial proposed rule have been modified for clarity or in response to comments. Accordingly, the entire revised proposed rule is available for public comment.

The BLM has analyzed the costs and the benefits of this proposed action in an accompanying Regulatory Impact Analysis available in the rulemaking docket. The estimated costs range from $12 million to $20 million per year. The range reflects uncertainty about the generalization of costs across all hydraulic fracturing operations. The potential benefits of the rule are more challenging to monetize than the costs, but that does not mean that the rule is without benefits. The rule creates a consistent, predictable regulatory framework, in accordance with the BLM's stewardship responsibilities under the *Federal Land Policy and Management Act* and other statutes, for hydraulic fracturing involving BLM-administered lands. The rule is designed to reduce the environmental and health risk that can be posed by hydraulic fracturing operations, particularly in the way the rule addresses flowback fluids, well construction, and hydraulic fracture design. The rule would ensure that operators demonstrate wellbore integrity with pressure tests on 100 percent of the hydraulically fractured wells and with

CELs on the casing strings that protect usable water on each type well. A type well is an oil and gas well that can be used as a model for well completion in a field where geologic characteristics are substantially similar. The authorized officer would evaluate whether substantially similar geologic conditions exist during review of the APD or sundry notice requesting approval of a group of wells for a field. CELs would be required only of type wells, ''wildcat'' wells that are not approved as part of a field development proposal, and whenever there is evidence of a problem with the cement job. The BLM is asking for comments on the effectiveness of this proposal.

I. Public Comment Procedures
II. Background
III. Discussion of the Revised Proposed Rule and Comments on the Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

If you wish to comment, you may submit your comments by any one of several methods: *Mail:* You may mail comments to U.S. Department of the Interior, Director (630), Bureau of Land Management, Mail Stop 2134LM, 1849 C Street NW., Washington, DC 20240, Attention: 1004–AE26. *Personal or messenger delivery:* Bureau of Land Management, 20 M Street SE., Room 2134LM, Attention: Regulatory Affairs, Washington, DC 20003. *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions at this Web site.

You may submit comments on the information collection burdens directly to the Office of Management and Budget, Office of Information and Regulatory Affairs, Desk Officer for the Department of the Interior, fax 202–395–5806, or *oira_submission@omb.eop.gov*. Please include ''Attention: OMB Control Number 1004–0203'' in your comments. If you submit comments on the information collection burdens, please provide the BLM with a copy of your comments, at one of the addresses shown above.

Please make your comments as specific as possible by confining them to issues directly related to the content of this revised proposed rule, and explain the basis for your comments. The comments and recommendations that will be most useful and likely to influence agency decisions are:

1. Those supported by quantitative information or studies; and
2. Those that include citations to, and analyses of, the applicable laws and regulations.

The BLM is not obligated to consider or include the comments received after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**) in the Administrative Record for the rule.

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES** during regular hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays. Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

II. Background

Well stimulation techniques, such as hydraulic fracturing, are commonly used by oil and natural gas producers to increase the volumes of oil and natural gas that can be extracted from wells. Hydraulic fracturing techniques are particularly effective in enhancing oil and gas production from shale gas or oil formations. Until quite recently, shale formations rarely produced oil or gas in commercial quantities because shale does not generally allow flow of hydrocarbons to wellbores unless mechanical changes to the properties of the rock can be induced. The development of horizontal drilling, combined with hydraulic fracturing, has made the production of oil and gas from shale feasible. Hydraulic fracturing involves the injection of fluid under high pressure to create or enlarge fractures in the reservoir rocks. The fluid that is used in hydraulic fracturing is usually accompanied by proppants, such as particles of sand, which are carried into the newly fractured rock and help keep the fractures open once the fracturing operation is completed. The proppant-filled fractures become conduits for fluid migration from the reservoir rock to the wellbore and the fluid is subsequently brought to the surface. In addition to the water and sand (which together typically make up 98 to 99 percent of the materials pumped into a well during a fracturing operation), chemical additives are also frequently used. These chemicals can serve many functions in hydraulic fracturing, including limiting the growth of bacteria and preventing corrosion of the well casing. The exact formulation of the chemicals used varies depending on the rock formations, the well, and the requirements of the operator.

Hydraulic fracturing is a common and accepted practice, and has been, in oil and gas production for decades. The BLM estimates that about 90 percent (approximately 3,400 wells per year) of wells drilled on Federal and Indian lands are stimulated using hydraulic fracturing techniques. Although many of these are conventional wells, much of the new activity occurs on wells designed to produce shale oil and gas or to employ horizontal drilling techniques. Over the past 10 years, there have been significant technological advances in horizontal drilling, which is frequently combined with hydraulic fracturing. This combination, together with the discovery that these techniques can release significant quantities of oil and gas from large shale deposits, has led to production from geologic formations in parts of the country that previously did not produce significant amounts of oil or gas. The resulting expansion of oil and gas drilling into new parts of the country because of the availability of new horizontal drilling technologies has significantly increased public awareness of hydraulic fracturing and the potential impacts that it may have on water quality and water consumption, unless adequately regulated and safely implemented.

The BLM's existing hydraulic fracturing regulations are found at 43 CFR 3162.3–2. These regulations were established in 1982 and last revised in 1988, long before the latest hydraulic fracturing technologies became widely used. In response to public interest in hydraulic fracturing and in the BLM's regulation of hydraulic fracturing, in particular, the Department of the Interior (Department) held a forum on hydraulic fracturing on November 30, 2010, in Washington, DC, attended by the Secretary of the Interior and more than 130 interested parties. The BLM later hosted public forums (in Bismarck, North Dakota on April 20, 2011; Little Rock, Arkansas on April 22, 2011; and Golden, Colorado on April 25, 2011) to collect broad input on the issues surrounding hydraulic fracturing. More than 600 members of the public attended the April 2011 forums. Some of the comments frequently heard during these forums included concerns about water quality, water consumption, and a desire for improved environmental safeguards for surface operations. Commenters also strongly encouraged the agency to require public disclosure of the chemicals used in hydraulic fracturing operations on Federal and Indian lands. Commenters from the oil and gas industry suggested

changes that would make the implementation of the rule more practicable, from their perspective, and some opposed adoption of any such rules affecting hydraulic fracturing on the Federal mineral estate. Further, the BLM distributed copies of the then-draft rule to affected federally recognized tribes in January 2012 and invited comments from affected tribes.

Around the time of the BLM's forums, at the direction of President Barack Obama, the Secretary of Energy convened a Shale Gas Production Subcommittee (Subcommittee) of the Secretary of Energy Advisory Board to evaluate hydraulic fracturing issues. The Subcommittee met with industry, service providers, state and Federal regulators, academics, environmental groups, and many other stakeholders. On August 18, 2011, the Subcommittee issued initial recommendations in its ''90-day Interim Report.'' The Subcommittee issued its final report, entitled ''Shale Gas Production Subcommittee Second Ninety Day Report'' on November 18, 2011. The Subcommittee recommended, among other things, that more information be provided to the public about hydraulic fracturing operations whether or not they occur on the Federal mineral estate, including disclosure of the chemicals used in fracturing fluids. The Subcommittee also recommended the adoption of stricter standards for wellbore construction and testing. The final report also recommended that operators engaging in hydraulic fracturing undertake pressure testing to ensure the integrity of all casings. These reports are available to the public from the Department of Energy's Web site at *http://www.shalegas.energy.gov*.

On May 11, 2012, the BLM published in the **Federal Register** the initial proposed rule entitled ''Oil and Gas; Well Stimulation, Including Hydraulic Fracturing, on Federal and Indian Lands'' (77 FR 27691). The comment period on the initial proposed rule closed on July 10, 2012. At the request of public commenters, on June 26, 2012, the BLM published in the **Federal Register** a notice extending the comment period for 60 days (77 FR 38024). The extended comment period closed on September 10, 2012. The BLM received over 177,000 comments on the initial proposed rule from individuals, Federal and state governments and agencies, interest groups, and industry representatives. After reviewing the comments on the proposed rule, the BLM now proposes to revise the initial proposed rule. As did the initial proposed rule, this revised proposed rule would apply to all wells administered by the BLM, including those of Federal, tribal, and individual Indian trust lands. Substantive comments on the initial proposed rule that informed the BLM's decisions on the revised proposed rule are discussed in the section-by-section discussion of this preamble. In the final rule, the BLM will provide a complete discussion of the comments submitted on the initial proposed rule (although some are discussed in this preamble) and those received as a result of this revised proposed rule.

The BLM's revised proposed rule is generally consistent with the American Petroleum Institute's (API) guidelines for well construction and well integrity. See API Guidance Document HF 1, Hydraulic Fracturing Operations—Well Construction and Integrity Guidelines, First Edition, October 2009. HF1 discusses the importance of maintaining wellbore integrity with casing and a cementing program. It recommends pressure tests after cementing casing strings, and describes some circumstances where CBLs are used to verify adequate cementing. The API also has published guidelines for water management that support the use of lined pits for water management. See API Guidance Document HF 2—Water Management Associated with Hydraulic Fracturing, First Edition, 2010.

Based on the input provided from a broad array of sources, including the individuals who spoke at the BLM's public forums and the recommendations of the Subcommittee, BLM proposed critical improvements to its regulations for hydraulic fracturing on May 11, 2012. Careful consideration of the comments received on the proposed rule, however, showed that further improvements and clarifications were appropriate. As did the initial proposed rule, this revised proposed rule would apply to all wells administered by the BLM, including those on Federal, tribal, and individual Indian trust lands.

Tribal consultation is a critical part of this rulemaking effort, and the Department is committed to making sure tribal leaders play a significant role as BLM and the tribes work together to develop resources on public and Indian lands in a safe and responsible way. During the proposed rule stage, the BLM initiated government-to-government consultation with tribes on the proposed rule and offered to hold follow-up consultation meetings with any tribe that desires to have an individual meeting. In January 2012, the BLM held four regional tribal consultation meetings, to which over 175 tribal entities were invited. To build upon established local relationships, the individual follow-up consultation meetings involved the local BLM authorized officers and management, including State Directors. After the issuance of the proposed rule, tribal governments, tribal members, and individual Native Americans were also invited to comment directly on the proposed rule.

In June 2012, the BLM held additional regional consultation meetings in Salt Lake City, Utah; Farmington, New Mexico; Tulsa, Oklahoma; and Billings, Montana. Eighty-one tribal members representing 27 tribes attended the meetings. In these sessions, the BLM and tribal representatives engaged in substantive discussions of the proposed hydraulic fracturing rule. A variety of issues were discussed, including but not limited to the applicability of tribal laws, validating water sources, inspection and enforcement, wellbore integrity, and water management, among others. Additional individual consultations with tribal representatives have taken place since that time. Also consultation meetings were held at the National Congress of American Indian Conference in Lincoln, Nebraska, on June 18, 2012, and at New Town, North Dakota on July 13, 2012.

Responses from tribal representatives informed the agency's actions in defining the scope of acceptable hydraulic fracturing operations. One of the outcomes of these meetings is the requirement in this rule that operators certify that operations on Indian lands comply with tribal laws.

The revised proposed rule also seeks to create less of an administrative burden than the initial proposed rule while providing the same benefits. This change was made in response to both tribal and industry comments.

The BLM has been and will continue to be proactive about tribal consultation under the Department's newly formalized Tribal Consultation Policy, which emphasizes trust, respect and shared responsibility in providing tribal governments an expanded role in informing Federal policy that impacts Indian lands. Consultation will continue during the comment period of this revised proposed rule. Tribal governments, tribal members, and individual Native Americans were also invited to comment directly on the proposed rule, as they are invited to comment on the revised proposed rule.

Several tribal representatives and tribal organizations have commented that the hydraulic fracturing rule should not apply on Indian land, or that tribes should be allowed to decide not to have the rule apply on their land (that is, ''opt out'' of the rule). The BLM fully

embraces the statutes, Executive Orders, and other statements of governmental or departmental policy in favor of promoting tribal self-determination and control of resources. In addition, the Department remains bound by specific statutes in which Congress has delegated specific authority and duties to the Department regarding the management and regulation of resources. The IMLA provides in pertinent part as follows: ''All operations under any oil, gas, or other mineral lease issued pursuant to the terms … of this title or any other Act affecting restricted Indian lands shall be subject to the rules and regulations promulgated by the Secretary of the Interior.'' 25 U.S.C. 396d. The Department has consistently interpreted this statutory directive as allowing uniform regulations governing mineral resource development on Indian and Federal lands. Thus, an opt-out provision would not be consistent with the Department's procedures under IMLA, and the revised proposed rule does not provide such an option.

There has also been a suggestion that the Secretary should delegate her regulatory authority to the tribes if the tribe has regulations that meet or exceed the standards in the BLM regulation. The IMLA does not authorize the Secretary to delegate her regulatory responsibilities to the tribes, and therefore the revised proposed rule does not include a delegation provision. Nonetheless, there are opportunities for tribes to assert more control over oil and gas operations on tribal land by entering into Tribal Energy Resource Agreements under the Indian Energy Development and Self-Determination Act (part of the Energy Policy Act of 2005), and to pursue contracts under the Indian Self-Determination and Education Assistance Act of 1975.

Also, the proposed rule has been revised to defer to State (on Federal land) or tribal (on Indian land) designations of aquifers as either requiring protection from oil and gas operations, or as exempt from the requirement to isolate water-bearing zones in section 3162.3–3(b). Revised section 3162.3(k) provides that for lands within the jurisdiction of a State or a tribe that State or tribe could work with the BLM to craft a variance that would allow compliance with State or tribal requirements to be accepted as compliance with the rule, if the variance meets or exceeds this rule's standards. The BLM is also seeking comments on whether compliance with State or tribal requirements to disclose chemical constituents of hydraulic fracturing fluids should be deemed as compliance with the proposed rule if the State or tribal requirements meet or exceed the standard in the rule at section 3162.3–3(i).

As explained elsewhere in this preamble, the BLM intends to reach out to States and to tribes to review existing agreements, to strengthen those that could provide a greater role for States and tribes, and to reach new agreements where there have been none. The BLM will seek new and improved agreements to reduce regulatory burdens and to increase efficiency, while fulfilling the Secretary's responsibilities mandated by statutes as steward for the public lands and trustee for Indian lands.

The BLM invites the public's comments on whether there are other opportunities in the revised proposed rule to incorporate or to defer to State or tribal standards or requirements.

Although greater use of State or tribal standards or procedures could reduce compliance costs for operators and increase consistency, enforcement issues could arise. On Federal lands, the BLM enforces the Federal regulations and lease conditions, and the States enforce their regulations. On Indian lands, the BLM enforces the Federal regulations and the terms of the leases, and the tribes have the power to enforce their own law. Comments are requested on practical enforcement challenges that might arise if the BLM incorporates or defers to State or tribal laws or procedures, and on any proposed solutions.

Over the past few years, in response to strong public interest, several States—including Colorado, Wyoming, Arkansas, and Texas—have substantially revised their State regulations related to hydraulic fracturing. One of the BLM's key goals in updating its regulations on hydraulic fracturing is to complement State efforts by providing a consistent standard across all public and Indian lands nationwide. The BLM has revised the initial proposed rule to make reported information consistent and easily accessible to the public. For instance, the BLM is working closely with the Groundwater Protection Council and the Interstate Oil and Gas Compact Commission so that operators may report chemicals used in hydraulic fracturing operations to BLM through the existing FracFocus.org Web site, which is already well established and used by many States. This online database includes information from oil and gas wells in approximately 12 States and includes information from over 500 companies. The BLM understands that the database is in the process of being improved and will in the near future have enhanced search capabilities and allow for easier reporting of information. If operators are unable to use FracFocus or elect not to, they may elect to report chemicals used on Federal or Indian lands directly to the BLM. The BLM intends to report that information to the public through FracFocus.

The BLM recognizes the efforts of some States to regulate hydraulic fracturing and seeks to avoid duplicative regulatory requirements. However, it is important to recognize that a major impetus for a separate BLM rule is that States are not legally required to meet the stewardship standards applying to public lands and do not have trust responsibilities for Indian lands under Federal laws. Thus, the rule may expand on or set different standards from those of States that regulate hydraulic fracturing operations, but do not need to adhere to the same resource management and public involvement standards appropriate on Federal lands under Federal law. This revised proposed rule encourages efficiency in the collection of data and the reporting of information by proposing to allow operators in States that require disclosure on FracFocus to meet both the State and the BLM requirements through a single submission to FracFocus.

III. Discussion of the Revised Proposed Rule and Comments on the Proposed Rule

As was discussed in the proposed rule, the BLM is revising its hydraulic fracturing regulations, found at 43 CFR 3162.3–2, and adding a new section 3162.3–3. Existing section 3162.3–3 would be retained and renumbered.

The *Federal Land Policy and Management Act* (FLPMA) directs the BLM to manage the public lands so as to prevent unnecessary or undue degradation, and to manage those lands using the principles of multiple use and sustained yield. FLPMA defines multiple use to mean, among other things, a combination of balanced and diverse resource uses that takes into account long-term needs of future generations for renewable and non-renewable resources. FLPMA also requires that the public lands be managed in a manner that will protect the quality of their resources, including ecological, environmental, and water resources. The *Mineral Leasing Act* and the *Mineral Leasing Act for Acquired Lands* authorize the Secretary to lease Federal oil and gas resources, and to regulate oil and gas operations on those leases, including surface-disturbing activities. The *Act of March 3, 1909,* the

Indian Mineral Leasing Act and the *Indian Mineral Development Act* assigns regulatory authority to the Secretary over Indian oil and gas leases on trust lands (except those excluded by statute, i.e., the Crow Reservation in Montana, the ceded lands of the Shoshone Reservation in Wyoming, the Osage Reservation in Oklahoma, and the coal and asphalt lands of the Choctaw and Chickasaw Tribes in Oklahoma). As stewards of the public lands and minerals and as the Secretary's regulator for operations on oil and gas leases on Indian lands, the BLM has evaluated the increased use of hydraulic fracturing practices over the last decade and determined that the existing rules for hydraulic fracturing require updating. The Secretary delegated to the BLM his authority to oversee operations on Indian mineral leases through the Departmental Manual (235 DM 1.K) under the Indian Allotted Lands Leasing Act and the Tribal Lands Leasing Act. The Secretary also approved the authorities section of the regulations which give the BLM authority under additional Indian related statutes.

As discussed in the background section of this preamble, the increased use of well stimulation activities over the last decade has also generated concerns among the public about hydraulic fracturing and about the chemicals used in hydraulic fracturing. The proposed rule and this revised proposed rule are intended to increase transparency for the public regarding the fluids used in the hydraulic fracturing process, in addition to providing assurances that wellbore integrity is maintained throughout the fracturing process and that the fluids that flow back to the surface from hydraulic fracturing operations are properly stored, disposed of, or treated. The following chart explains the major changes between the proposed regulations and the regulations in this revised proposed rule.

Initial proposed regulation	Revised proposed pegulation	Substantive changes
43 CFR 3160.0–5 Definitions	43 CFR 3160.0–5 Definitions	This revised proposed rule would revise the proposed term ''stimulation fluid'' to ''hydraulic fracturing fluid'' to be consistent with other changes to the rule. It also would delete the definition of ''well stimulation'' and add a definition of ''hydraulic fracturing,'' which excludes acidizing, enhanced secondary recovery and tertiary recovery. The terms used in other sections of this rule were also revised to make those sections consistent with the changes here. The rule would also include definitions of the terms ''refracturing'' and ''type well.'' ''Refracturing'' is defined as a hydraulic fracturing operation subsequent to an initial completion of an oil and gas well which used hydraulic fracturing previously. ''Type well'' is defined in this section to mean an oil and gas well that can be used as a model for other wells drilled by the same operator across the field. The revised proposed rule also clarifies the definition of ''usable water'' by specifying types of geologic zones that would be deemed to contain usable water, and other types that would be deemed not to contain usable water.
43 CFR 3162.3–2(a) Subsequent Well Operations.	43 CFR 3162.3–2(a) Subsequent Well Operations.	The revised proposed rule would replace the term ''commingling'' with the term ''combining'' to avoid confusion with the term ''commingling'' that is used in calculating royalties on production.
43 CFR 3162.3–3(a) Subsequent Well Operations; Well Stimulation.	43 CFR 3162.3–3(a) Subsequent Well Operations; Hydraulic Fracturing.	The revised proposed rule would change the scope of the regulation to apply only to hydraulic fracturing operations, and not to other ''well stimulation'' activities. It would clarify that the regulation also applies to refracturing operations.
(None)	43 CFR 3162.3–3(b) Isolation of Usable Water to Prevent Contamination.	This new paragraph would require that all fracturing and refracturing operations meet the performance standard in section 3162.5–2(d), which requires that operators must isolate all usable water and other mineral-bearing formations and protect them from contamination.
43 CFR 3162.3–3(c) What the Notice of Intent Sundry Must Include.	43 CFR 3162.3–3(d) What the Notice of Intent Sundry Must Include.	The revised proposed rule would add a new provision that allows the Notice of Intent (NOI) Sundry to be submitted for a single well or a group of wells with the same geological characteristics. If it is for a group of wells, the information should be for a ''type well.''
43 CFR 3162.3–3(c)(2)	43 CFR 3162.3–3(d)(2)	The revised proposed rule would delete the requirement to submit a CBL for approval prior to commencing fracturing operations. Section 3162.3–3(i)(8), would require that a CEL be submitted after fracturing operations, unless there are problems with the cement job. The revised proposed rule would also add a requirement that the depths of usable water aquifers be based on a drill log of the subject well or of another well in the field.
43 CFR 3162.3–3(c)(4)	Deleted	The revised proposed rule would delete the requirement that the operator submit a pre-hydraulic fracturing certification that it will comply with all applicable permitting and notice requirements.
43 CFR 3162.3–3(c)(3)	43 CFR 3162.3–3(d)(3)	The revised proposed rule would add to the list of the source and location of water supply ''reused or recycled water.''
43 CFR 3162.3–3(c)(5)	43 CFR 3162.3–3(d)(4)	The revised proposed rule would add to the requirements for a hydraulic fracturing design that the operator must include the estimated fracture direction and propagation plotted on the well schematics and on a topographical map of the same scale as the map used in the APD. It would also add a requirement to supply the estimated vertical distance to the nearest usable water aquifer above the fracture zone.

Initial proposed regulation	Revised proposed pegulation	Substantive changes
43 CFR 3162.3–3(c)(6)	43 CFR 3162.3–3(d)(5)	The revised proposed rule would remove ''chemical composition'' from the information that is required to be submitted regarding the handling of recovered fluids.
43 CFR 3162.3(d) Mechanical Integrity Testing Prior to Well Stimulation.	43 CFR 3162.3–3(f) Mechanical Integrity Testing Prior to Hydraulic Fracturing.	The revised proposed rule would add clarification that a mechanical integrity test (MIT) would be required for a re-fracturing operation.
(None)	43 CFR 3162.3–3(e)(1) Monitoring of Cementing Operations and Cement Evaluation Log Prior to Hydraulic Fracturing.	The revised proposed rule would add a new paragraph requiring that during cementing operations the operator must monitor and record the flow rate, density, and treating pressure, and then submit the monitoring report to the BLM within 30 days of completion of the hydraulic fracturing.
43 CFR 3162.3–3(c)(2)	43 CFR 3162.3–3(e)(2)	The revised proposed rule would add a new paragraph stating a general rule that an operator must run a CEL on each casing that protects usable water. A CEL may be ultrasonic logs, variable density logs, micro-seismograms, standard CBLs, CBLs with directional receiver array, ultrasonic pulse echo technique, an isolation scanner or other tool of equal effectiveness.
(None)	43 CFR 3162.3–3(e)(3)	The revised proposed rule would add a new paragraph that provides an exception to the CEL requirement where an operator's ''type well'' has been shown to have successful cement bonding and subsequent wells have the same specifications and geologic parameters as the ''type well,'' and the cementing operations monitoring data parallels those of the type well.
(None)	43 CFR 3162.3–3(e)(4)	The revised proposed rule would add a new paragraph that if there is any indication of inadequate cementing, the operator must report it to the BLM within 24 hours, with written confirmation within 48 hours. The operator would be required to run a CEL showing that it has corrected the cementing job, and that usable water has been isolated to protect it from contamination. At least 72 hours prior to starting fracturing operations, the operator must submit to the BLM a certification indicating that it corrected the inadequate cement job and documentation showing that there is adequate cement bonding.
(None)	43 CFR 3162.3–3(e)(5)	The revised proposed rule would add a new provision stating that the operator must submit the information required by (e)(1) and (2) to the BLM in a Subsequent Report Sundry Notice.
43 CFR 3162.3–3(e)(1)	43 CFR 3162.3–3(g)(1)	This paragraph would be revised to apply to refracturing operations as well as fracturing operations. It also would be revised to make it clear that that the pressure in the annulus between any intermediate casings and the production casing must be continuously monitored and recorded.
43 CFR 3162.3–3(e)(2) Monitoring and Recording During Well Stimulation.	43 CFR 3162.3–3(g)(2) Monitoring and Recording During Hydraulic Fracturing.	This paragraph would be revised to apply to refracturing operations as well as fracturing operations. For any incident of the annulus pressure increasing by more than 500 psi, the revised proposed rule would change the due date for a Subsequent Report Sundry Notice from 15 days after the occurrence to 30 days after completion of fracturing operations.
43 CFR 3162.3–3(g) Information that Must be Provided to the Authorized Officer After Completed Operations.	43 CFR 3162.3–3(i) Information that Must be Provided to the Authorized Officer After Completed Operations.	Changes to this section would add a clarification that the information is required for each well fractured or refractured, even if the BLM approved a Notice of Intent Sundry for a group of wells. The new provision would allow reporting of chemical information to the BLM either directly or through FracFocus or other database that the BLM specifies. The revised proposed rule would add a new provision that the operator submitting chemical information through FracFocus must specify that the information is for a Federal or Indian well, certify that the information is correct, and certify that the operator complied with applicable laws governing notice and permits. The revised proposed rule would also add a new provision clarifying that the operator is responsible for information submitted by its hydraulic fracturing contractor.
43 CFR 3162.3–3(g)(1)	43 CFR 3162.3–3(i)(2)	This revised section would delete the requirement that the operator report the actual access route and transportation method for all water used in stimulating the well, since this information is provided before the operation is approved.

Initial proposed regulation	Revised proposed pegulation	Substantive changes
43 CFR 3162.3–3(g)(2), (4) and (5)	43 CFR 3162.3–3(i)(1)	The proposed regulation required two separate reports or tables (one for all additives of the actual stimulation fluid by trade name and purpose, and another for the complete chemical makeup (including the Chemical Abstracts Service Registry Number [CAS number]) of all materials used in the actual stimulation fluid). The revised proposed rule would require the information required in the FracFocus form: True vertical depth of the well, total water volume used, and for each chemical used (including the base fluid) the trade name, supplier, purpose, ingredients, CAS number, maximum ingredient concentration in the additive, and maximum ingredient concentration in the fracturing fluid.
43 CFR 3162.3–3(g)(6)	43 CFR 3162.3–3(i)(4)	A new requirement would be added by this rule to report the actual, estimated, or calculated direction of the fractures.
43 CFR 3162.3–3(g)(7)	Deleted	This revised proposed rule would delete the provision that would have expressly allowed the Subsequent Report Sundry Notice to be completed in part by attaching the hydraulic fracturing contractor's job log so long as the required information was included and readily apparent.
43 CFR 3162.3–3(g)(8) and (9)	43 CFR 3162.3–3(i)(7)	The revised proposed rule would revise the requirement for certification of wellbore integrity to include the monitoring of cementing operations and the CEL. It would also clarify that the certification of compliance with applicable law is different for Indian lands than for Federal lands.
(None)	43 CFR 3162.3–3(i)(8)	This rule would add a new paragraph requiring operators to submit the actual cement operations monitoring report, any CEL, and the MIT results.
(None)	43 CFR 3162.3–3(i)(9)	This rule would add a new paragraph allowing the BLM to require the operator to provide further information about any representation submitted under paragraph (i).
43 CFR 3162.3–3(h) and (i)	43 CFR 3162.3–3(j)(1) through (4)	In this revised proposed rule these sections have been significantly revised. The regulations would no longer require operators to submit all information about chemicals to the BLM, to segregate trade secrets, and to justify the assertion of trade secret protection. Instead, the regulations would instruct operators not to disclose trade secret information to the BLM or on FracFocus. Operators would submit an affidavit stating that the withheld information is entitled to withholding from the public under Federal statute or regulation. The BLM would retain authority to require operators to submit the claimed trade secret information.
(None)	43 CFR 3162.3–3(j)(4)	This rule would add a new paragraph requiring operators to keep the information claimed to be trade secrets for 6 years, by reference to existing 43 CFR 3162.4–1, which applies to all lease operations.
* * *	43 CFR 3162.3–3(k)	This rule would add a new provision allowing States and tribes to work with the BLM to create variances applicable to all lands within a field, a basin, a State, or Indian lands. Such a variance would have to meet or exceed the effectiveness of the rule provision it replaces.

Section-by-Section Discussion of the Revised Proposed Rule and Discussion of Comments

Comments Addressed in This Revised Proposed Rule

In this revised proposed rule, the BLM discusses many of the comments received on the proposed rule. The BLM will fully discuss comments on the initial proposed and revised proposed rules in the eventual announcement of the final rule. Commenters provided detailed and helpful information. The BLM desires to demonstrate how public comment assisted in framing the issues and to ultimately produce this revised proposed rule. The Department does not address every comment in this revised rule, because the changes in this revised proposed rule have mooted some comments on the initial proposed rule. Other comments were not central to the re-evaluation the BLM has undertaken, and thus discussion of those few comments would not contribute to the public's understanding of the reasons the BLM is publishing the revised proposed rule.

Additionally, not every change in the revised proposed rule responds to a specific comment. Some revisions clarify the proposed rule, and still other revisions allow this revised rule to be more effective with reduced costs and delays to operators and to the BLM.

This revised proposed rule identifies some issues on which the BLM specifically seeks comments. The public, however, may submit comments on any provision of the revised proposed rule. All comments received in response to the initial proposed rule will be in the record of any final rule; accordingly, the public does not need to resubmit comments to the initial proposed rule in response to this revised proposed rule.

General Comments on the Initial Proposed Rule

The BLM received comments both supporting and questioning the need for a rule regulating hydraulic fracturing. Supporters stated, among other things, that the rule protects groundwater and ensures that operators properly handle flowback water. In general, the opposition stated that BLM regulation of hydraulic fracturing is unnecessary and

argued that no scientific basis exists that hydraulic fracturing causes groundwater contamination and that it is a low-risk operation. The opposition further argued that States should regulate hydraulic fracturing and that many States already have current rules. The BLM acknowledges that many States do have regulations in place; however, not all of the States that contain Federal lands under the BLM's jurisdiction have hydraulic fracturing regulations. Further, FLPMA and other Federal law provide for public involvement that is not always required in State law. In addition, the BLM has responsibilities for Indian resources and State regulations do not apply to Indian lands. Furthermore, States do not uniformly require measures that would uphold the BLM's responsibilities for federally managed public resources, to protect the environment and human health and safety on Federal and Indian lands, and to prevent unnecessary or undue degradation of the public lands. By taking additional steps to ensure wellbore integrity and to control the handling of flowback water, potential impacts of hydraulic fracturing can be mitigated.

Some commenters questioned whether the BLM's proposed regulations are premature, because the Environmental Protection Agency (EPA) is currently conducting a multi-year study on the potential impact of hydraulic fracturing on drinking water resources, with a final report due in 2014. The BLM is aware of the ongoing EPA study relating to the impacts of hydraulic fracturing. While the EPA study may offer additional information regarding the potential impacts of hydraulic fracturing, nothing in the revised proposed regulations would contradict or conflict with the EPA study, which does not focus on the management of public lands and resources subject to Federal public lands law. Notwithstanding the findings that will be included in the EPA's anticipated study, this revised regulation prevents undue or unnecessary degradation of public lands and furthers the Secretary's trust responsibilities on Indian lands.

Some commenters disputed the authority of the BLM to regulate well construction and regulate water supplies used for, or potentially impacted by, hydraulic fracturing. Other commenters asserted that the proposed rule infringes upon State and tribal water rights authority. FLPMA directs the BLM to manage the public lands so as to prevent unnecessary or undue degradation. FLPMA also requires that the public lands be managed in a manner that will protect the quality of resources, *i.e.* ecological, environmental, and water resources. Regulating wellbore construction meets these mandates. The Indian lands leasing statutes direct the Secretary to regulate oil and gas operations on Indian lands. The Secretary has delegated his authority for regulating downhole activities on Indian mineral leases to the BLM. The BLM has historically regulated the construction of wellbores through approvals of APDs (applying the Onshore Oil and Gas Order Numbers 1 and 2). This rule would supplement existing regulations regarding wellbore construction (Onshore Oil and Gas Order Number 2, Drilling (53 FR 46790)).

The revised proposed regulations at sections 3162.3–3(d)(3) and 3162.3–3(i)(2) would require submission of information on water sources to assist the BLM in assessing the environmental effects of individual drilling operations. The National Environmental Policy Act and the implementing regulations by the Council on Environmental Quality require that Federal agencies assess the environmental impacts of their proposed actions and inform their decision-making. The information on water sources will be part of an environmental assessment regarding how water is being supplied for the hydraulic fracturing operation. The BLM does not intend to regulate water use, but instead to acquire information on the water used incidental to oil and gas operations on Federal and Indian lands. Acquisition of this information is similar to requirements in Onshore Oil and Gas Order No. 1, Approval of Operations (72 FR 10308) for drilling a well. Onshore Order No. 1 requires the operator to identify the source, access route, and transportation method for all water anticipated for use in drilling the proposed well. Based on information received at this time, the requirement in Onshore Order No. 1 has not caused conflicts with State or tribal water rights authorities. Likewise, based on BLM's previous experience with the information requirements of its existing onshore orders, BLM does not anticipate that the requirements proposed here will cause any conflicts. The revised proposed regulation does not regulate Indian, State, and private water rights. Accordingly, the Department made no revisions to the initial proposed rule as a result of these comments.

The BLM received some comments stating that the rule should clarify the jurisdiction or scope of this rule. The revised proposed rule falls under 43 CFR part 3160. The jurisdiction (scope) of all sections under part 3160, which would include this revised proposed rule, is defined in existing regulations at 43 CFR 3161(a), which states: ''[a]ll operations conducted on a Federal or Indian oil and gas lease by the operator are subject to the regulations in this part.'' Therefore, this revised proposed rule would not apply to hydraulic fracturing operations on private or State leases, even leases included in a Federal or Indian agreement. The BLM's only jurisdiction on private and State leases is for site security, measurement, and reporting of production when the private or State lease is committed to a Federal or Indian agreement. Existing regulations already define the jurisdiction or scope of the revised proposed rule, so the Department made no revisions to the initial proposed rule as a result of these comments.

Some commenters requested that the BLM coordinate permitting and reporting with States to avoid duplication. Some commenters faulted the BLM for undermining the efforts of State oil and gas commissions to regulate hydraulic fracturing. The BLM has revised the initial proposed rule to avoid duplication with State requirements. Nonetheless, the BLM needs to have accurate information about the construction and completion of oil and gas wells on Federal and Indian land. The BLM acknowledges the efforts necessary to comply with State or tribal and BLM regulations, but modern information technology significantly reduces the time and expense of reporting the same information to both a State or tribal agency and to the BLM. Federal law is clear that the Federal Government has extensive authority over Federal lands and Indian lands, and that State governments may exercise certain powers on non-Indian lands, except in instances where Federal law preempts State law. The notice, approval, testing, operational, and reporting requirements of the revised proposed regulation would in no way undermine the efforts of State agencies to regulate hydraulic fracturing. The BLM recognizes the advantages to building upon existing relationships established with the different States and tribes as a prudent approach to maintaining efficiency and flexibility while reducing duplication. It makes sense for both the BLM and the States or tribes with oil and gas activity to explore ways to coordinate implementation of this revised proposed rule. For States or tribes that maintain hydraulic fracturing rules that meet or exceed the standards that would be imposed by this revised proposed rule, the BLM will pursue amending or

updating the existing agreement with each State or tribe to reflect the expectation and responsibilities for each agency. An example of an existing agreement is the State of Colorado which has a Memorandum of Agreement with the BLM (and the United States Forest Service) for Permitting and Oil and Gas Operations on BLM and National Forest Service Lands in Colorado.

The BLM is committed to working with tribes to coordinate implementation of this revised proposed rule with the tribes' laws, rules, and permitting and inspection programs. The contents of such agreements or understandings might be different for each tribe, but such agreements actively seeking opportunities to share standards, information, and processes should yield more consistency for operators and better efficiency for the BLM and tribal agencies.

Some commenters said that the proposed rule is inconsistent with existing laws or regulations such as the *Energy Policy Act of 2005* and EPA's New Source Performance Standards. For instance, some commenters believed that the proposed permitting requirements would cause delays in permitting that would violate the timeframes mandated by the Energy Policy Act. The BLM disagrees with these comments. Changes from the initial proposal in this revised proposed rule would reduce possible permitting delays and BLM projected workload. The BLM would meet the requirements of the Energy Policy Act by informing the operator what steps remain to be completed and the schedule for completion of these requirements for processing of their drilling permits. Often delays occur from submittal of incomplete information or surveys as part of the drilling permit proposal, or due to turnover in industry permitting specialists. The BLM has increased the number of drilling permits approved over the past 3 years, and does not believe such productivity gains will be negatively impacted by this revised proposed rule. The BLM received some comments that certain definitions and requirements in the proposed rule were vague. The commenters stated that without clarification, this purported vagueness could lead to misinterpretation by operators and inconsistent application by BLM engineers and inspectors. Because the revised proposed rule uses different approaches to regulation than the initial proposed rule, some definitions have been revised. The BLM worked to ensure the revisions also increased clarity. The BLM believes that the definitions are sufficiently clear to the industry, the BLM, and the public. To the extent that some definitions might be construed as open-ended, it is because the rule must allow for some degree of flexibility to accommodate the wide range of geologic and environmental conditions encountered on Federal and Indian leases.

Some commenters stated that the BLM does not have the staffing, budget, or the number of experts needed to implement the rule, which will cause delays in approvals. The BLM does not agree with the assertion regarding the lack of BLM staff expertise. Also the revisions proposed in this revised proposed rule would reduce the amount of staff time required to implement the rule and limit any permitting delays. The changes include the option of including multiple wells with substantially similar geology in the permit application (type wells), narrowing the scope of the rule to include only hydraulic fracturing, and the elimination of the proposed requirement for the BLM to review and approve CBLs prior to hydraulic fracturing. These changes are discussed further in other sections of this rule.

Some BLM offices, especially those that process a large volume of drilling applications, may experience delays in implementing the revised proposed rule. The BLM is mindful of this issue and already provides remote assistance from other offices. As with the implementation of any new rule, some delays may be inevitable. This rule, however, will help prevent unnecessary or undue degradation of public lands and to provide protection to Indian trust resources.

Some commenters recommended that the BLM, State, or tribes should inspect all hydraulic fracturing operations on Federal and Indian land. The BLM did not revise the rule as a result of these comments. As part of the BLM's annual inspection strategy, the BLM inspects all workover operations, including hydraulic fracturing, on Federal and Indian lands that are rated as a high priority. This rating depends on measuring many factors, including the type of operation, the location, and the potential impacts of the operation.

The BLM received some comments objecting to the application of the rule to ''well stimulation'' operations which, as defined in the May 2012, proposed rule, includes any operation designed to increase the permeability of the reservoir rock. The definition specifically included acidization, but could also be interpreted to mean other operations such as thermal stimulation and maintenance fracturing, designed to open up fractures near the wellbore. Some of the commenters stated that the requirements in the proposed rule were too onerous for what they considered to be routine maintenance operations. The commenters requested that the rule apply only to hydraulic fracturing operations.

The BLM agrees with these comments and made several revisions to the revised proposed rule as a result. Section 3162.3–3(a) has been revised to apply only to hydraulic fracturing and refracturing, rather than to well stimulation as stated in the proposed rule.

In addition, definitions of ''hydraulic fracturing'' and ''refracturing'' have been added to the revised proposed rule (section 3160.0–5) instead of the previous definition of well stimulation. In this revised proposed rule, the term ''hydraulic fracturing'' specifically excludes enhanced secondary recovery, such as water flooding, tertiary recovery, recovery through steam injection, and other types of well stimulation such as acidizing.

Some commenters requested clarification of the requirements for operators who conduct hydraulic fracturing operations on or near land managed by other Federal agencies such as the National Park Service (NPS) and the United States Forest Service (USFS). One commenter wanted to ensure that a comprehensive NEPA document was prepared and that the BLM include the NPS as a cooperating agency when hydraulic fracturing operations are near National Parks. Another commenter wanted the rule to specify that it applied to USFS managed land. When warranted, the BLM invites other agencies, including the USFS and the NPS, to participate in the preparation of the NEPA analysis.

The involvement of other agencies reflects the site-specific issues and potential impacts to resources. On USFS lands, the USFS typically has the lead responsibility for compliance with NEPA as part of its review of the surface use plan of operation, and the BLM serves as a cooperating or joint lead agency. The revised proposed rule, as with all of the other regulations in 43 CFR part 3160 (see 43 CFR 3161.1—Jurisdiction), would apply to USFS lands. No revisions were made to the rule as a result of these comments.

The BLM received some comments requesting that the rule include a ban on the use of diesel fuel in hydraulic fracturing operations. Jurisdiction over the use of diesel fuel in hydraulic fracturing operations lies with the EPA through its administration of the Underground Injection Control (UIC)

program. (SDWA, Section 1421(d)(1)(B), 42 U.S.C. 300h(d)(1)(B)(ii,40 CFR 144.11). Owners or operators who inject diesel fuels during hydraulic fracturing related to oil and gas operations must obtain a UIC permit before injection begins. The EPA published draft permitting guidance for oil and gas hydraulic fracturing operations using diesel fuels in May 2012. Thus the BLM did not revise the rule as a result of these comments.

The BLM received some comments that certain provisions of the proposed rule were open ended, which would give BLM too much discretion and would result in uncertainty, delays, and increased costs for operators. For example, some comments suggested that the ability of the BLM to request additional information in the Sundry Notice requesting approval for hydraulic fracturing (section 3162.3–3(d)(7)) was open ended. The BLM believes that the provisions in the revised proposed rule are necessary to provide the flexibility essential to regulating operations over a broad range of geologic and environmental conditions. Requests for information from the Authorized Officer are administratively appealable if an operator believes the directive lacks a proper basis. The BLM did not revise the rule as a result of these comments.

The BLM received some comments suggesting that all wells permitted prior to the effective date of the rule should be exempt from the provisions of the rule, that the rule be phased in over a period of 180 days, and that older wells should be reviewed for information only. The BLM understands the commenters' concerns. Nonetheless, the primary goal of this rule is to ensure that hydraulic fracturing does not cause negative impacts to Federal or Indian resources, including groundwater and surface water. This is achieved by ensuring wellbore integrity is maintained throughout the hydraulic fracturing process and placing restrictions on the handling of flowback water. Achieving these goals is critical regardless of when the BLM approved the APD or if the proposed operation will take place immediately after the effective date of the rule or 180 days after the effective date of this rule. The BLM did not revise the rule as a result of these comments.

Section Discussion

As an administrative matter, this rule would amend the authorities section for the BLM's oil and gas operations regulations at 43 CFR 3160.0–3 to include FLPMA. Section 310 of FLPMA authorizes the Secretary of the Interior to promulgate regulations to carry out the purposes of FLPMA and other laws applicable to the public lands. See 43 U.S.C. 1740. This amendment would not be a major change and would have no effect on lessees, operators, or the public.

This rule would remove the terms ''nonroutine fracturing jobs,'' and ''routine fracturing jobs,'' from 43 CFR 3162.3–2(a) and 43 CFR 3162.3–2(b). It would add a new section, 43 CFR 3162.3–3, for hydraulic fracturing operations. In this rule, there would be no distinction drawn between ''nonroutine'' or ''routine'' hydraulic fracturing operations. Prior approval would be required for hydraulic fracturing operations, but would be available concurrently with the prior approval process that is already in place for general well drilling activities through the APD process. The running of CELs on surface or intermediate casing strings, which is currently an optional practice, would be required for new wells where the casing protects usable water, except for wells substantially similar to an operator's ''type well'' for which the operator has demonstrated the efficacy of the cement bonding of casing under similar geological conditions within the same field. All wells would require mechanical integrity testing prior to hydraulic fracturing.

The revised proposed rule includes eight new definitions for technical terms used in the rule. These definitions will improve readability and clarity of the regulations.

Published in this rule are the following definitions:

- *Annulus* means the space around a pipe in a wellbore, the outer wall of which may be the wall of either the borehole or the casing; sometimes also called the *annular space.*
- *Bradenhead* means a heavy, flanged steel fitting connected to the first string of casing that allows suspension of intermediate and production strings of casing, and supplies the means for the annulus to be sealed off.
- *Hydraulic fracturing* means those operations conducted in an individual wellbore designed to increase the flow of hydrocarbons from the rock formation to the wellbore through modifying the permeability of reservoir rock by breaking it. Hydraulic fracturing does not include enhanced secondary recovery such as water flooding, tertiary recovery, recovery through steam injection, or other types of well stimulation operations such as acidizing. The BLM changed the proposed rule's term ''stimulation fluid'' to ''hydraulic fracturing fluid'' throughout these regulations.
- *Hydraulic fracturing fluid* means the liquid or gas, and any associated solids used in hydraulic fracturing, including constituents such as water, chemicals, and proppants.
- *Proppant* means a granular substance (most commonly sand, sintered bauxite, or ceramic) that is carried in suspension by the fracturing fluid and that serves to keep the cracks open when fracturing fluid is withdrawn after a hydraulic fracture treatment.
- *Refracturing* means a hydraulic fracturing operation subsequent to the completion of a prior hydraulic fracturing operation in the same well. For purposes of this definition, a hydraulic fracturing operation is completed when a well begins producing oil or gas, or when equipment necessary to inject the hydraulic fracturing fluid at sufficient pressure to fracture the stratum is removed from the well pad, whichever occurs earlier.
- *Type well* means an oil and gas well that can be used as a model for well completion in a field where geologic characteristics are substantially similar within the same field, and where operations such as drilling, cementing, and completions using hydraulic fracturing are likely to be successfully replicated using the same design.

Usable water means generally those waters containing up to 10,000 ppm of total dissolved solids.

The proposed rule used the term ''well stimulation'' to describe the activities being regulated by this rule. In this revised proposed rule, that term is replaced with the term ''hydraulic fracturing.'' The reason for the change is because, after reviewing all of the comments and considering the available information, the BLM has determined that only hydraulic fracturing operations require the additional measures in this rulemaking. This definition also has language that explains the types of secondary recovery activities to which this rule does not apply.

This rule also includes the following three terms that were not in the proposal: Hydraulic fracturing fluid; refracturing; and type well. These terms are defined so that there is a common understanding of the regulatory provisions that follow.

This rule would delete the definition of ''fresh water,'' and is consistent with how the BLM has been protecting all usable waters in its onshore orders. Usable water includes fresh water (often defined as water containing less than 5,000 parts per million (ppm) of total dissolved solids (TDS)) and water that is

of lower quality than fresh water. The BLM has been more protective when it seeks to protect all usable water during drilling operations, not just fresh water. This policy was established upon the effective date of Onshore Order No. 2, December 19, 1988. Water with up to 10,000 ppm TDS may be used for some agricultural or industrial purposes, often with some treatment, and thus would continue to be protected under this revised proposed rule. Not all waters of up to 10,000 ppm TDS need to be isolated or protected from hydraulic fracturing operations; clarifying edits have been added to help the public understand how the rule will affect operations.

The rule would revise section 3162.3–2(a) by removing the phrase ''perform nonroutine fracturing jobs'' from the current 43 CFR 3162.3–2(a). The phrase ''routine fracturing jobs, or'' would also be removed from existing section 3162.3–2(b). This rule does not affect requirements for acidizing jobs, and this rule would not remove the reference to acidizing jobs from section 3162.3–2(b). Hydraulic fracturing operations are addressed under section 3162.3–3.

In paragraph (a) of this section, the term ''commingling'' in the initial proposed rule would be replaced with the term ''combining'' to clarify the intent of this requirement and to avoid confusion with the meaning of ''commingling'' as that term is used in a production accounting context and in sections 3162.7–2 and 3162.7–3 of this title. The term ''commingling'' in a production accounting context refers only to the combining of production from different leases, communitized areas (CA), participating areas (PA), or State or private mineral estates prior to royalty measurement. Commingling, whether it is downhole commingling or surface commingling, requires BLM approval to ensure that the allocation method is consistent with Onshore Oil and Gas Order Number 3, Site Security (54 FR 8056), Onshore Oil and Gas Order Number 4, Measurement of Oil (54 FR 8086), and Onshore Oil and Gas Order Number 5, Measurement of Gas (54 FR 8100), for royalty measurement purposes. The combining of production from different intervals or zones within a wellbore also requires BLM approval to ensure that the zones proposed for combining are compatible from a reservoir standpoint, regardless of the royalty implications. The intent of the requirement in this section would be to address reservoir concerns from combining zones or intervals; therefore, the word ''commingling'' was changed to ''combining.'' The royalty implications of commingling production from different leases, CAs, PAs, or State and private properties are handled under a separate approval process in 43 CFR 3162.7–2 and 3162.7–3.

Refracturing operations within 5 years from the approval of a Notice of Intent Sundry would be considered a ''recompletion'' under section 3162.3–2(b). The subsequent report on those operations would require the information and certifications prescribed in section 3162.3–3(i) of this rule. Under section 3162.3–3(c)(3)(i), a refracturing operation more than 5 years after the approval of the Notice of Intent Sundry would require BLM's approval of a new Notice of Intent Sundry.

The revised proposed rule would change the scope of the regulation to apply only to hydraulic fracturing operations and not to other well stimulation activities. Section 3162.3–3(a) would make it clear that this section applies only to hydraulic fracturing operations and that all other injection activities must comply with section 3162.3–2. This language is necessary to make the distinction between hydraulic fracturing and other well injection activities, such as secondary and tertiary recovery operations. Secondary and tertiary recovery operations do not involve the injection of chemicals at pressures high enough to fracture strata, and thus do not raise the same concerns of breaching the well bore and migrating into usable water.

New paragraph 3162.3–3(b) would require that all fracturing and refracturing operations meet the performance standard in section 3162.5–2(d) of this title. Among other things, that section requires operators to isolate all usable water and other mineral-bearing formations and protect them from contamination.

Some commenters requested more clarity on how the definition of usable water would apply to the requirement to isolate and protect usable water from contamination from hydraulic fracturing operations. The BLM has revised the definition of usable water to specify that, for purposes of the hydraulic fracturing regulations, usable water includes underground sources of drinking water, zones actually used for water supply for industrial or agricultural purposes (unless the operator shows that the industrial or agricultural user would not be harmed by failure to protect or isolate), and zones designated by the State or the tribe as requiring isolation or protection from oil and gas operations. The BLM has also revised the section to specify that, for the purposes of the hydraulic fracturing regulations, usable water does not include the zone authorized for hydraulic fracturing, zones designated as ''exempted aquifers'' under the Safe Drinking Water Act (SDWA), and zones that the State or tribe have explicitly designated as exempt from any requirement for oil and gas operators to isolate or protect. Any other zones containing water that does not exceed 10,000 ppm TDS would be considered usable water. The BLM recognizes that including aquifers not otherwise exempted would be consistent with its Oil and Gas Onshore Orders, but may make the rule more stringent than other Federal, State, and tribal laws. The BLM invites comments specifically on the incremental costs associated with protecting zones that contain up to 10,000 ppm of total dissolved solids, that are not already protected under SDWA or equivalent State or tribal law, and not excluded in the proposed definition (i.e., those aquifers protected by part (4) in the proposed definition of usable water). BLM may consider excluding such zones in the final rule.

The BLM believes that the revised language makes explicit the appropriate deference to the expertise and professional judgment of the State or tribal agencies entrusted to manage the groundwater resources under their respective jurisdictions.

Section 3162.3–3(c) would require the BLM's approval of all proposals for hydraulic fracturing or refracturing activity. The operator has the option of applying for the BLM's approval in its APD, including the information required by paragraph (d) of this section.

The operator may submit a Sundry Notice and Report on Wells (Form 3160–5) as a Notice of Intent Sundry for the hydraulic fracturing proposal for the BLM's approval before the operator begins the fracturing activity. This section would supersede and replace existing section 3162.3–2(b) that states that no prior approval is required for routine fracturing. That reference in the existing section would be deleted. Also, an operator must submit a new Sundry Notice prior to hydraulic fracturing activity:

- If the BLM's previous approval for hydraulic fracturing is more than 5 years old,
- If the operator becomes aware of significant new information about the relevant geology, the fracturing operation or technology, or the anticipated impacts to any resource, or
- If the operator proposes refracturing of the well.

The 5-year period is consistent with practices in some States, including Montana, Wyoming, and Colorado,

which require that operators reconfirm well integrity for fracturing operations through a pressure test every 5 years. The requirement to submit a new NOI for refracturing is new to this revised proposed rule and is added to clarify that approval of a single hydraulic fracturing operation in a well does not allow for multiple refracturing procedures without compliance with the notice, monitoring, and reporting requirements.

The BLM understands the time-sensitive nature of oil and gas drilling and well completion activities and does not anticipate that the submittal of additional hydraulic fracturing-related information with APD applications will significantly impact the timing of the approval of drilling permits. The BLM believes that the additional information that would be required by this rule would be reviewed in conjunction with the APD and within the normal APD processing time frame. Also, the BLM anticipates that requests to conduct hydraulic fracturing operations on existing wells that have been in service more than 5 years will be reviewed promptly. The BLM understands that delays in approvals of operations can be costly to operators and the BLM intends to avoid delays whenever possible. Furthermore, if an operator believes that approval of hydraulic fracturing would be swifter if it is not part of the APD, the operator has the option of submitting the Notice of Intent Sundry at a later date. However, the operator does not obtain an exemption from any requirement of this regulation by submitting a Notice of Intent Sundry after drilling and cementing operations have commenced.

Section 3162.3–3(d) has been revised from what was originally proposed to allow the Sundry Notice required by this section to be submitted for a single well or a group of wells. If the submission is for a group of wells that share substantially similar geological characteristics, the information should describe the ''type well.'' ''Type well'' is a term commonly used in the oil and gas industry and the BLM added it as a new definition in section 3160.0–5 of this rule. By constructing and monitoring a type well, including running a CEL on casing that encounters usable water, the operator demonstrates that its engineering design and execution effectively isolate aquifers with usable water in the field. The same operator may then replicate the type well for each of the wells in the approved group for the same field. The operator would not need to run a CEL on those wells unless the monitoring data indicated a problem with the cementing.

Section 3162.3–3(d)(1) would require a report that includes the geological names, a geological description, and the proposed measured depth of the top and the bottom of the formation into which hydraulic fracturing fluids would be injected. The report is needed so that the BLM may determine the properties of the rock layers and the thickness of the producing formation and identify the confining rocks above and below the zone that would be stimulated.

Under this revised proposed rule, section 3162.3–3(d)(2) would be revised by removing the reference to the CBL, because under this rule prior approval of a CBL or other CEL would no longer be routinely required. The change in this section is as a result of changes to paragraph (e) and is necessary to make this section consistent with those changes. Section 3162.3–3(d)(2) would be revised to require the operator to submit the measured or estimated depths of all occurrences of usable water using a drill log from the subject well or any other well sharing the same geological characteristics within the same geologic formation, which will help the BLM in its efforts to make sure that water resources are protected. As it pertains to the depths of all occurrences of usable water, the word ''estimated'' has been added because at the planning stages of the operation, the actual measured depths would not generally be available.

Although prior approval of a CEL would no longer be routinely required, operators would be required to submit to the BLM the results of a CEL with the post-completion sundry notice. The BLM will be reviewing the well drilling and completion records and logs including the CEL, to help verify that operators have complied with their duty to assure that the casings are properly cemented.

Section 3162.3–3(d)(3) would require reporting of the measured depth to the perforations in the casing and uncased hole intervals (open hole). This section would also require the operator to disclose specific information about the water source to be used in the fracturing operation, including the location of the water that would be used as the base fluid. The BLM needs this information to determine the impacts associated with operations. This rule would add ''reused or recycled water'' to the example list of sources and location of the water supply to be used for fracturing operations. The rule makes it clear that reused or recycled water is a recognized source of water supply for these types of operations. The information required by this paragraph does not interfere with State or tribal regulation of water allocation. The operators would need to comply with all State or tribal water laws, but need not disclose to the BLM the documents evidencing their rights to use the water. This regulation would in no way discourage operators from reusing or recycling water for new hydraulic fracturing operations.

Initial proposed section 3162.3–3(c)(4) would have required operators to certify in writing that they have complied with all applicable Federal, tribal, State, and local laws, rules, and regulations pertaining to fracturing fluids before a fracture is attempted. This section has been deleted from the revised proposed rule because the BLM believes that requiring this certification after the operator has completed hydraulic fracturing operations (see section 3162.3–3 (i)(7)) adequately protects Federal and Indian lands and resources and, therefore, the burden on industry of providing and on the BLM of reviewing that information ahead of operations is not justified.

Section 3162.3–3(c)(5) has been renumbered in this revised proposed rule as section 3162.3(d)(4) and has been revised. Section 3162.3–3(d)(4) would require the operator to submit a plan for the hydraulic fracturing design. This information is needed in order for the BLM to be able to verify that the proposed hydraulic fracturing design is adequate for safely conducting the proposed well stimulation.

Section 3162.3–3(d)(4)(i) would require the operator to submit the estimated total volume of fluids that will be used in the hydraulic fracturing operations.

Section 3162.3–3(d)(4)(ii) would require submission of the anticipated surface treating pressure range. This information is needed by the BLM to verify that the maximum wellbore design burst pressure will not be exceeded at any stage of the hydraulic fracturing operation.

Section 3162.3–3(d)(4)(iii) would require the maximum injection treating pressure information to be submitted. This information is needed by the BLM to verify that the maximum allowable injection pressure will not be exceeded at any stage of the hydraulic fracturing operation.

Section 3162.3–3(d)(4)(iv) would require the operator to submit the estimated fracture direction, length, and height, including the fracture propagation plotted on a map so that the BLM can ensure that the fracturing operations do not threaten aquifers, other resources, or other operations. The rule would also require that the information include the estimated

fracture propagation plotted on the well schematics and on a map. The rule would require that the map must be of a scale no smaller than 1:24,000, which is the scale required for the map included in an APD.

The rule also would add a new paragraph 3162.3–3(d)(4)(v) that requires submission of the estimated vertical distance to the base of the nearest usable water aquifer above the fracture zone. The rule would require this information to assure that usable water is isolated from propagated fissures. Fracturing operations that are expected to propagate fissures vertically to depths near those of usable water may require closer scrutiny by the BLM than those with thousands of feet between the fissures and aquifers.

Section 3162.3–3(d)(5) would require the operator to provide for BLM's approval information about the handling of recovered fluids. This information is being requested so that the BLM has all necessary information regarding chemicals being used in the event that the information is needed to help protect health and safety or to prevent unnecessary or undue degradation of the public lands. The BLM has deleted the requirement for operators to provide the estimated chemical composition of flowback fluids because it would in effect require operators to reveal the total chemical constituents of their hydraulic fracturing fluids prior to operations. It would also require speculation as to the chemistry of fluids in the target zone, and their reactions, if any, with the hydraulic fracturing fluids. The BLM has determined that operators may justifiably change the chemical composition of hydraulic fracturing fluids after approval of fracturing operations, and even during those operations in response to such factors as availability of chemicals and unexpected geologic conditions. Thus, the reliability of the pre-operational estimated composition of flowback fluids could be imperfect. The composition of actual flowback fluids could be appropriately determined from the post-operational disclosure of the chemicals used in the fracturing operations. It is most important at the approval stage, however, for the operator to show that it has an adequate plan to manage and contain the recovered fluids that would prevent them from contaminating surface water or groundwater without regard to their specific chemical composition.

Section 3162.3–3(d)(5)(i) would require the operator to submit to the BLM an estimate of the volume of fluid to be recovered during flowback, swabbing, and recovery from production facility vessels. This information is required to ensure that the facilities needed to process or contain the estimated volume of fluid will be available on location.

Section 3162.3–3(d)(5)(ii) would require the operator to submit to the BLM the proposed methods of managing the recovered fluids. This information is needed to ensure that the handling methods will adequately protect public health and safety.

Section 3162.3–3(d)(5)(iii) would require the operator to submit to the BLM a description of the proposed disposal method of the recovered fluids. This is consistent with existing BLM regulations for produced waters (i.e., Onshore Oil and Gas Order Number 7, Disposal of Produced Water, (58 FR 47354)). This information is requested so that the BLM has all necessary information regarding disposal of chemicals used in the event it is needed to protect the environment and human health and safety on Federal and Indian lands and to prevent unnecessary or undue degradation of the public lands.

Section 3162.3–3(d)(6) would require the operator to provide, at the request of the BLM, additional information pertaining to any facet of the hydraulic fracturing proposal. For example, the BLM may require new or different tests or logs in cases where the original information submitted was inadequate, out of date, or incomplete. Any new information that the BLM may request will be limited to information necessary for the BLM to ensure that operations are consistent with applicable laws and regulation, or that the operator is taking into account site-specific circumstances. Such information may include, but is not limited to, tabular or graphical results of an MIT, the results of logs run, the results of tests showing the total dissolved solids in water proposed to be used as the base fluid, and the name of the contractor performing the hydraulic fracturing operation.

Comments on What the Notice of Intent Sundry Must Include

Some commenters requested baseline water testing prior to hydraulic fracturing operations; however, the BLM cannot authorize operators to enter non-Federal land to conduct baseline water testing, so the BLM did not change the revised proposed rule as a result. Whether to require baseline water testing on Federal land will be addressed, as is the current practice, as part of the analysis under the National Environmental Policy Act (NEPA) review, and the ''downhole review'' by the BLM authorized officer pursuant to Onshore Oil and Gas Orders Nos. 1 and 2. For example, if local drilling or geologic conditions, such as downhole stratigraphy involving faults, fissures, natural fractures, karst/limestone or other similar conditions require extra vigilance for any leaks of wellbore fluids to the usable water, then additional testing for baseline water could be required by the BLM as a condition of approval (COA) of a drilling permit. Similarly, the site-specific NEPA analysis of a drilling permit might reveal local environmental conditions that indicate a need to require baseline testing as a COA.

The BLM received some comments requesting that the BLM require up-front disclosure of the chemicals proposed for use in the hydraulic fracturing fluid. Commenters indicated that only through full up-front disclosure could the BLM and the public assess impacts to water, land, air quality, and human health and safety. The proposed rule was not revised based on these comments. Analysis of the impacts from hydraulic fracturing is done as part of the NEPA analysis conducted prior to the issuance of permits. For the purposes of NEPA compliance, the exact composition of the fluid proposed for use is not required because chemicals used in the hydraulic fracturing process are generally considered potentially hazardous for the purpose of impact analysis and mitigation. Operators will be aware that the rule requires disclosure of hydraulic fracturing chemicals after operations are complete and operators will also be required to certify that the hydraulic fracturing fluid used complied with all applicable permitting and notice requirements and all applicable Federal, State, and local laws, rules, and regulations (a separate but similar certification is required for Indian lands). The operator would also be required to certify that wellbore integrity was maintained prior to and throughout hydraulic fracturing operations. The BLM believes that the post-fracturing disclosures and certifications would provide adequate assurances that the hydraulic fracturing operations protect public health and safety and protect Federal and Indian resources.

The BLM also received comments in opposition to pre-disclosure of chemical constituents because of trade secret concerns and positing that the actual chemicals used will change from the pre-drilling stage based on the results encountered during drilling. While the BLM agrees with these comments, no revisions to the revised proposed rule were made because neither the initial proposed rule nor the revised proposed

rule would require pre-disclosure of chemicals.

The BLM received some comments expressing concern about additional delays that would be caused by the permitting process in the proposed rule. According to the comments, unnecessary delays would be caused by having to submit voluminous amounts of information for each well proposed for hydraulic fracturing or acidization, the review and approval of CBLs prior to hydraulic fracturing, and the lack of BLM staff to perform these additional reviews. Based on consideration of these comments, the initial proposed rule has been revised. The changes include the option of including multiple wells with similar geology in the permit application (''type wells''), narrowing the scope of the rule to include only hydraulic fracturing, and the elimination of the requirement for the BLM to review and approve CBLs prior to hydraulic fracturing. These changes are discussed further in other sections of this preamble.

The BLM received some comments regarding the amount of information required in section 3162.3–3(c) of the proposed rule in order for the BLM to grant approval of hydraulic fracturing operations. The commenters stated that much of this information, such as flowback time and flowback volume, is speculative. Commenters indicated that data such as treatment volumes, chemical composition, and other specific design parameters can only be determined after the well has been drilled. Commenters also suggested that instead of providing site-specific design details which could change, the BLM should allow operators to submit a generic master design plan or type well proposal.

The BLM agrees with these comments. The revised proposed rule (section 3162.3–3(d)) would provide for a more streamlined permitting process by allowing a Notice of Intent Sundry Notice to cover a group of wells with similar geologic characteristics, rather than just a single well. If the Sundry Notice is for a group of wells, the information required in section 3162.3–3(d) would be submitted for a type well that represents a typical completion and hydraulic fracturing procedure for the group of wells included in the Sundry Notice. The requirement to submit a CBL prior to the BLM granting approval for hydraulic fracturing is also being removed in the revised proposed rule.

The BLM received some comments that suggested that more information should be required prior to approving a plan or application for a permit to hydraulically fracture a well. Some of the additional information suggested to be obtained included the total amounts of waste, recycling methods, produced fluid disposal plans, fluid transportation plans, on-site storage and chemical composition of flowback water, more geologic data, an emergency spill response plan, and information about confining zones. All of the suggestions are already parts of required APD components and other BLM regulations including Onshore Orders Nos. 1, 2, and 7. The BLM did not revise the rule as a result of these comments.

Some comments suggested that the BLM require more information both pre- and post-hydraulic fracturing, including common chemical names, composition of recovered fluids, sources of water used and storage/containment methods. Existing regulations require advance approval of plans for handling waste and hazardous materials and sources of water used in drilling and completing wells on Federal and Indian lands. The BLM did not revise the rule as a result of these comments.

The BLM received some comments stating that the proposed rule should provide for ''estimates'' rather than actual information in the permit application. The reason given for providing estimates is that the hydraulic fracturing plan could change from the time it is approved based on conditions encountered during drilling and for other reasons. The BLM partially agrees with this comment and has revised the rule so that it would allow the operator to submit information for a type well drilled in an area of similar geology in lieu of submitting information specific to every well proposed for hydraulic fracturing. The BLM understands that some of the information such as formation depths, will be estimations of various parameters; for example, well-specific geological strata, formation depth/zone of perforation and fracture, expected amount of fracturing fluid injection volumes and flowback from the wellbore, expected pressure and temperature during drilling and completions, etc. However, the BLM also requires that the operator submit a Sundry Notice if major changes from the approved permit are requested.

The BLM received some comments that the proposed rule requires documentation that is duplicative of other regulatory requirements and documents already submitted to the BLM, particularly the APD and Well Completion reports. The BLM agrees that some of the data that would be required in this rule is similar to that found or contained in other reports, forms and approved plans. However, the BLM believes that the requested information is unique to the hydraulic fracturing operation and is necessary for the BLM to ensure that operations are conducted in a manner that will protect groundwater, surface water, and other resources. The BLM did not revise the rule as a result of this comment. The BLM received some comments regarding the timeframes for hydraulic fracturing permit approvals. The commenters suggested that the rule should specify a set amount of time in which the BLM must complete its review of hydraulic fracturing proposals, and if that time was exceeded, the proposal would be automatically approved. The BLM did not revise the rule as a result of these comments because the imposition of a timeframe or ''automatic'' approvals could limit the BLM's ability to ensure protection of usable water and other resources. The BLM cannot abdicate its statutorily mandated responsibilities to prevent unnecessary or undue degradation of public lands and to protect Federal and Indian resources by establishing an artificial deadline. As discussed in other sections, however, the revised proposed rule would make several changes to the permitting process that would reduce the possibility of unreasonable delays.

The BLM received some comments questioning the rationale or need for the information requested in both the permit and the subsequent report. The BLM has determined that the requested information is important to assess the environmental impacts of the proposed operation as well as to ensure that hydraulic fracturing operations will be conducted in a manner that prevents waste of valuable minerals, protects other resources, and ensures public health and safety. No revisions to the rule were made as a result of this comment.

The BLM received some comments objecting to the requirement to estimate or calculate fracture lengths both in the application for hydraulic fracturing (section 3162.3–3(d)) and in the subsequent report (section 3162.3–3(i)). The primary objection expressed by the commenters is the difficulty, expense, and high degree of uncertainty in estimating, calculating, or measuring fracture lengths. According to the commenters, calculating fracture lengths requires elaborate computer models, which are often proprietary, and measuring fracture lengths requires seismic monitoring which adds time and expense. Some commenters questioned the need for this information, especially given that the target zone is usually thousands of feet below any known usable water zones. Other commenters stated that there is a

significant economic incentive to contain fractures to the target zone in order to minimize the volume of fluid required in the fracturing process.

In order to evaluate the potential impacts of the proposed hydraulic fracturing application, the BLM must have information showing the estimated fracture lengths. This information is used to help ensure that fractures will not intersect known fault zones, communicate with older unplugged wells with questionable wellbore integrity, or communicate with usable water zones. The BLM is aware that the fracture lengths provided in the application and subsequent report are estimates. For the subsequent report, the reporting of actual fracture lengths can be used to identify potential problems. The BLM did revise section 3162.3–3(i) as a result of these comments; moreover, section 3162.3–3(d) was revised to clarify how the estimated fracture lengths are to be provided to the BLM in the application.

Section Discussion

Section 3162.3–3(e) is new to the rule. This section would require monitoring of cementing operations and would require a CEL prior to hydraulic fracturing operations for each casing that protects usable water. The requirements are necessary to ensure that the usable water aquifers intersected during well drilling have been isolated to protect them from contamination. Because aquifers are permeable, operators routinely isolate them from hydraulic fracturing operations by lining the wellbore with a tubular casing (typically metal casing). ''Surface casings'' are typically run for the top 1,000 to 1,500 feet of a well. ''Intermediate casings'' are used where necessary at greater depths. Operators pump cement to the outside of the casing to assure that the casing will transmit the pressures of hydraulic fracturing to the surrounding rock without failure, and to assure that neither fracturing fluids nor produced oil and gas leak through or around the casing and are lost. Cementing operations, however, do not always yield a perfect result. There may be gaps, voids, or channels between a casing and the rock wall of the wellbore that lack adequate cement, and thus may be vulnerable to failure or leaks. A CEL is a class of tools that can be run down a casing to assess whether there are any significant gaps or voids in the cement behind a casing. Operators typically run a CEL on intermediate casings, but not on surface casings when the cement flows back to the surface. For surface casing an operator generally observes the cement in the annulus, and uses additional cement as needed. The initial proposed regulations at section 3162.3–3(c)(2) would have required a CBL prior to all hydraulic fracturing operations. However, a CBL is only one of a suite of technologies that are described as CELs. Under this revised proposed rule, other cement evaluation technologies, either existing or developed in the future, that are equally effective may be used. An ''equally effective'' technology in this context would be any methodology or tool that is at least as reliable as a CBL in detecting gaps or voids in the cement behind a casing and meets the performance objective of validating the wellbore integrity and isolating zones of usable water.

Operators may choose from several well logging techniques to evaluate the quality of the cement behind casing. Various types of logs provide different types of information. For example, a CBL presents the reflected amplitude of an acoustic signal transmitted by a logging tool inside the casing. Another acoustic log presents the waveforms of the reflected signals detected by the logging tool receiver and provides qualitative insights concerning the casing, the cement sheath and the formation. Ultrasonic logging tools measure the resonant echoes.

Under this rule, operators would have the flexibility of using suitable logs to confirm a good cement bond behind the casing to protect and isolate usable water. The BLM will review those logs after post-completion submission by the operator.

New section 3162.3–3(e)(1) would require the operator to monitor and record the flowrate, density, and treating pressure, and to submit a cement operation monitoring report to the BLM within 30 days after completion of hydraulic fracturing operations. The required monitoring data would provide important indications of problems with the cementing of casings. That monitoring data would help to verify the results of a CEL and for wells where no CEL is required will provide the primary assurance that cementing operations conformed to those of a proven type well.

New section 3162.3–3(e)(2) would require the operator to run a CEL for each casing that protects usable water, unless it is exempt from doing so under (e)(3) of this section, and to submit these logs to the BLM within 30 days after completion of the hydraulic fracturing operations. A CEL includes, but is not limited to, a CBL, ultrasonic imager, variable density logs, micro-seismograms, CBLs with directional receiver array, ultrasonic pulse echo technique, or isolation scanner.

Comments on Cement Bond Logs

The BLM received some comments in response to proposed sections 3162.3–3(b)(i), 3162.3–3(b)(ii), 3162.3–3(c)(2), that would have required operators to run CBLs and obtain approval from the BLM prior to commencing hydraulic fracturing operations. The commenters focused on seven main issues: (1) Allowing the use of other technology besides CBLs; (2) The use of other metrics to demonstrate zonal isolation; (3) Delays and costs associated with running and obtaining approval of CBLs prior to commencing hydraulic fracturing operations; (4) Reliability and interpretation of CBLs; (5) The incorporation of API Standard 65–2; (6) The ability for operators to challenge or appeal findings from the BLM regarding CBL results; and (7) The possibility of requiring CBLs on all casing strings, not just the surface casing. These comments are discussed in further detail below.

Some commenters suggested that the BLM should allow the use of other technologies in lieu of a CBL. The other technologies that were suggested include ultrasonic logs, variable density logs, micro-seismograms, standard CBLs, CBLs with directional receiver array, ultrasonic pulse echo technique, and isolation scanners. The BLM agrees with this comment and believes that these technologies could be effective at demonstrating zonal isolation. Therefore, section 3162.3–3(e)(2) would replace the term CBL with a more generic term, ''cement evaluation log,'' (CEL) which would include the technologies suggested by the commenters. It would also permit operators to use logging tools which are the most appropriate in any given situation.

Some commenters stated that a CBL provides only one indication of the quality of a cement job. The comments said that there are other, perhaps more reliable, methods of determining the quality of the cement job such as:

- Monitoring cement returns to the surface during the cement job. If good cement returns are achieved, it is a positive indication that there were no unexpected or untreated voids or fractures in the wellbore, which helps ensure that cement was properly placed between the wellbore and the casing;
- Placing centralizers on the lower joints of casing to ensure the casing is concentric to the wellbore, allowing a uniform cement sheath to form between the casing and the wellbore;

• Witnessing the amount of ''fall back'' of cement in the annulus; while it is normal for the top of the cement to retreat down the annulus as the cement sets, excessive fall-back can indicate that problems were encountered during the cement job;

• Monitoring the pressures, flow rates, volumes, and densities of cement during the cement job. If these parameters are consistent with the values anticipated during the design of the cement job, it is a good indication that no unexpected conditions were encountered during the cementing and that a cement seal has been established;

• Ensuring that there were no equipment failures during the cement job, such as line breaks or pump failures; and

• Applying other analytic techniques such as temperature logs and formation integrity tests.

Some commenters stated that the BLM should require the operator to run a CBL only if one or more of these methods indicated a problem with the cement job. The BLM agrees with these comments and proposes several revisions in the revised proposed rule as a result. The revised proposed rule includes a new section 3162.3–3(e)(1) that would establish requirements for monitoring cementing operations, including the need to monitor and record flow rate, density, and pumping pressure of the cement. In addition, section 3162.3–3(e)(4) would require the operator to run a CEL if there are indications of an inadequate cement job such as lost returns, cement channeling, gas cut mud, or equipment failure. If the monitoring information provides indications of an inadequate cement job, the operator would also be required to notify the BLM within 24 hours, submit a written report within 48 hours, and to certify that the inadequate cement job had been corrected and document that zonal isolation had been achieved prior to starting hydraulic fracturing operations. The BLM also agrees with the importance of centralizers in obtaining zonal isolation; however, because Onshore Order No. 2 (Section III.B.1.f) already requires centralizers on the bottom 3 joints of surface casing, an additional requirement to run centralizers is not needed in this rule.

Some commenters objected to the cost of running a CBL on every well and, perhaps more importantly, the delay associated with the BLM review of CBLs prior to allowing operators to start hydraulic fracturing operations. Some comments referenced the current delays in permitting due to lack of staff and stated that this additional approval step would only serve to exacerbate these delays. Several revisions are included in the revised proposed rule as a result of these comments. For wells where there are no indications of an inadequate cement job, section 3162.3–3(e)(3) would provide an option to run a CEL only on a type well that is representative of local geology and typical drilling and completion techniques. If the CEL run on the type well demonstrated zonal isolation, CELs would not be required on subsequent wells where there were no indications of an inadequate cement job. However, Section 3162.3–3(e)(4) would require an operator to run a CEL on all wells where there are indications of an inadequate cement job, such as, but not limited to, lost returns, cement channeling, gas cut mud, or failure of equipment, that show that remedial action and evaluation are necessary. In addition, the revised proposed rule would eliminate the need for the BLM to review and approve the CEL prior to commencing hydraulic fracturing operations. Instead, operators would submit CELs run under section 3162.3–3(e)(2) within 30 days of completing hydraulic fracturing operations. CELs for type wells would have to be submitted prior to exempting subsequent wells under 3162.3–3(e)(3) from the requirement to run a CEL. Operators would submit CELs run under 3162.3–3(e)(4) at least 72 hours prior to commencing hydraulic fracturing operations; however no approval from the BLM would be necessary. The BLM considered a requirement for operators to receive BLM approval prior to commencing hydraulic fracturing operations in these cases. The BLM believes that the combination of the proposed notice and certification requirements would provide adequate assurance of wellbore integrity prior to hydraulic fracturing without incurring additional delay or workload. The proposed 24-hour notice would also allow the BLM time to prioritize inspections of the hydraulic fracturing operation to verify compliance with these proposed regulations, Onshore Order Number 2, and the approved APD.

The BLM received some comments expressing concern about the reliability of CBLs and the difficulties of interpreting CBLs. Some commenters stated that CBLs are not effective until the cement has reached a certain compressive strength because CBLs work on the principal of acoustic attenuation. At low compressive strengths, commenters stated that the acoustic properties of cement and water are very similar and it is difficult to delineate between the two when interpreting logs. The commenters went on to state that the problem is more pronounced in surface casing because the lower formation temperature near the surface prolongs the setting process, requiring more time to achieve levels of compressive strength that are required for reliable log interpretation. Comments about the additional waiting times varied. One commenter suggested that a CBL on the surface casing and intermediate casing would delay drilling operations 24 hours for each test. Other commenters suggested that the CBL requirement would delay drilling operations by up to 72 hours for the surface casing alone. The commenters suggested that during this time, operators would be required to maintain idle drilling equipment on site, at a significant cost to the operators.

After researching these concerns, the BLM acknowledges the potential difficulties of running and interpreting CBLs. As a result, the BLM has determined that requiring CBLs on every well may be unnecessarily expensive, may induce unnecessary delay, and will not provide increased protection beyond what will be available by requiring a CEL on type wells. Therefore, the revised proposed rule would give operators the option of running a CEL on a type well as discussed previously. A CEL would still be required on all wells where there are indications that there is an inadequate cement job. The BLM also believes that allowing the use of other technology such as ultrasonic logs could make the log interpretation less subjective.

The BLM also received some comments expressing concerns about the ability of BLM staff to properly interpret CBLs. According to the commenters, without adequate training and experience, the BLM could misinterpret a CBL run in a wellbore with an adequate cement job and conclude that there was an inadequate cement job. This misinterpretation would result in additional time and expense for the operator to either challenge the BLM's finding or to conduct expensive and unnecessary remedial work. The BLM does not agree with the assertion regarding the lack of staff training and experience. However, the BLM believes that the previously discussed changes, including providing a type well option, and eliminating the need for a requirement to obtain BLM approval of CELs prior to starting hydraulic fracturing operations, address the commenters' concerns.

The BLM received some comments which requested that the rule include an appeal process for operators if the BLM

were to deny hydraulic fracturing on a well because the CBL could not demonstrate zonal isolation. The BLM did not revise this rule as a result of this comment because a BLM decision to deny authorization to hydraulically fracture a well would be subject to the administrative reviews already established in 43 CFR 3165.3 and 3165.4. In addition, as discussed earlier, the revised proposed rule would eliminate the requirement for operators to obtain BLM approval of CELs prior to starting hydraulic fracturing operations.

Some commenters recommended that the BLM require operators to run CELs on all casing strings, not just the surface casing because the isolation of usable water, as required in Onshore Order No. 2, may be accomplished by other casing strings. The proposed rule published in May 2012 required CBLs on all casing strings protecting usable water. The BLM clarified this requirement in 3162.3–3(e)(2), with exceptions for type wells, in this revised proposed rule.

Section Discussion

New section 3162.3–3(e)(3) would explain that an operator is not required to run a cement evaluation log on the casings if the operator:

(1) Had submitted a CEL for a type well that showed successful cement bonding to protect against downhole fluid cross-migration; and

(2) Completes a subsequent well or wells with the same specifications and geologic characteristics as the type well, and approved in the same group sundry notice for a single field, and the cementing operations monitoring data parallels those of the type well.

The BLM believes that where an operator has designed a type well to be replicated across a field (and often from the same well pad), and the cement monitoring data for each well and the CEL for the type well show no indications of cement problems, the operator should be allowed to construct the other wells in an approved group within the same field without the expense and potential delays of running a CEL for each well. The same well design and construction repeated within the same field with the same monitoring data should yield the same result: adequate cementing. After considering the comments, the BLM believes that requiring each well to have a CEL for the surface casing as originally proposed would impose costs and possibly delays on operators without providing significant additional assurance of adequate cementing to protect usable water aquifers. In view of the comments that insist that a CBL on surface casing is unnecessary when the cement returns to the surface, the BLM is also seeking comments on whether the requirements to run a CEL on wells where there is no indication of an inadequate cement job, as proposed in paragraphs 3162.3–3(e)(2) and (e)(3), is appropriate, including specific information about the costs and benefits of requiring CELs in such cases. Under new section 3162.3–3(e)(4), for any well, if there is any indication of an inadequate cement sheathing behind the casing such as, but not limited to, lost returns, cement channeling, gas cut mud, or failure of equipment, the operator would be required to notify the BLM within 24 hours of the occurrence, followed by a written report within 48 hours. Furthermore, the operator would be required to remedy the situation first following the standard industry practice. When logging operations indicate that the cement job is defective, either in the form of poor cement bonding or communication between zones, a remedial cementing technique known as squeeze cementing may be performed to establish zonal isolation. The commonly used steps to remedy such problems include perforating the casing at the defective interval and forcing, or ''squeezing,'' cement slurry through the perforations and into the annulus to fill the voids. In addition, squeeze cementing may be an effective technique for repairing casing leaks caused by a corroded or split casing. The objective is to restore the barrier integrity of the formations that were disrupted by drilling. To confirm a good cement sheathing behind the casing, the operator must run a CEL showing that usable water has been isolated to protect it from contamination. If deemed necessary, the BLM could require the operator to submit the CEL for BLM approval prior to continued operations. At least 72 hours prior to commencing hydraulic fracturing operations, the operator would be required to submit to the BLM a signed certification indicating that the operator corrected the inadequate cement job and documentation showing that there is adequate cement bonding. These requirements were added because the revised proposed rule has eliminated the requirement to submit a CBL for each well for approval by the BLM prior to continuing operations. Accordingly, where there are indications of a problem with cementing, the BLM needs to have timely and complete information showing correction of the problem. If an operator failed to report a cementing problem, the BLM would utilize one or more of its existing enforcement options. This could include: shutting down operations on the well until the operator takes the appropriate corrective actions; issuing an order of the authorized officer requiring remedial action; or monetary assessments for failure to comply. The BLM would enforce the appropriate action regardless of whether the original requirements for the well included the running of a CEL. Also, the BLM would put a high priority on witnessing that operator's operations on this and future wells to ensure compliance with these proposed regulations, Onshore Order Number 2, and the approved APD.

New section 3162.3–3(e)(5) would require operators to include in the Subsequent Report Sundry Notice under section 3162.3–3(i) the records and logs produced under sections 3162.3–3(e)(1) and (e)(2).

Section 3162.3–3(f) would require the operator to perform a successful MIT before beginning hydraulic fracturing or refracturing operations. This requirement is necessary to help ensure the integrity of the wellbore under anticipated maximum pressures during hydraulic fracturing operations. Wellbore integrity may be degraded over time, and thus it is necessary to perform a MIT prior to each refracturing operation.

Section 3162.3–3(f)(1) would require the MIT to emulate the pressure conditions that would be seen in the proposed hydraulic fracturing. This test would show that the casing is strong enough to protect usable water and other subsurface resources during hydraulic fracturing operations.

Section 3162.3–3(f)(2) would establish the minimum engineering criteria for using a fracturing string as a technique during hydraulic fracturing. The requirement to be 100 feet below the cement top would be imposed to ensure that the production or intermediate casing is surrounded by a competent cement sheath as required by Onshore Order No. 2. The 100 foot requirement is required by some State statutes (e.g., Montana Board of Oil and Gas Conservation, section 36.22.1106, Hydraulic Fracturing) and is a generally accepted standard in the industry. Testing would emulate the pressure conditions that would be seen in the proposed hydraulic fracturing in order to ensure that the casing used in the well would be robust enough to handle the pressures.

Section 3162.3–3(f)(3) would require the well to hold the pressure for 30 minutes with no more than 10 percent pressure loss. This requirement is the same standard applied in Onshore Order No. 2, Section III.B.h., to confirm the mechanical integrity of the casing.

This language does not set a new standard in the BLM's regulations. This test, together with the other requirements, would demonstrate if the casing is strong enough to protect water and other subsurface resources during hydraulic fracturing operations. The BLM believes that all of these tests are important to show that reasonable precautions have been taken to ensure the protection of other resources during hydraulic fracturing operations.

Comments on Mechanical Integrity Testing

Some commenters objected to the cost of the requirement for an MIT prior to hydraulic fracturing due primarily to the delay and the cost of rig time. The BLM disagrees with this comment. A casing pressure test is already required by Onshore Order No. 2. Section III.B.1.h. of Onshore Order No. 2 requires that operators test all casing strings below the conductor to 0.22 psi per foot of casing string length or 1,500 psi, whichever is greater, but not to exceed 70 percent of the minimum internal yield. While the test pressure for the MIT may differ from what is required by Onshore Order No. 2, there is no significant increase in rig time required to run the MIT as proposed.

Mechanical integrity testing is a common hydraulic testing method; operators typically conduct such tests after every surface- or intermediate-casing cement job. Operators first perform a casing pressure test to verify the mechanical integrity of the tubular string and then drill out the casing shoe. Next, they perform a pressure integrity test by increasing the internal casing pressure until it exceeds the pressure that will be applied during the next drilling phase. If no leakage is detected, the cement seal is deemed successful.

The BLM believes that performing a successful MIT prior to starting hydraulic fracturing is essential to ensuring the casing and fracture string (if used) are capable of withstanding the pressure used and serves as an early indicator whether the applied pressures can be successfully supported. No revisions to the initial proposed rule were made as a result of this comment.

The BLM received some comments stating that an MIT is not needed on every well and should only be required on wells that are more than 5 years old or if pressure exceeds 80% of casing yield. The BLM believes that the requirements in section 3162.3–3(f)(1) of the revised proposed rule are standard industry practice and are required to ensure the casing is capable of withstanding the pressures applied during hydraulic fracturing operations. No revisions to the revised proposed rule were made as a result of this comment.

Some comments suggested that the BLM require the operator to perform an MIT before and after hydraulic fracturing to ensure that there were no casing failures during the hydraulic fracturing process. No revisions to the revised proposed rule were made as a result of this comment. Sections 3162.3–3(f)(1) and (f)(2) of this rule would require the operator to test the casing and fracture string (if used) to the maximum anticipated treating pressure. If the MIT is successful prior to hydraulic fracturing and the treatment pressure does not exceed the MIT test pressure, there is no reason to run another MIT after treatment. The BLM believes that the tests required under this rule are sufficient to show that the casing is strong enough to protect water and other subsurface resources during hydraulic fracturing operations.

Some comments suggested changing the term ''MIT'' to ''pressure testing.'' No revisions to the initial proposed rule were made as a result of this comment. The BLM believes that the term ''Mechanical Integrity Test'' is widely understood by industry, is used by many State regulatory agencies, and accurately describes the intent of the test. Nonetheless, we invite comments as to whether there are other tests that would be equally effective as an MIT for confirming that well casings will withstand the pressures of hydraulic fracturing operations.

One comment recommended that the BLM should require reporting the results of the MIT with the subsequent report rather than prior to hydraulic fracturing. The BLM did not revise the rule as a result of this comment because there is no specific provision in the revised proposed rule that would require the operator to submit the MIT results to the BLM prior to fracturing. A related comment suggested that the BLM should be notified of any failures or anomalies in the MIT prior to hydraulic fracturing. The BLM does not believe that a requirement to notify the BLM of a failed MIT is necessary to ensure wellbore integrity prior to fracturing. The revised proposed rule (section 3162.3–3(f)) would require a successful MIT prior to hydraulic fracturing; therefore, if the MIT failed and the operator proceeded with hydraulic fracturing operations, the operator would be in violation of the rule and would be subject to enforcement actions. No revisions to the initial proposed rule were made as a result of this comment.

The BLM received some comments suggesting that the proposed 10 percent allowable loss in pressure during the MIT is excessive. No revisions to the revised proposed rule were made as a result of this comment. The proposed 10 percent allowable pressure drop for the MIT is the same as the allowable pressure drop during the testing of casing and blowout prevention equipment in Onshore Order No. 2. The allowable pressure drop is included to set objective and enforceable standards of what the BLM considers to be a successful test.

Section Discussion

Section 3162.3–3(g)(1) would require the operator to continuously monitor and record the annulus pressure at the bradenhead and has been revised to apply to refracturing as well as fracturing operations. The pressure in the annulus between any intermediate casing and the production casing must also be continuously monitored and recorded. The pressure during the fracturing should be contained in the string through which the fracturing fluid is being pumped. Unexpected changes in the monitored and recorded pressure(s) provide an early indication of the possibility that well integrity has been compromised and that immediate action should be taken to prevent well failure. This information is needed by the BLM to ensure that hydraulic fracturing operations are conducted as designed. This information also shows that fracturing fluids are going to the intended formation and not into other geologic horizons such as aquifers. This section is different from the proposal in that it would require monitoring and recording of pressure between the annulus and any intermediate casing. This revised proposed rule makes this distinction because monitoring and recording of pressure in the annuli between all intermediate casings and the production casing more accurately shows downhole conditions, whereas the initial proposed rule required only monitoring and recording pressure in the annulus between the production casing and the intermediate string adjacent to the production string. Failure in other casing strings would not have been identified. The revision is proposed in order to detect potential failures of any casing string that may contribute to cross zonal flow.

Section 3162.3–3(g)(2) has been revised to apply to fracturing and refracturing operations and would require the operator to orally notify the BLM as soon as possible, but no later than 24 hours following the incident, if during the fracturing operation the

annulus pressure increases by more than 500 pounds per square inch over the annulus pressure immediately preceding the fracturing. Within 30 days after the occurrence, the operator must submit a Subsequent Report Sundry Notice (Form 3160–5, Sundry Notices and Report on Wells) to the BLM containing all details pertaining to the incident, including corrective actions taken. This information is needed by the BLM to ensure that fracturing fluids are going into the formation for which they were designed. The BLM also needs to obtain reasonable assurance that other resources are adequately protected. An increase of pressure in the annulus of this amount could indicate that the casing had been breached during hydraulic fracturing. Consistent with the BLM's Onshore Order No. 2, the operator must repair the casing should a breach occur. This section is different from the initial proposed rule. The initial proposed rule required the submission of the Subsequent Report Sundry Notice within 15 days after the occurrence. The revised proposed rule would require submission within 30 days after the occurrence. This revision was made to this rule to reduce the number of reports required from operators. The report can be part of the same Subsequent Report Sundry Notice required in revised proposed section 3162.3–3(i).

Section 3162.3–3(h) would require the operator to store recovered fluids in tanks or lined pits. This provision grants flexibility for the operator to choose using either a lined pit or a storage tank. This provision is necessary because flowback fluids could contain hydrocarbons from the formation and could also contain additives and other components that might degrade surface and groundwater if they were to be released without treatment. This section is consistent with existing industry practice and American Petroleum Institute (API) recommendations for handling completion fluids, including hydraulic fracturing fluids (see Section 6.1.6 of API Recommended Practice 51R, Environmental Protection for Onshore Oil and Gas Production Operations and Leases, First Edition, July 2009). Because the use of lined pits or tanks for the storage of recovered fluids reasonably protects land and water from spills or leaks of recovered fluids, the BLM believes that this provision is consistent with FLPMA's mandate to prevent unnecessary or undue degradation of the public lands and the BLM's obligations to protect environmental quality and Indian trust resources.

Typically, most of the hydraulic fracturing fluid that will be recovered from a well is recovered before the well begins producing significant quantities of oil or gas. Traces of the fracturing fluids, however, may be produced for long periods of time thereafter, usually with water from the formation. It is not the BLM's intent for the proposed rule to displace Onshore Order No. 7 for disposal of produced water. The BLM invites comments on the potential benefits of distinguishing flowback fluid from produced water and suggested ways to distinguish the two.

Commenters should consider that Onshore Order No. 7 allows for temporary storage in reserve pits for up to 90 days, with the possibility of an extension. Onshore Order No. 1 requires all pits to be reclaimed within six months of well completion or well plugging, with the possibility of a variance.

Additional conditions of approval for the handling of flowback water may be placed on the operation by the BLM if needed to ensure protection of the environment and other resources. The BLM recognizes the ongoing efforts of States to regulate hydraulic fracturing operations. This regulation would not preempt any State or tribal law that might require use of such technologies as double-lined pits or tanks as part of a reuse or recycling requirement.

Comments on the Handling of Recovered Fluids

Commenters expressed a variety of views on proposed section 3162.3–3(f). That section would require storage of flowback fluids in lined pits or tanks. Some commenters were critical of allowing storage of flowback fluids in lined pits, stating that pits increase the likelihood of accidental discharges, that pit liners may react with flowback fluids and cause failures and seepage, that pits must be fenced to exclude wildlife, and that the fluids stored in pits would cause air pollution. Those commenters recommended that pits be double-lined, that they be equipped with leak detection systems, or that storage in pits be prohibited and that the rule should require flowback fluid to be stored in tanks, or in a closed-loop containment and reuse system. Some commenters were in favor of BLM's proposal to require a plan for handling flowback fluids, as in proposed section 3162.3–3(c)(6), but sought additional encouragement in the rule for injection and recycling of those fluids.

Other commenters believed that requiring lined pits or tanks for flowback fluids was appropriate. Some, though, argued that those requirements were duplicative of the requirements of some State regulations. Some commenters recommended that the rule simply adopt the requirements of Onshore Order No. 7 for flowback pits.

The BLM shares commenters' concerns about contributions of pits to air quality problems, and the possibility of failures, leaks, and overflow events. The BLM is also concerned about excluding wildlife, including migratory birds, from pits on well sites, but a separate Instruction Memorandum has been issued and describes appropriate fencing, netting, and other actions to help prevent wildlife and livestock injury or mortality from various aspects of oil and gas operations, including open pits. See the BLM's Instruction Memorandum WO–IM–2013–033 of December 13, 2012. The BLM is also interested in evaluating the costs of requiring flowback fluids to be stored in closed tanks.

In a sampling of State regulations, it was found that most States require flowback fluids to be stored in lined pits or tanks. One State, California, requires storage in tanks, and another, New Mexico, allows lined pits to be approved as a variance from requiring storage in tanks. It also appears that some States, such as Texas and Oklahoma, are encouraging the use of mobile recycling systems.

Onshore Order No. 7 allows disposal of produced water in unlined pits in certain circumstances. The BLM does not believe that storage of hydraulic fracturing flowback fluids in unlined pits is appropriate because of the far greater volume of flowback fluids compared with typical volumes of produced water, and because of the chemical constituents of flowback fluids may pose different or increased risks if they come into contact with surface water or groundwater.

The revised proposed rule at 3162.3–3(h) has not been materially changed in response to the comments on the proposed rule. The revised proposed rule would not preempt State laws that require the use of tanks, or efforts to expand use of mobile recycling systems.

Some comments were also received requesting that the final rule state that all flowback water be captured in tanks and removed from the site without the use of pits. This would require that the BLM distinguish flowback water from produced water and also require additional tankage since flowback water is generally returned to the surface mixed with water produced from the formation. The BLM seeks comments on whether the following is an appropriate distinction: fluids recovered from a hydraulically fractured well before it

begins production of oil or gas will be considered flowback and subject to revised proposed rule section 3162.3–3(h); fluids recovered from a hydraulically fractured well after it begins production of oil or gas will be considered produced water and subject to Onshore Order No. 7. The BLM is also interested in the public's views on whether such a distinction should be in the regulation, or be issued as non-binding guidance.

In view of comments raising concerns that flowback fluids present hazards to the environment beyond those that can be controlled in lined pits, the BLM is specifically requesting comments on whether the rule should require flowback fluids to be stored only in closed tanks, and not allow them to be stored in lined pits. Is the exclusive use of tanks preferable for the handling of flow-flowback water from either an environmental or economic perspective? Are there additional environmental or economic concerns that should be considered as the BLM considers a requirement for the use of tanks for the disposal of flow-flowback waters? Another alternative would be for the rule to specify that a lined pit must be equipped with a leak detection system, as is required for lined pits for produced water under Onshore Order No. 7. Some commenters advocated for requiring double-lined pits. The BLM asks for comments on the costs and benefits of the foregoing alternatives for storage of flowback fluids. Specific information about the environmental and economic costs and benefits of those alternatives would be most useful. Information on the prevalence of tank use versus lined pits would also be helpful.

A number of comments were received on the proposed rule that raised issues that are already addressed in other places in the BLM's Oil and Gas operations regulations and the Onshore Orders. The Onshore Orders may be viewed at: *http://www.blm.gov/mt/st/en/prog/energy/oil_and_gas/operations/orders.print.html*.

Section Discussion

Section 3162.3–3(i) has been reorganized from what was in the proposed rule and would require the operator to submit to the BLM certain information within 30 days after fracturing or refracturing operations are complete. The information required by paragraph (i)(1) of this section on the depth of the well, water volume used, and information about the chemicals used in the fracturing fluid may be submitted through FracFocus or another BLM-designated database, or in the Subsequent Report Sundry Notice. If the information is submitted through FracFocus, or another BLM-designated database, the operator must specify whether the information is for a Federal or Indian well, certify that the information is correct, and certify compliance with applicable law. All other information required under paragraph (i) would be submitted in the Subsequent Report Sundry Notice. If, for some reason, the operator is unable to submit the information about the chemicals through FracFocus or another BLM-designated database, the operator must timely submit the required information directly to the BLM. The BLM would determine if the hydraulic fracturing operation was conducted as approved and would retain this information as part of the individual well record and it would be available for use when the well has been depleted and the plugging of the well is being designed. This section would also make it clear that any information submitted by a contractor or agent of the operator is considered to have been submitted directly from the operator to the BLM. In other words, the operator is responsible for information submitted by contractors or agents. This section also would require the operator to submit information to the BLM within 30 days after the hydraulic fracturing operations are completed for each well, even if the BLM approved hydraulic fracturing of a group of wells (see section 3162.3–3(c)).

Section 3162.3–3(i)(1) is new to the rule and would require that the operator submit to the BLM the true vertical depth of the well, total water volume used, and for each chemical used (including base fluid) the trade name, supplier, purpose, ingredients, Chemical Abstract Service Number (CAS #), maximum ingredient concentration in additive (% by mass), and maximum ingredient concentration in hydraulic fracturing fluid (% by mass). Total water volume includes ''new'' water and any produced water or water reused or recycled from prior hydraulic fracturing operations. The percent mass value is the mass value for each component (Mc) divided by the value of the entire fluid mass (Mt) times 100. (Mc/Mt)*100 = percent value. The information should be based on the maximum potential for concentration, and thus the total may exceed 100 percent by a reasonable, but minimal, amount. The percent mass values should be for the entire stimulation operation, not for the individual stages. Table 1 presents an example of the kind of information that may be submitted.

TABLE 1—SAMPLE HYDRAULIC FRACTURING FLUID PRODUCT COMPONENT INFORMATION DISCLOSURE

Well Identification/Location and Other Fracturing Information

	Value	Remarks
Fracture Date	Start mm/dd/yyyy	Finish mm/dd/yyyy
State	Wyoming.	
County	Sublette.	
API Number	XX–XXX–XXXX.	
Operator Name:	XYZ COMPANY.	
Well Name and Number	Name and Number.	
Longitude	−109.123456.	
Latitude	42.54321.	
Production Type	Gas, wet gas, oil.	
True Vertical Depth (TVD) in feet	14,193.	
Total Fluid Volume Injected (gal)	X,XXX,XXX.	

HYDRAULIC FRACTURING FLUID COMPOSITION

Trade name	Supplier	Purpose	Ingredients	Chemical abstract service number (CAS #)	Max. ingredient concentration in additive (% by mass)	Max. ingredient concentration in HF Fluid (% by mass)**	Comments
SAND	XYZ Corp. ...	Proppant	Crystalline silica, quartz.	14808–60–7	100.00	7.48357	
LGC–39 UC	XYZ Corp. ...	Liquid Gel Concentrate.	Polysaccharide	Confidential Business Information.	60.00	0.16265	

** A long list of other materials may follow

The information required in paragraph 3162.3–3(i)(1) may be submitted directly to the BLM or through FracFocus or another BLM-designated database service. Substantially similar information required to be submitted by this section was proposed in sections 3162.3–3(g)(4) and (g)(5). The required information has been restated to conform to the fields for disclosure provided by FracFocus. Disclosure through FracFocus, though voluntary, would save operators from submitting data both to FracFocus and to the BLM in the States that require posting to FracFocus. It would also provide to the public timely information from a single Web site on fracturing operations on Federal, Indian (under these regulations), and non-Federal/non-Indian wells (through State law or voluntary submission). If the operator experiences any problem with submitting required information through FracFocus, it should notify the BLM promptly. The operator would be required to submit the information to the BLM within 30 days after completing the hydraulic fracturing operation, whether or not it is able to submit it through FracFocus.

Some commenters on the proposed rule were critical of FracFocus because of limitations in its ability to search and aggregate data across individual wells. The BLM has been in discussions with persons responsible for FracFocus and expects that recent and foreseeable improvements to the system will address many of these concerns.

Section 3162.3–3(i)(2) would require the operator to submit information on the actual measured depth of perforations or the open-hole interval (i.e., non-cased wellbore), the source and location(s) of the water used in the hydraulic fracturing fluid, and actual pump pressures. This information identifies the producing interval of the well and would be available for use when the well has been depleted and plugging of the well is being designed. The level of detail of the required information about the sources of the water used has been reduced from that in initial proposed section 3162.3–3(g)(1), because the deleted information (access route and transportation method) would not be useful to the BLM after the conclusion of operations. Requiring a subsequent report on the actual sources of water used, however, would allow the BLM to check the accuracy of the pre-fracturing notice and to remain informed of important trends in sourcing of water for hydraulic fracturing operations.

Section 3162.3–3(i)(3) would require submission of information on the actual surface pressure and rate at the end of each fluid stage, and the actual flush volume, rate, and final pump pressure. This information is needed by the BLM for it to ensure that the maximum allowable pressure was not exceeded at any stage of the hydraulic fracturing operation.

Section 3162.3–3(i)(4) would require submission of information pertaining to the actual, estimated, or calculated fracture length, height, and direction. This information is required so that the BLM can verify that the intended effects of the hydraulic fracturing operations remain confined to the petroleum-bearing rock layers and will not have unintended consequences on other rock layers or aquifers. The revised rule requires an operator to indicate the direction of hydraulic fracture. This was not in the initial proposed rule, and is necessary for the BLM to have accurate information pertaining to the extent and direction of the fracturing operations.

Section 3162.3–3(i)(5) would require submission of the following information concerning the handling of recovered fluids:

(1) The volume of fluid recovered during flowback, swabbing, or recovery from production facility vessels;

(2) The methods of handling the recovered fluids, including, but not limited to, transfer pipes and tankers, holding pond use, re-use for other stimulation activities, or injection; and

(3) The disposal method of the recovered fluids, including, but not limited to, injection, hauling by truck, or transporting by pipeline. The disposal of fluids produced during the flowback from the hydraulic fracturing process must follow the requirements set out in Onshore Order No. 7, Disposal of Produced Water, Section III. B.

The information is necessary to assure that the lands and waters have not been contaminated by flowback fluids. The proposed regulation at 3162.3–3(g)(10) included a requirement for information on pipeline requirements. Pipeline systems are not ordinarily used for transfer of flowback fluids. This revised proposed rule at section 3162.3–3(h)(5)(ii), instead would require information on transfer pipes and tankers.

Section 3162.3–3(i)(6) would state that if the actual operations deviate from the approved plan, the deviation(s) must be documented and explained. Understanding the complexities of hydraulic fracturing, the BLM expects there often to be slight differences between the proposed plan and the actual operation. The explanation would provide the BLM with a better understanding not only of the particular well, but also of the technologies used in various geologic areas.

Section 3162.3–3(i)(7) is a renumbered section that would require the operator to submit to the BLM a certification signed by the operator that:

(1) Wellbore integrity was maintained prior to and throughout the hydraulic fracturing operation, as required by paragraph (b) of this section. This requirement was originally proposed in section 3162.3–3(h)(9). It would also require the operator to certify that it complied with the requirements of paragraphs (e), (f), (g) and (h) of this section; and

(2) For Federal lands, the hydraulic fracturing fluid used complied with all applicable permitting and notice requirements as well as all applicable Federal, State, and local laws, rules, and regulations; or

(3) For Indian lands, the hydraulic fracturing fluid used complied with all applicable permitting and notice requirements as well as all applicable

Federal and tribal laws, rules, and regulations.

Operators must certify that they have complied with the requirements for monitoring cementing operations, mechanical integrity testing, and monitoring during fracturing operations; the accuracy of these certifications will be checked through the submission of the monitoring and testing data as required in section 3162.3–3(i)(8). Assurances of wellbore integrity are critical for knowing whether further inquiries are needed to assess any environmental contamination. The certification of compliance with applicable permitting and notice requirements was in the proposed regulation both for the notice of intent and for the subsequent operations. This rule would require only that the certification be included with the Subsequent Operations Sundry Notice.

In response to comments provided in meetings with tribal representatives, in this revised proposed rule, the certification required for Indian lands is detailed separately from the certification required for Federal lands. Consistent with the overall approach of this rule, the revision is to clarify that this part does not apply State or local law to Indian lands. This section does not specify which laws apply on Indian or on Federal lands, but only the necessary certification.

Section 3162.3–3(i)(8) is also new to the revised proposed rule and it would require the operator to submit evidence supporting the information required in paragraphs (e)(1), (e)(2), and (f) of this section, including the cement operations monitoring report, any CEL, and the result of any MIT. The initial proposed rule would have required submission to the BLM of cement bond logs prior to completing operations, but that requirement has been revised in response to comments that the costs of delays for CBLs would be excessive. As mentioned above, requiring the monitoring and testing data, including any CELs after operations, will be sufficient to check the accuracy of operators' certification that the operations were in compliance with the rule.

New section 3162.3–3(i)(9) would provide that the BLM may require submission of data substantiating the information required in paragraph (i) of this section. The required information would provide a more complete record of the well. If there is an indication that a closer examination is necessary, the operator would provide the authorized officer with the data relevant to the information reported with the Subsequent Operations Sundry Notice.

Comments on Information That Must Be Provided to the BLM After Completed Operations

The BLM received some comments regarding the disclosure through the FracFocus Web site of chemical constituents used by operators during hydraulic fracturing operations. This online database includes information from oil and gas wells in roughly 12 States and includes information from over 500 companies. The commenters were divided between those supporting disclosure using FracFocus and those opposed to its use. Supporters of FracFocus indicated it was a common database which many State agencies already use, that the BLM does not have the necessary manpower to process and post information on their own, and that FracFocus allows for transparency of data to the public.

The BLM agrees with these comments and has proposed revisions to the proposed rule at section 3162.3–3(i) that would recognize FracFocus as an approved method of disclosing chemicals. However, the BLM would also accept other methods of disclosure, including the submittal of a Sundry Notice, or the posting of the information in another BLM-designated database. The revised proposed rule makes it clear that an operator should not disclose any information on the Subsequent Report Sundry Notice or on FracFocus that it believes to be exempt from disclosure under the Trade Secrets Act or other Federal law. However, under the revised proposed rule, the BLM would have the authority to require the submittal Trade Secret information on a case-by-case basis. A more detailed discussion of the Trade Secrets Act is provided under that section of the preamble.

Commenters objecting to the use of FracFocus were concerned that the database lacks search capability or filtering and sorting of information, provides incomplete disclosure, and that copyright protection prohibits data from being copied. Commenters also expressed concerns that FracFocus is not updated in a timely manner, needs a dedicated funding source independent from the oil and gas industry, and that FracFocus is not a government run Web site and not subject to Federal laws or oversight. Some comments proposed that the BLM develop an independent government-run database for chemical disclosure.

While the BLM did not revise this rule in response to these comments, it understands that FracFocus is in the process of improving the database with enhanced search capabilities to allow for easier reporting of information. In addition, information submitted to the BLM through FracFocus will still be required to comply with this rule. The BLM believes that working with the Groundwater Protection Council and the Interstate Oil and Gas Compact Commission to improve FracFocus will be more cost-effective and beneficial than creating a separate database for Federal and Indian wells.

The BLM received some comments that suggested that the rule should require the reporting of the maximum concentration of each constituent in the hydraulic fracturing fluid instead of the actual concentration, as was stated in the proposed rule. Commenters also suggested that the concentration in percent of total fluids should be reported. The BLM agrees with these suggestions because by using maximum concentration, the information is consistent with the data fields in FracFocus and the requirements of this rule. Most hydraulic fracturing operations are conducted on one section or segment at a time along the length of the horizontal well bore within the target zone. Operators may adjust or vary the actual concentrations of chemicals in later fracturing segments based on results in the earlier segments. In such a situation, there may be no one concentration of certain chemicals, but the maximum concentration could be readily reported. In addition, the maximum concentration expressed in percent of total fluid would be helpful in determining the toxicity of the fluid in case of accidental spill or exposure. For these reasons, the revised proposed rule (section 3162.3–3(i)(1)) would require the maximum concentration of each chemical used in both the additive and in the hydraulic fracturing fluid.

The BLM received some comments objecting to the amount of information required in the subsequent report required in section 3162.3–3(g). Some commenters suggested that the reporting of chemical constituents should include only those constituents that were added and not chemicals that could be native to the target zone. One comment objected to the requirement that the subsequent report must be submitted to the BLM and suggested that the operator maintain the information and submit it only upon request. Some comments stated that not all chemicals have a Chemical Abstracts Service Registry Number (CAS#) assigned to them and, therefore, should not be required. The BLM did not change the revised proposed rule as a result of these comments because the information required is important to its overall goal of ensuring public safety and environmental protection.

The BLM received some comments that more information should be required in the subsequent report, including the volume of the base fluid and each chemical used and proppants. The BLM did not revise the revised proposed rule as a result of these comments because the information already required is sufficient to ensure public safety and environmental protection.

The BLM also requests comments on whether, if the State (for Federal lands) or the tribe (for Indian lands) requires submission of the same or more information about the chemical constituents of hydraulic fracturing fluids, and provides that the information would be publicly available (except for trade secrets protected under State or tribal law), the BLM should deem compliance with those disclosure requirements within 30 days from completion of hydraulic fracturing operations to be compliance with proposed section 3162.3–3(i)(1). Such an amendment would reduce the compliance burden on operators in some areas, compared with the revised proposed section 3162.3–3(i)(1). However, if the State or the tribe does not require posting of the data on FracFocus, it could be less convenient for the public or the BLM to obtain the data, or to compare data across jurisdictions.

The BLM received some comments that stated an operator cannot certify actions of a third party or a contractor. The BLM disagrees with this comment. Existing regulations (43 CFR 3162.3(b)) specify that an operator is responsible for the conduct of every contract service provider on the operator's well site and lease, including the on-site activities and regulatory compliance of any hydraulic fracturing contractor. This requirement in the revised proposed rule is consistent with existing Federal regulations; therefore the BLM did not revise this rule as a result of this comment.

Some comments stated that the rule needs clarification on how to certify that wellbore integrity has been maintained throughout the hydraulic fracturing process. Certification of wellbore integrity would include certification of the monitoring requirements proposed in section 3162.3–3(f)(2). No revisions to the initial proposed rule were made as a result of this comment.

The BLM received some comments that said the rule should require operators to certify that they have complied with all Federal, State, and local laws. The BLM did not revise the rule as a result of these comments. The BLM believes, since all lease exploration, development, construction, production, operations, and reclamation activity is required to be conducted in a manner which conforms to all applicable Federal, State, and local laws and regulations, that requiring additional certifications, as suggested, would be redundant and cause unnecessary delays in approval and processing of APDs and sundry notices. All lease operations are already subject to the terms of the lease and its stipulations, the regulations of 43 CFR part 3100, Onshore Oil and Gas Orders, NTLs, the approved APD, and any written instructions or orders of the BLM authorized officer. In addition, the initial proposed rule and the revised proposed rule at section 3162.3–3(i)(7) would require the operator to certify that the hydraulic fracturing fluid used complied with all applicable permitting and notice requirements as well as all applicable tribal or Federal, State, and local laws, rules, and regulations. The BLM did not revise the rule as a result of this comment. However, we note that BLM would not normally take enforcement action based on an operator's innocent use of chemicals inadvertently mis-labeled by the manufacturer. BLM does not want to create an incentive in the rule that would make mis-labeled chemicals more valuable than properly labeled chemicals.

Section 3162.3–3(j) is substantially different from the proposed rule. This section would notify the operator of procedures it needs to follow to identify information otherwise required to be submitted under this section that the operator believes to be exempt, by law, from public disclosure. The operator should not disclose any particular information on the Subsequent Report Sundry Notice or through FracFocus that it believes to be exempted from public disclosure by the Trade Secrets Act or other Federal law. Instead, the operator should identify that particular information as a trade secret. For any information submitted under section 3162.3–3(j)(1), the operator would be deemed to have waived any right to protect that information from public disclosure. For the claimed exemption of any information required under paragraph (i)(1) of this section, the operator would be required to submit to the BLM an affidavit that:

(1) Identifies the Federal statute or regulation that prohibits the public disclosure;

(2) Affirms that the information is not publicly available;

(3) Affirms that the information is not required to be publicly available under any applicable law;

(4) Affirms that the release of the information would likely harm the operator's competitive position; and

(5) Affirms that the information is not readily apparent through reverse engineering.

For information which the operator does not believe to be exempt from public disclosure, this regulation is similar to the proposed regulations. Under section 3162.3–3(j)(2), any information provided in a Subsequent Report Sundry Notice or through FracFocus or other designated database would not be protected by the Trade Secrets Act or other Federal law.

For information claimed to be exempt from public disclosure, this rule is different from the proposed rule's exemption requirements. The proposed regulation would have required operators to submit the identities of all the chemicals used in the fracturing operations, to segregate the information the operator considered to be exempt from disclosure, and to justify the exemption. This rule does not require submission to the BLM information exempt by law from public disclosure. Instead, under section 3162.3–3(j)(1), the operator would submit an affidavit similar to the one required by regulations in the State of Colorado. If the affidavit is complete, it is possible that the operator may not be asked to submit any additional information regarding the claimed trade secrets. The BLM would have the discretion to require the operator to submit the undisclosed information for the BLM's review. Also, the BLM retains the discretion to adjudicate whether the undisclosed chemicals are exempt from public disclosure. If the BLM requested the information and determined that the information is exempt from disclosure, it would be kept confidential to the extent allowed by law.

Comments On Information Claimed To Be Exempt From Public Disclosure

Some commenters addressed the BLM's management of information about chemicals used in hydraulic fracturing operations. The proposed regulation would have required operators to provide information identifying all of the chemicals used in hydraulic fracturing fluids. For information that operators believed to be exempt from public disclosure under Federal law (referred to here as ''trade secrets''), the proposed regulation would have required operators to submit that information to the BLM, mark that information as a trade secret and provide a justification for not releasing that information to the public. A commenter noted that not all States

with oil and gas operations require public disclosure of the chemicals used in hydraulic fracturing fluids and that those that do require public disclosure are not uniform in their requirements. Some commenters wanted the BLM to provide for disclosure of trade secrets to the public, either upon demand of health officials or first responders or at the request of any member of the public. Other commenters wanted additional assurances that trade secrets would be kept confidential, or objected to providing trade secret information to the BLM, and some stated that uncertainty in protection of trade secrets could stifle innovation.

The *Federal Trade Secrets Act* makes it a crime for any Federal employee to make an unauthorized disclosure of a trade secret. See 18 U.S.C. 1905. The BLM lacks statutory authority to exclude hydraulic fracturing chemicals by regulation from the scope of the Trade Secrets Act. A commenter argued that the general rulemaking authority of the Secretary found in FLPMA, the *Mineral Leasing Act,* and the Indian mineral leasing statutes is sufficient for the BLM to require public disclosure of all chemicals without regard to the *Federal Trade Secrets Act.* The judicial opinions cited by that commenter, though, are distinguishable because the statutes at issue in those cases clearly contemplated public disclosure, and thus provided the necessary legal authorization for disclosure. The commenter's assertion that more information provided to the public would assist the BLM in its statutory duties does not render disclosure of operators' trade secrets ''authorized by law.''

Some States that require submission of trade secret information about hydraulic fracturing chemicals have laws which allow disclosure under certain circumstances to medical providers, public health officials, land owners, or first responders. The *Federal Trade Secrets Act,* however, does not provide for such exceptions.

The BLM believes that the initial proposed rule requiring operators to disclose trade secret information with justification for protecting each piece of information and requiring the BLM to maintain the confidentiality of all trade secret chemicals would not be the best solution. It would increase paperwork burdens on operators, and custodial requirements for the BLM. Because the BLM could not reveal trade secret information, the benefits of requiring operators to submit all such information would be limited. Revised section 3162.3–3(j) would instead instruct operators not to submit trade secret information with their disclosure of non-trade secret chemical information. Rather, operators claiming that some chemical information is a trade secret would withhold the information and submit an affidavit, modeled on the one used by the State of Colorado, to affirm that the undisclosed information is entitled to protection from public disclosure. The original affidavit may be submitted to the BLM with the subsequent report sundry notice within 30 days of completion of hydraulic fracturing operations, or an electronic version acceptable to the BLM field office may be submitted within that time. The electronic version would have the same legal effect as an original affidavit.

The operators would keep the undisclosed information for 6 years, under existing 43 CFR 3162.4–1(d). The BLM would have the discretion to require any operator to provide the withheld information. The BLM might demand withheld chemical information for reasons that could include the need to assist in tracing the origin of chemicals in a possible contamination event or to assure that operators are not claiming trade secret protection without justification.

Some commenters asserted that various engineering and construction features of oil and gas wells may be deserving of trade secret protection. For information, other than that required in revised proposed section 3162.3–3(i)(1), believed to be protected from public disclosure, the submitter must comply with the existing regulations at 43 CFR 3100.4. The procedure in revised proposed section 3162.3–3(j) applies only to the information required in revised proposed section 3162.3–3(i)(1).

Some commenters directed the BLM's attention to statutes such as the *Occupational Safety and Health Act* and the *Emergency Response and Community Right to Know Act,* and to regulations promulgated by other Federal agencies under the authority of such Acts. Those statutes, though, do not authorize the BLM to regulate the information required under those programs or to authorize disclosure of trade secrets. The revised proposed rule, however, would not interfere with other Federal agencies administering their programs, and would not preempt applicable State, local, or tribal laws that might require operators or other agencies to make chemical information available.

Other commenters asserted that operators should not be responsible for asserting and justifying trade secret protection for chemicals selected by service contractors. On the contrary, operators are responsible for all operations on their well sites and for compliance with all of the BLM's operating and reporting regulations. Some commenters believed that 10 days notice of a decision by the BLM before information would be released to the public was not sufficient to obtain temporary relief from a court. However, ten days is the notice for such decisions under the Department's FOIA regulations at 43 CFR 4.23(g). Some commenters suggested that trade secret issues should be centrally coordinated within the agency rather than be subject to field office case-by-case determinations. Trade secret issues are inherently specific to technologies, well locations, fracture zones, and times. The BLM will address trade secret issues at the most appropriate level of its organization, but that does not need to be specified in regulation.

Section Discussion

Under new section 3162.3–3(j)(4), information that the operator claimed to be exempt from disclosure would be required to be maintained in the operator's records for 6 years after the completion of the hydraulic fracturing operations, by referring to existing regulations at 43 CFR 3162.4–1(d). That time period will assure that records are available, but should not be unduly burdensome for operators. Section 3162.3–3(j)(4) has been added because the revised proposed rule has eliminated the requirement that operators routinely report information on trade secret chemicals to the BLM. In order for the BLM to have access to the withheld information, the rule needs a mandatory retention requirement. Existing section 3162.4–1(a) requires retention of ''accurate and complete records with respect to all lease operations,'' and subsection (d) of that section requires those records be retained for 6 years from the date they were generated. The reference to section 3162.4–1(d) is to provide consistency for operators. The BLM, however, is interested in comments with environmental and economic information that would show that another time period would be more appropriate.

Section 3162.3–3(k) would provide the operator with a process for requesting a variance from the minimum standards of this regulation. Variances apply only to operational activities, including monitoring and testing technologies, and do not apply to the actual approval process. The revised proposed rule adds a provision allowing the BLM to designate a variance applicable to all wells in a field, a basin,

a State, or within Indian lands. Such a variance would be based on the BLM's determination that the variance will meet or exceed the effectiveness of the regulation and would allow the BLM to adapt the regulatory requirements to the unique geology of an area. It would also be another way that the BLM could defer to a standard, technology, or process required or allowed by State or tribal law that meets or exceeds the effectiveness of the revised proposed rule. Under section 3162.3–3(k)(1) a request for a variance would be required to specifically identify the regulatory provision of this section for which the variance is being requested, explain the reason the variance is needed, and demonstrate how the operator will satisfy the objectives of the regulation for which the variance is being requested.

Section 3162.3–3(k)(2) states that the BLM must make a determination that the variance request meets or exceeds the objectives of the regulation. For example, an operator could request a variance from the requirement to monitor pressure in the annulus between any intermediate casing string and the production string because the last intermediate string was run as a liner and did not extend to the surface. The BLM could grant a variance in this situation because monitoring the annulus between the production casing and an intermediate string that did extend to the surface meets the objective of ensuring mechanical integrity is maintained during the hydraulic fracturing operation. This variance provision is consistent with existing BLM regulations such as Onshore Order Number 1 (see Section X. of Onshore Order No. 1).

Section 3162.3–3(k)(3) would state that a variance under this section does not constitute a variance to provisions of other regulations, laws, or orders.

Section 3162.3–3(k)(4) makes clear that the BLM has the right to rescind a variance or modify any condition of approval due to changes in Federal law, technology, regulation, field operations, noncompliance, or other reasons. The BLM would intend for an operator to rely on a variance, and thus would not expect to rescind it. When BLM finds that rescinding a variance is necessary, ordinarily, the BLM's rescission of a variance would be effective only prospectively. Conceivably, an operator might obtain a variance through such misrepresentations that it must not continue to benefit from the variance, or a variance is issued in violation of a statute or causes such significant harm that it must be rescinded retroactively, but such situations should rarely occur.

Section 3162.5–2(d) would remove the references to fresh water and removes the phrase ''containing 5,000 ppm or less of dissolved solids.'' This rule would require the operator to isolate all usable water and other mineral bearing formations and protect them from contamination. This language does not set a new standard in the BLM's regulations and does not create new compliance requirements for those operating on public and Indian lands. Since 1988, Onshore Order No. 2, Section II.Y., has defined usable water and at Section III.B. has required the operator to ''protect and/or isolate all usable water zones.'' Revised proposed section 3162.5–2(d) brings these regulations into conformity with Onshore Order No. 2, and provides the appropriate standard for control of wells, including hydraulic fracturing operations. Properly constructed and cemented production casing, and where appropriate, intermediate casing, will in most cases provide effective isolation of usable water and other mineral-bearing formations below the surface casing.

IV. Procedural Matters

Federal and Indian Oil and Gas Leasing Activity

To understand the context of the costs and benefits of this rule, BLM includes background information concerning the BLM's leasing of Federal oil and gas, and management of Federal and Indian leases. This analysis explains the basis for the conclusions related to the procedural matters sections that follow. The BLM Oil and Gas Management program is one of the largest mineral leasing programs in the Federal Government. At the end of fiscal year (FY) 2012, there were 48,699 Federal oil and gas leases covering 37,792,212 acres. For FY 2012, there were 92,583 producible and service drill holes and 99,015 producible and service completions on Federal leases. In FY 2012, onshore Federal oil and gas leases produced about 118 million barrels (Bbl) of oil, 2.81 billion Mcf (thousand cubic feet) of natural gas, and 2.84 billion gallons (Gal) of natural gas liquids, with a production value of almost $23 billion and generating royalties of almost $2.6 billion. Oil and gas production from Indian leases was almost 29 million barrels of oil, 256 million Mcf of natural gas, and 155 million gallons of natural gas liquids, with a production value of $3.4 billion and generating royalties of $561 million.

TABLE 2—FEDERAL AND INDIAN OIL AND GAS PRODUCTION AND ROYALTIES, FISCAL YEAR 2012

	Sales volume	Sales value ($ million)	Royalty ($ million)
Federal Leases:			
Oil (Bbl)	118,142,826	$10,442	$1,275
Gas (Mcf)	2,806,572,692	9,258	976
NGL (Gal)	2,839,924,280	2,947	298
Subtotal		22,648	2,550
Indian Leases:			
Oil (Bbl)	28,989,309	2,441	424
Gas (Mcf)	256,176,345	762	116
NGL (Gal)	155,313,421	183	21
Subtotal		3,386	561

Source: Office of Natural Resource Revenue, Federal Onshore Reported Royalty Revenue, Fiscal Year 2012 and American Indian Reported Royalty Revenue, Fiscal Year 2012.

Estimating Benefits and Costs

This analysis estimates the potential costs and benefits that would occur as a result of the rule. Therefore, this analysis measures the impacts in relation to the current operating environment (or the baseline).

In analyzing the costs and benefits of the rule, it is important to differentiate between the activities that operators currently conduct and those additional activities that the rule would compel. This change in behavior provides the basis of the cost and benefit estimates.

OMB Circular A–4 recognizes that not all benefits and costs can be described in monetary or even in quantitative terms. In such cases, the circular directs agencies to present any relevant quantitative information along with a description of the unquantifiable effects.

Measuring the Incremental Change

Many of the provisions in the rule are conducted voluntarily by operators as a matter of company practice or standard industry practice. Operators have a vested interest in ensuring that wells are constructed properly to avoid problems that might jeopardize their investment. As a matter of industry practice, operators typically perform the following tasks:

- Develop a plan for the hydraulic fracturing operation;
- Monitor the cementing processes;
- Cement the casing to protect water zones;
- Conduct pressure tests on casing strings during the drilling process or before hydraulic fracturing operations;
- Maintain drill logs identifying usable water zones;
- Run CBLs and/or other evaluation logs on the production casing and sometimes on the intermediate casing, if formations of interest that are above the producing zone or to maintain compliance with State regulations, State permit requirements, or Federal permit requirements;
- Monitor annulus pressures during the hydraulic fracturing operation; and
- Manage the flowback of fluids.

Some practices required in the rule are already conducted by operators in order to comply with existing applicable State regulations or requirements. Such State regulations often dictate how an operator cements a well, what tests or logs it conducts, how it handles flowback, or whether it must disclose the chemical contents of the hydraulic fracturing fluid. In addition to regulations, states may place requirements in the drilling permits as conditions of approval.

Some of the provisions in the rule repeat existing Federal requirements. Operators on Federal and Indian lands are already in compliance with those provisions, and therefore the rule does not pose an additional burden. For example, the BLM has casing and cementing requirements to protect and/or isolate usable water zones, found in Onshore Order No. 2, that are consistent with the final rule. Operators on Federal and Indian leases who are drilling in compliance with Onshore Order No. 2 would also be in compliance with this rule; accordingly the rule poses no additional burden for drilling and cementing operations, but does require testing and reporting to assure that usable water zones are isolated. Like State regulatory authorities, the BLM or a tribe may also place requirements on operators as a condition of approval for the drilling permit. Where appropriate and possible, the analysis does not consider impacts in areas where operators already adhere to the rule's provisions as a matter of voluntary practice or regulatory compliance with existing Federal, tribal or State regulations or requirements in conditions of approval.

Costs Framework

To examine the costs of the rule, the analysis considers the number of hydraulic fracturing operations that would be subject to the various requirements and the costs of the various requirements. While the rule would apply to all hydraulic fracturing operations on Federal and Indian lands, specific provisions in the rule may apply only to a subset of those operations. For example, the rule requires Subsequent Report (SR) Sundry submissions for all hydraulic fracturing operations. However, the number of required NOI Sundry requests and the CELs conducted would be fewer.

The three key components to the cost formulation are the estimated number of hydraulic fracturing operations, the applicability of provisions to those operations, and the compliance costs to satisfy the provisions. Lower estimates in either of these areas would lead to lower estimates of the total costs of the rule. Likewise, higher estimates would lead to higher estimated total costs.

Protecting usable water: The BLM already requires casing and cementing to protect usable water zones that are consistent with the final rule. Therefore, the rule does not pose an additional burden to operators.

Pressure Testing Requirement: The pressure testing requirement is consistent with standard industry practice, State regulations, and BLM regulations. The requirement does not pose an additional burden to operators.

Pit liner or storage tank requirement: The requirement to manage flowback in lined pits or storage tanks is consistent with almost all existing State regulations in States where new oil and gas activity is occurring on BLM-managed lands. The requirement would pose an additional burden to operators only on Federal and Indian leaseholds in States or on Indian lands without existing requirements and for those operators that do not voluntarily comply.

Disposal of flowback: The revised proposed rule would require that operators comply with applicable laws and is consistent with Onshore Order No. 7 disposal requirements for produced water. We do not expect that these provisions will pose additional burdens to operators.

Cement evaluation logs on casing strings that protect usable water: The rule has a provision to conduct CELs on the casing strings that protect usable water. The applicable casing strings include the surface casing and sometimes the intermediate casing. Operators do not typically run CELs to evaluate the cement behind the surface casing, so the rule would require an additional step and cost in the drilling process. Not all wells require intermediate casing, and wells that require intermediate casing may do so for reasons other than to protect usable water. In addition to requiring a CEL on the surface casing of type wells and wells not associated with a type-well development proposal, the rule would compel CELs on intermediate casing that protects usable water, and further, is deemed to compel CELs only on those intermediate casings where the operator would not otherwise conduct a CEL in compliance with State regulations or conditions of approval or do so voluntarily.

Subsequent wells under a type well approval: Under the revised proposed rule, not all wells would be subject to the CEL requirement. The subject activity should reflect the number of CELs on single wells and on type wells, but not for the subsequently drilled wells under a type well approval.

Requiring a CEL when there is an indication of inadequate cementing: Under the rule, operators on all wells (single wells, type wells, and subsequent wells to a type well) are required to run a CEL when there is an indication of inadequate cementing of a casing string that protects usable water. The BLM and many State regulations and requirements have established protocols for remedial actions in the event of inadequate cementing. Those protocols require operators to remediate

to the authorized officer's satisfaction and where the regulatory authority may request results from a CEL. For example, Onshore Order 2 requires that operators perform remedial cementing if cement is not circulated back to the surface for the surface casing (Section III.B.1.c). Onshore Order 2 also requires an additional pressure test or remedial action as specified by the authorized officer if a pressure test indicates that casing strings do not meet minimum standards (Section III.B.1.h). Onshore Order 2 lists other minimum standards and corrective actions, including some that require logging or testing, remedial cementing, and actions specified by the authorized officer.

Measuring the costs of a CEL: The rule introduces a new step (or steps) to the drilling process, depending on the well. This new step potentially poses an additional cost burden to operators for the costs of the CEL and the costs to maintain idle drilling equipment if the drilling process is delayed.

After cementing the casing, operators must wait for a period of time for the cement to harden before conducting any well tests and drilling the plug. The BLM requires operators to wait until the cement at the casing shoe reaches a compressive strength of 500 psi. States generally have compressive strength standards similar to the BLM's. For example, the State of Montana requires operators to wait 8 hours and New Mexico requires operators to wait anywhere from 8 to 18 hours.

While waiting for the cement behind the surface casing to set, operators will install other required equipment on the well, including blowout preventers. After the cement has hardened sufficiently and the operator has satisfied Federal or State requirements, operators would normally conduct a pressure test on the surface casing, drill through the plug, drill for an additional interval into the formation, and then test the shoe. After a successful shoe test, operators then drill the intermediate hole. The process is generally the same for the intermediate casing; however, operators may also run a log on the intermediate casing depending on the circumstances described before.

We received some comments on the proposed rule suggesting that, by requiring CBLs, the rule would force all operators to maintain idle drilling equipment while the cement reached additional compressive strength sufficient for a CBL to show meaningful results. At issue is the idea that an operator would need to wait an additional amount of time before pressure testing the casing or drilling through the plug.

An operator does not have to stand idle at this point in time. For example, an operator may pressure test the surface casing, drill out the plug, test the shoe, and then drill the intermediate hole. An operator may then perform a CEL at any point in time before setting the intermediate casing, *i.e.,* while replacing a drill bit. In any of these scenarios, however, ancillary delays associated with the availability of the logging company and the time required to run the log could still result.

Operators drilling multiple wells on a pad should also be able to run a CEL and avoid potential drilling delays. When drilling multiple wells on a pad, an operator may use a smaller drilling rig (known throughout the industry as a ''double'' rig) to sequentially drill a casing hole, set casing, and cement casing of each well, one by one. After the surface holes have all been sequentially drilled, cased, and cemented, the operator will remove the small drilling rig from the pad, and bring in a large drilling rig to drill the subsequent sections of each well. If an operator is drilling multiple wells in this fashion, then it may continue the drilling process while the cement sets on the first well, and log that well at the operator's convenience. In these situations, the operator would incur no additional costs associated with maintaining idle drilling equipment.

Benefits Framework

While the potential benefits of the rule are more challenging to monetize than the costs, they are significant. The rule is designed to reduce the environmental and health risk posed by hydraulic fracturing operations, particularly in its treatment of flowback fluids, well construction, and hydraulic fracture design. Stronger field operations with sound resource protections provide improved efficiency for the BLM to administer the program management for oil and gas with fewer protests, fewer compliance problems, fewer FOIAs, and other activities that divert limited available staff.

The primary challenge in monetizing benefits lies in the quantification of a risk that is largely unknown. Risk is the product of the likelihood of an incident occurring and the impact that would result. In this context, risk is the probability of an incident occurring from hydraulic fracturing times the cost of the damage. The monetized benefit of this rule would be the reduction in risk attributed to the rule, which also represents the avoided costs of remediating damage.

Though operators are required to remediate damage when it occurs, there may be uncertainty about the true cost or extent of the damage or limitations in connecting an incident with an operation. Even if the damage is internalized, the overall benefit to society would be less than if the incident was avoided (if the compliance costs are less than the damage costs), since resources would have been unnecessarily dedicated to the remediation.

Operators are required to notify the BLM when undesirable events occur. Undesirable events may include accidents, or accidental spills or releases of hydrocarbon fluids, produced water, hydraulic fracturing flowback fluids, or other substances. These events have the potential to adversely affect public lands and other important resources; reduce the value of the minerals and lands; plus add expensive costs to the BLM inspection and enforcement by diverting limited staff.

There are limitations in using the BLM data on undesirable events for this analysis. First, the data do not specify whether the undesirable events occurred as a result of any of the drilling or completion activities associated with the hydraulic fracturing operations. In addition, the available data cannot be readily matched with particular provisions in the rule. The data provides figures for the incidence of spills, accidents, injuries, and other impacts on a well, but the pit liner information is generally not specified in the incident reports for spills or leaks. As such, there is difficulty in quantifying the level of risk reduction that would be attributed to the regulations, even though the regulations would most certainly reduce risk.

Damage, in general, is unknown, particularly when attempting to generalize damage costs which may vary by expected magnitude and reversibility of effects. Also, the valuation of the damage may also take many and highly variable forms. For example, an undesirable incident occurring during hydraulic fracturing might require the remediation of surface or subsurface areas. The incident might also require that the operator shut-in temporarily or plug the well before it may produce all of the mineral resources. In this case, the operator would lose revenue and society would not benefit from the produced resources. Such would be the same for spills.

Discounted Present Value

There is a time dimension to estimates of potential costs and benefits. The potential events described, if they occur at all, may be in the distant future.

The further in the future the benefits and costs are expected to occur, the smaller the present value associated with the stream of costs and benefits. As such, future costs and benefits must be discounted.[1] The discount factor is then used to convert the stream of costs and benefits into ''present discounted values.'' When the estimated benefits and costs have been discounted, they can be added to determine the overall value of net benefits.

The OMB's basic guidance on the appropriate discount rate to use is provided in OMB Circular A–94. The OMB's Circular A–94 states that a real discount rate of 7 percent should be used as a base-case for regulatory analysis. The OMB considers the 7 percent rate as an estimate of the average before-tax rate of return to private capital in the U.S. economy. It is a broad measure that reflects the returns to real estate and small business capital as well as corporate capital. It approximates the opportunity cost of capital, and it is the appropriate discount rate whenever the main effect of a regulation is to displace or alter the use of capital in the private sector.

OMB Circular A–4 also states that a 3 percent discount rate should be used for regulatory analyses and provides an explanation of the use of the discount rate as follows: ''The effects of regulation do not always fall exclusively or primarily on the allocation of capital. When regulation primarily and directly affects private consumption (e.g., through higher consumer prices for goods and services), a lower discount rate is appropriate. The alternative most often used is sometimes called the 'social rate of time preference.' This simply means the rate at which 'society' discounts future consumption flows to their present value.''

The analysis also examines potential costs and benefits using 10 and 12 percent discount rates. The consideration of higher discount rates are appropriate for this analysis, since the rule imposes costs on the oil and gas industry and the opportunity cost of not having that available capital is generally higher than 3 and 7 percent. The higher rates also serve as a sensitivity test.

Uncertainty

The costs and benefits provided in this analysis are estimates and come with uncertainty. We describe the primary sources of uncertainty below:

- Type well applicability: The estimates for the rule rely largely on the concept of the type well. In terms of cost calculations, the uncertainty lies in an average number of wells that would be covered under a type well approval. While the BLM is confident that the average number of wells that an operator completes in a field is a good measure with which to base the estimate, the measure is positively skewed by a fewer number of firms with a high number of wells. This does not suggest a problem with the data, but rather that the experiences of operators will vary, and that the likely scenario is that the typical operator completes fewer wells than the average. In terms of benefit calculations, there is uncertainty about the effectiveness of the type well concept, and how reliably the CEL results on casing strings of a type well assure adequate cementing for subsequent wells in the same geologic area.
- Length of delay time to run a CEL: A large source of uncertainty is the amount of time that the CEL requirement might delay drilling operations. The BLM received comments suggesting that the CEL would delay drilling operations for up to 72 hours. The CEL on the surface casing, in particular, poses a new step in the drilling process for operators. A large source of uncertainty is the extent to which operators would be subject to delays, and if so, how they will be able to incorporate this new requirement and minimize or eliminate potential delays through operating efficiencies.
- Percent of wells encountering problems during the cementing process: Cementing problems and downhole conditions, in general, are not widely reported metrics. This analysis uses 3 percent as the basis for calculating the potential costs and benefits.
- Benefits of specific provisions for well integrity and NOI Sundry submission: Further uncertainty lies in the estimation of benefits and the cumulative effect of the rule's provisions on mitigating the potential risks of hydraulic fracturing operations. This rule has specific provisions that would help operators and the BLM better identify potential issues in wellbore integrity and fracturing design, before operations begin. However, it is difficult to attribute benefits to one single test (for instance the CEL) when that is only one part of the overall evaluation of wellbore integrity.

Results

Where appropriate, this analysis monetizes costs and benefits expected to occur over the next 10 years, from 2013 to 2022. This period of analysis was chosen because 10 years is the length of the primary lease term on BLM-managed lands. The analysis presents a range of expected outcomes due to uncertainty about the generalization of costs and benefits across all hydraulic fracturing operations. In developing the rule, the BLM considered several alternatives. The alternatives primarily focused on two topic areas: Verification of proper cementing behind casing strings through CELs and the management of flowback fluids from operations. One alternative would require CELs on casing strings protecting usable water for all wells and the use of storage tanks to manage flowback. A second alternative would require CELs on casing strings protecting usable water for all wells but does not establish requirements for storage tanks or lined pits. Table 3 and Table 4 show a summary of incremental costs and benefits, respectively, for the rule and the alternatives examined. To annualize the incremental costs and benefits, the analysis calculates the annualized value (AV). Where monetized, the results are presented in 2012 dollars.

The entire results are available in the full Economic Analysis and Regulatory Flexibility Analysis available at the address listed in the **ADDRESSES** section of this rule.

TABLE 3—SUMMARY OF COSTS

[$Million]

Annualized value	Revised proposed rule	Alternative 1	Alternative 2
Undiscounted	12–20	119–213	119–213
Discounted at 3%	12–19	118–213	118–213

[1] Discount factor = $1/(1+r)^t$ where r is the discount rate and t is time measured in years during which benefits and costs are expected to occur.

TABLE 3—SUMMARY OF COSTS—Continued

[$Million]

Annualized value	Revised proposed rule	Alternative 1	Alternative 2
Discounted at 7%	12–19	118–212	118–212
Discounted at 10%	12–19	117–211	117–211
Discounted at 12%	12–19	117–211	117–211

The annualized values of the costs do not vary significantly across different discount rates. This is expected for several reasons. When the original cost schedule is relatively constant over time (neither front-loaded nor back-loaded) the AV will be relatively similar to the average cost. This is expected with compliance costs related to this rule, since the total compliance costs for the rule are expected to be relatively similar over future years, owing to similar activity data (i.e., the number of hydraulic fracturing operations) and that the compliance costs for a single operation are contained within a short timeframe.

TABLE 4—SUMMARY OF NON-MONETIZED BENEFITS

Non-monetized benefits	Rule (percent)	Alternative 1 (percent)	Alternative 2 (percent)
Percent of individual hydraulic fracturing plans reviewed by the BLM	11	100	100
Percent of hydraulic fracturing operations using unlined pits	0	0	0.15
Percent of individual wells where wellbore integrity is demonstrated with CELs on casing strings that protect usable water	8	96	96
Percent of wells where wellbore integrity is demonstrated with pressure tests	100	100	100
Percent of hydraulic fracturing operations where chemical content of fluids are disclosed	100	100	100

Non-monetized benefits	Estimated baseline (percent)	Rule	Alternative 1	Alternative 2
Likelihood of Minor Incident	2.70	N/A	N/A	N/A
Likelihood of Major Incident	0.03	N/A	N/A	N/A

Estimated Costs of Revised Proposed Rule

Annualized costs to the industry are estimated to be between about $12 and $20 million when undiscounted and when using discount rates of 3, 7, 10, and 12 percent. The net present value of total costs over the 10-year period are estimated to be between $102 to $166 million when discounted at 3 percent, between $84 and $136 million when discounted at 7 percent, between $73 and $119 million when discounted at 10 percent, and between $67 and $109 million when discounted at 12 percent.

The largest cost burden lies with the CEL requirement, which is also the source of the greatest amount of uncertainty when developing estimates. Drilling methods, procedures, and requirements vary across operations, locations, and States, so it is challenging to place an exact dollar figure on the appropriate cost.

The estimated costs for the CEL requirement are driven to a large extent by the amount of time operators might have to maintain idle drilling equipment on-site. The lower bound of the estimated CEL requirement includes the annual costs of conducting CELs on the surface casing, assuming that operators using a small rig to drill the surface holes of wells would likely avoid the costs of maintaining idle drilling equipment. The estimate possibly represents the lowest possible cost; however, there is a chance it could be even lower depending on the ability of the operators on other wells to maximize efficiencies and reduce delays. The upper bound of the estimated CEL requirement does not account for the potential of operators to reduce delays below 24 hours per CEL on the surface casing and 48 hours on the intermediate casing. While the estimate possibly represents the maximum total cost, it may underestimate the total costs if CELs result in delays assumed.

The BLM has assumed delay times to account for additional compressive requirements and ancillary delays that could occur. However, there are several ways for operators to reduce the amount of idle time. The Economic Analysis prepared for this rule analyzed the sensitivity of the upper bound total estimates to assumed idle times. If operators are able to reduce the assumed delays by 25 percent, then the upper bound costs estimates would be reduced by 19 percent. On the other hand, if the assumptions underestimate the delay times by 25 percent, then the upper bound estimate would be increased by 19 percent.

The administrative compliance costs are non-trivial and are based on a per submission cost of $478. It is likely that operators, over time, will be able to gain efficiencies and reduce costs below the estimates provided.

The costs provided are estimates of the direct costs and not the overall costs to society. There is uncertainty about the effect that the rule would have across all potential hydraulic fracturing operations. The rule has a provision for type well approval of the NOI Sundry and log requirements (unless the operator encounters problems with improper cementing) and affords operators drilling many wells in a geologic area greater efficiency than it does for operators drilling a single well or few wells. If one assumes that operators cannot derive efficiencies to avoid the costs of idle rig time, it could favor activity in development fields over exploratory areas.

There is also flexibility in how the various BLM authorized officers might treat applications for variances, and to what extent that will allow operators to potentially reduce costs. There are well

construction methods, such as the use of a ''frac string,'' that reduce the pressures placed on the intermediate casing and surface casing strings during hydraulic fracturing operations. This is one potential area where an operator might receive a variance.

Average Compliance Costs for Operators

The provisions of the rule would result in compliance costs ranging from $3,138 to $5,110 for all hydraulic fracturing operations differentially, for example, if the operation is for a type well versus a subsequent well. Averaging the total compliance costs for the industry in the first year of regulation by the number of hydraulic fracturing operations, the BLM expects the compliance costs to range from $3,138 to $5,110 per operation. The CEL requirements represent the bulk of that portion, $2,591 to $4,564. Average compliance costs per operation for each of the policy options are shown in Table 5.

TABLE 5—AVERAGE COMPLIANCE COSTS IN 2013 ACROSS ALL OPERATIONS FOR THE RULE, ALTERNATIVE 1, AND ALTERNATIVE 2

Requirement	Average across all operations					
	Revised proposed rule		Alternative 1		Alternative 2	
	Low	High	Low	High	Low	High
Count of Hydraulic Fracturing Operations (in 2013)	3,566		3,566		3,566	
CEL on Surface Casing	$1,980	$3,953	$24,894	$49,692	$24,894	$49,692
CEL on Intermediate Casing	409	409	5,140	5,140	5,140	5,140
CEL if Inadequate Cementing	202	202	0	0	0	0
Lining Pits	9	9	9	9	0	0
NOI Sundry	54	54	478	478	478	478
SR Sundry	478	478	478	478	478	478
Variance Requests	5	5	48	48	48	48
Total	3,138	5,110	31,047	55,845	31,038	55,836

BLM Administrative Burden

The processing of NOI Sundry, SR Sundry, and variance requests associated with the rule would pose additional burden to the BLM; however, it is unclear the extent to which the BLM can meet the additional burden with existing capacity. An additional 8.44 FTE of workload is estimated to be required to meet the administrative burden of the rule in the first year of implementation.

Benefits of the Revised Proposed Rule

The rule provisions, as described in the revised proposed rule, would require an operator to conduct tests on a well before it conducts hydraulic fracturing operations on that well. For all operators on Federal and Indian land the revised proposed rule would compel operators to conduct an average of 293 CELs per year on surface casings, 14 CELs per year on intermediate casings, and 110 CELs per year on casing strings where there is an initial indication of inadequate cementing.

Relative to the initial proposed rule, the revised proposed rule would not compel as many CELs. Therefore, there is a chance that the rule would not reduce as much risk as the alternatives. The rule would ensure that operators demonstrate wellbore integrity with pressure tests on 100 percent of the wells and with CELs on the casing strings that protect usable water on 8 percent of wells. The level of risk reduction across subsequent wells relies on the replication of adequate cementing across multiple wells in a geographic area with the same geologic characteristics.

The rule would compel 110 CELs to demonstrate that inadequate cementing was corrected by operators. As such, it requires a verification of proper remedial cementing on the very wells that pose greater risk.

Under the rule, operators would submit an average of 432 NOI Sundry applications per year covering about 3,816 hydraulic fracturing operations (average over the 10-year period, 2013–2022). The BLM would receive individual hydraulic fracturing plans for an estimated 11 percent of the expected operations, and the remaining 89 percent of operations would be for subsequent wells to a type well. The type well provision, relative to the alternatives, reduces burden on the industry and the BLM. The submission of NOI Sundry applications would provide the BLM with the necessary information to make informed decisions about the public's resources and thus improve the public welfare, and have the same benefits for Indian resources and Indian welfare.

The rule is estimated to compel only six additional lined pits per year, simply because most of the States where the BLM manages oil and gas resources already require lined pits. For those six pits, the requirement would immediately remove sources of harm to the environment and the public from the contamination of the surface environment with fracturing fluids.

The rule would compel 3,816 Sundry reports and public disclosures of the chemical content of the hydraulic fracturing fluids. The increase in information about additives could aid water users when they consider the potential effects of hydraulic fracturing operations and constituent chemicals.

Overall, the rule would potentially reduce the risks associated with hydraulic fracturing operations. The BLM estimated the likelihood of an incident resulting from a hydraulic fracturing operation could be between 0.03 and 2.70 percent. Damage from an incident could cost between $15,000 and $1 million for remediation plus any lost revenue from unrecoverable resources, including spilled or stranded resources.

Economic Impact Analysis and Distributional Assessments Energy System Impact Analysis

Executive Order 13211 requires that agencies prepare and submit to the Administrator of the Office of Information and Regulatory Affairs (OIRA), OMB, a Statement of Energy Effects for certain actions identified as significant energy actions. Section 4(b) of Executive Order 13211 defines a ''significant energy action'' as ''any action by an agency (normally

published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of OIRA as a significant energy action.''

The additional burden posed by this rule would vary by the type of well proposed for hydraulic fracture. A key consideration is the extent to which the costs of the requirements might impact investment, production, employment, and a number of other factors. That is, to what extent, if any, would an operator choose to invest in other areas, non-Federal and non-Indian lands, when faced with the cost requirements of the rule. Since the bulk of the costs would apply to hydraulic fracturing operations on wells that are yet to be drilled (and not on existing wells and to refracturing operations), operators will be able to account for any cost increases up front when making investment decisions. The BLM believes that the additional cost per hydraulic fracturing operation is insignificant when compared with the drilling costs in recent years, the production gains from hydraulically fractured wells operations, and the net incomes of entities within the oil and natural gas industries.

Table 6 shows the average compliance costs, by well type or operation, as a percent of the total costs of drilling a well. For a single well or a type well, the compliance costs represent about 0.4 to 1.4 percent of the costs of drilling a well. For a subsequent well to a type well, the costs represent between 0.01 and 0.02 percent of the total drilling costs. For existing wells and refracture operations, the percentages are even lower, at about 0.01 to 0.03 percent. When averaging the compliance costs across all operations, the costs represent between 0.04 and 0.13 percent of the costs of drilling a well.

Since the estimated compliance costs are not a substantial when compared with the total costs of drilling a well, the BLM believes that the rule is unlikely to have an effect on the investment decisions of firms, and the rule is unlikely to affect the supply, distribution, or use of energy.

TABLE 6—THE AVERAGE COMPLIANCE COSTS OF THE REVISED PROPOSED RULE AS A PERCENT OF TOTAL DRILLING COSTS

Activity	Well type fracturing operation					Average across all operations (percent)	
	Type well or single well		Subsequent well under type well approval (percent)	Existing well (percent)	Refracture operation (percent)		
	Low (percent)	High (percent)				Low (percent)	High (percent)
Percent of Drilling Costs for a Crude Oil, Natural Gas, and Dry Well (2007$) [1]	0.7128	1.3301	0.0167	0.0243	0.0241	0.0752	0.1225
Percent of Drilling Costs for a Crude Oil Well (2007$) [1]	0.7434	1.3871	0.0174	0.0253	0.0251	0.0784	0.1277
Percent of Drilling Costs for a Natural Gas Well (2007$) [1]	0.7611	1.4202	0.0178	0.0259	0.0257	0.0803	0.1308
Percent of Drilling Costs for a horizontal well in the Bakken Three Forks (reported in 2010) [2]	0.5507	1.0275	0.0129	0.0188	0.0186	0.0581	0.0946
Percent of Drilling Costs for a horizontal well in the Marcellus Shale (reported in 2011) [3]	0.3913	0.7301	0.0092	0.0133	0.0132	0.0413	0.0672

NOTES:
[1] Average drilling costs in 2007 range from $3.9 million to about $4.2 million. U.S. Energy Information Administration (January 31, 2012). *Costs of Crude Oil and Natural Gas Wells Drilled.*
[2] Costs of $5.4 million cited by Investopedia from Continental Resources. Investopedia (March 12, 2010). *Oil Service Costs to Move Higher.*
[3] Costs of $7.6 million cited by Marcellus Drilling News from a University of Pittsburgh Study (Marcellus Drilling News (September 2011) *How much does it cost to drill a single Marcellus well? $7.6M.*

Employment Impact Analysis

Executive Order 13563 reaffirms the principles established in Executive Order 12866, but calls for additional consideration of the regulatory impact on employment. It states, ''Our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation.'' An analysis of employment impacts is a standalone analysis and the impacts should not be included in the estimation of benefits and costs.

This proposed rule would require operators, who have not already done so, to conduct one-time tests on a well or make a one-time installation of a mitigation control feature. In addition, operators would be required to perform administrative tasks related to a one-time event.

Compliance with the operational requirements is expected to shift resources from firms in the crude oil and natural gas extraction industries (NAICS codes:: 211111—Crude Petroleum and Natural Gas Extraction, 211112—Natural Gas Liquid Extraction) to firms providing support services for drilling oil and gas wells (NAICS code: 213111—Drilling Oil and Gas Wells). For example, the requirement for a CEL on the surface casing represents a burden to the operator, but a benefit to the company running the log.

Of principal interest is the extent to which the financial burden is expected to change operators' investment decisions. If the financial burden is not significant and all other factors are equal, then one would expect operators to maintain existing levels of investment and employment. The BLM believes that the proposed rule would result in an additional cost per well stimulation that is small and will not alter the investment or employment decisions of firms.

Firms in the support services for oil and gas drilling industry are likely to benefit from the rule, since they would likely carry out the operational requirements of the rule. Though we do not know the incremental revenue gains from performing these services, the operational requirements themselves are likely to require additional capacity.

Executive Order 12866, Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, the Office of Management and Budget has determined that this rule is a significant regulatory action.

The rule will not 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. However, the rule may raise novel policy issues because of the requirement that operators provide to the BLM information regarding hydraulic fracturing operations that they are not currently providing to the BLM.

This rule would not create inconsistencies or otherwise interfere with an action taken or planned by another agency. This rule would not change the relationships of the oil and gas operations with other agencies. These relationships are included in agreements and memoranda of understanding that would not change with this rule. In addition, this rule would not materially affect the budgetary impact of entitlements, grants, loan programs, or the rights and obligations of their recipients. Please see the discussion of the impacts of the rule as described earlier in this section of the preamble.

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. For the purposes of this analysis, the BLM assumes that all entities (all lessees and operators) that may be affected by this rule are small entities, even though that is not actually the case.

The rule deals with hydraulic fracturing on all Federal and Indian lands (except those excluded by statute). There would be some increased costs associated with the enhanced recordkeeping requirements and some new operational requirements. However, the BLM expects that these costs would be minor in comparison to overall operations costs. Therefore, the BLM has determined under the RFA that the rule would not have a significant economic impact on a substantial number of small entities. Please see the discussion earlier in this section of the preamble for a discussion of the impacts of the rule.

Small Business Regulatory Enforcement Fairness Act

The Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) 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 governmental jurisdictions, or small not-for-profit enterprises.

The BLM reviewed the Small Business Administration (SBA) size standards for small businesses and the number of entities fitting those size standards as reported by the U.S. Census Bureau in the 2007 Economic Census. Using the Economic Census data, the BLM concludes that about 99 percent of the entities operating in the relevant sectors are small businesses in that they employ fewer than 500 employees.

The BLM also examined potential impacts on small businesses that are most likely to be impacted by the rule and, more specifically, the requirements that would pose a burden to operators. Using Automated Fluid Mineral Support System data for well completions, the BLM compiled a list of firms that completed wells within the past 5 years. The BLM expects that these firms are most likely to be financially impacted by the CEL requirements. From that list the BLM researched company annual report filings with the SEC to determine annual company net incomes and employment figures. From the original list, the BLM found 55 company filings. Of those, 33 firms were classified as small businesses.

Using the net income data for the small businesses that filed SEC Form 10–K, the BLM used the estimated compliance costs per well type or fracturing operation, and the average costs across all operations to calculate the percent of compliance costs as a portion of annual company net incomes for 2011. Averaging results for the small businesses that the BLM examined, the average costs of the rule are expected to represent between 0.041 and 0.066 percent of the company net incomes.

Therefore, after considering the economic impact of the rule on these small entities, the screening analysis indicates that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Under the Unfunded Mandates Act, agencies must prepare a written statement about benefits and costs prior to issuing a proposed or final rule that may result in aggregate expenditure by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year.

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or to the private sector in any one year. Thus, the rule is also not subject to the requirements of Sections 202 or 205 of the *Unfunded Mandates Reform Act* (UMRA).

This rule is also not subject to the requirements of Section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments; it contains no requirements that apply to such governments nor does it impose obligations upon them.

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

Under Executive Order 12630, the rule would not have significant takings implications. A takings implication assessment is not required. This rule would establish recordkeeping requirements for hydraulic fracturing operations and some additional operational requirements on Federal and Indian lands. All such operations are subject to lease terms which expressly require that subsequent lease activities be conducted in compliance with subsequently adopted Federal laws and regulations. The rule conforms to the terms of those Federal leases and applicable statutes, and as such the rule is not a governmental action capable of interfering with constitutionally protected property rights. Therefore, the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13352, Facilitation of Cooperative Conservation

Under Executive Order 13352, the BLM has determined that this rule would not impede facilitating cooperative conservation and would take appropriate account of and consider the interests of persons with ownership or other legally recognized interests in land or other natural resources. This rulemaking process involved Federal, State, local and tribal governments, private for-profit and nonprofit institutions, other nongovernmental entities and individuals in the decision-making. The process provides that the programs, projects, and activities are consistent with protecting public health and safety.

Executive Order 13132, Federalism

Under Executive Order 13132, this rule would not have significant Federalism effects. A Federalism assessment is not required because the rule would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The rule would not have any effect on any of the items listed. The rule would affect the relationship between operators, lessees, and the BLM, but would not impact States. Therefore, under Executive Order 13132, the BLM has determined that this rule would not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13175, the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), The Department of the Interior Policy on Consultation with Indian Tribes (Dec. 1, 2011), and 512 Departmental Manual 2, the BLM evaluated possible effects of the rule on federally recognized Indian tribes. The BLM approves proposed operations on all Indian onshore oil and gas leases (except those excluded by statute). Therefore, the rule has the potential to affect Indian tribes. In conformance with the Department's policy on tribal consultation, the Bureau of Land Management held four tribal consultation meetings to which over 175 tribal entities were invited. The consultations were held in:

- Tulsa, Oklahoma on January 10, 2012;
- Billings, Montana on January 12, 2012;
- Salt Lake City, Utah on January 17, 2012; and
- Farmington, New Mexico on January 19, 2012.

The purpose of these meetings was to solicit initial feedback and preliminary comments from the tribes. To date, the tribes have expressed concerns about the BLM's Inspection and Enforcement program's ability to enforce the terms of this rule; previously plugged and abandoned wells being potential conduits for contamination of groundwater; and the operator having to provide documentation that the water used for the fracturing operation was legally acquired. The BLM considered these concerns during the drafting of the proposed rule.

After publication of the proposed rule, the BLM held another series of meetings to obtain comments and recommendations from tribes and tribal organizations. Those meetings were held in June 2012 in Salt Lake City, Utah; Farmington, New Mexico; Tulsa, Oklahoma; and Billings, Montana. The BLM also engaged in one-on-one consultations as requested by several tribes. Some tribal representatives were concerned about risks to the quality of their vital water supplies. Others, though, were more concerned with the risk that increased compliance costs would drive the industry off of Indian lands, and deprive the tribes of much-needed revenues and economic development.

The BLM has considered and responded to the concerns expressed by the tribal representatives both orally and in written comments, as described above. In particular, it has made changes that will reduce economic burdens of compliance for many operators. Several tribes provided written and oral comments critical of the proposed rule. Other tribes argued that the proposed rules violated tribal sovereignty. The proposed rule, however, is not unique. Regulations promulgated by the Bureau of Indian Affairs render the BLM's operating regulations in 43 CFR part 3160 applicable to oil and gas leases of trust and restricted Indian lands, both tribal and individually-owned. See 25 CFR 211.4, 212.4, and 225.4.

Some tribes insist that those BIA regulations are in violation of FLPMA, which they argue restricts the BLM's authority to Federal lands. Section 301 of FLPMA, however, charges the Director of the BLM to carry out functions and duties as the Secretary may prescribe with respect to the lands and the resources under the Secretary's jurisdiction according to the applicable provisions of FLPMA and any other applicable law. 43 U.S.C. 1731(a). See also 43 U.S.C. 1731(b). The Act of March 3,1909 (1909 Act) (at 25 U.S.C. 396), the Indian Minerals Leasing Act (IMLA) (at 25 U.S.C. 396d) and the Indian Mineral Development Act (IMDA) (at 25 U.S.C. 2107) provide the Secretary of the Interior with authority to promulgate regulations governing oil and gas operations and mineral agreements on certain Indian lands. As previously cited, the Secretary, through the regulations promulgated by the BIA, has assigned to the BLM part of the Secretary's trust responsibilities to regulate oil and gas operations on those Indian lands. This rule concerning Indian lands is promulgated pursuant to the 1909 Act, the IMLA, and the IMDA, and will be implemented by the BLM under those authorities, consistent with Section 301 of FLPMA.

Some tribes have asked that the proposed rule exempt Indian lands from its scope. Such an exemption would require the Secretary of the Interior to conclude, among other things, that usable waters in Indian lands, and the persons who use such waters, are less deserving of protection than waters and water users on Federal land. The Department of the Interior declines to reach that conclusion.

Some tribes have advocated that the proposed rule should allow Indian tribes to decide individually whether the hydraulic fracturing regulations would apply on their lands. The BIA's regulations, however, apply all of the BLM's oil and gas operating regulations to Indian lands, and do not allow the tribes to pick and select which of the BLM's regulations apply on their lands.

The tribes, however, report that industry representatives have threatened not to bid on Indian leases if the initial proposed rule were promulgated. The tribes are concerned that a major source of revenue and of economic development might leave Indian lands because of the costs of compliance with the proposed rule. The BLM has carefully considered the tribes' comments, along with those of the oil and gas industry and of concerned citizens and governments. The revised proposed rule includes several changes from the initial proposed rule to reduce the costs and other burdens of compliance. Examples include allowing operators to use any one of a class of CELs to verify the adequacy of cement casings, not requiring the CEL to be submitted or approved before fracturing operations if there is no indication of problems with the cementing, and the ''type well'' approach allowing an operator's approved group of wells that conform to the operator's proven type

well in the same field to be hydraulically fractured without additional CELs, unless there is a problem with the cementing. The revised proposed rule also explicitly states that BLM will require isolation of zones that the tribes designate for protection from oil and gas operations, and will not require isolation of zones that tribes have exempted from protection. (Note, though, that the revised proposed rule would not exempt an operator from the provisions of the SDWA.) Furthermore, the BLM could approve a variance applicable to all or parts of Indian lands, provided the variance meets or exceeds the effectiveness of the revised proposed rule. Such a variance could allow an operator's compliance with a tribe's standard or procedure to be accepted as compliance with the revised proposed rule, thus reducing the compliance burdens for operators. Such changes should significantly reduce compliance costs for operators while still assuring protection of usable water resources.

The BLM is aware that the revised proposed rule would nonetheless result in some higher costs for operators on Federal and Indian lands, compared with compliance costs for hydraulic fracturing on non-Federal, non-Indian lands in several States. Regulatory compliance costs, however, are only one set in a long list of costs that operators compare to anticipated revenues when deciding whether and how much to bid on a Federal or Indian lease. It has not been the BLM's experience that regulatory compliance costs have caused the industry as a whole to avoid valuable oil and gas resources on Federal and Indian lands.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that this rule would not unduly burden the judicial system and meets the requirements of Sections 3(a) and 3(b)(2) of the Order. The Office of the Solicitor has reviewed the rule to eliminate drafting errors and ambiguity. It has been written to minimize litigation, provide clear legal standards for affected conduct rather than general standards, and promote simplification and avoid unnecessary burdens.

Paperwork Reduction Act

The Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3521) provides that 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. Collections of information include requests and requirements that an individual, partnership, or corporation obtain information, and report it to a Federal agency (44 U.S.C. 3502(3); 5 CFR 1320.3(c) and (k)).

The BLM included its information collection request in the proposed rule and invited public comment. OMB did not approve or disapprove the request at that time. The BLM has revised the information collection that was in the proposed rule and has re-submitted its information collection request. In accordance with the PRA, the BLM is inviting public comment on its request that OMB approve new uses of Form 3160–5 (Sundry Notices and Reports on Wells). The BLM is proposing that these new uses would replace certain existing uses of Form 3160–5 for hydraulic fracturing operations.

OMB has approved the use of Form 3160–5 under control number 1004–0137, Onshore Oil and Gas Operations (43 CFR part 3160), to collect information on a number of operations, including some hydraulic fracturing operations. Once the BLM is authorized to collect hydraulic fracturing information in accordance with finalized new section 3162.3–3 and new control number 1004–0203, the BLM will request revision of control number 1004–0137 to:

- Add the new hydraulic fracturing uses and burdens of Form 3160–5 to control number 1004–0137;
- Remove the existing hydraulic fracturing uses and burdens from the existing approval of Form 3160–5; and
- Discontinue new control number 1004–0203.

The new collection of information would be required to obtain or retain a benefit for the operators of Federal and Indian (except on the Osage Reservation, the Crow Reservation, and certain other areas) onshore oil and gas leases, units, or communitization agreements that include Federal leases. The BLM has requested a 3-year term of approval for the new control number.

The information collection request for this revised proposed rule has been submitted to OMB for review under 44 U.S.C. 3504(h) of the Paperwork Reduction Act. A copy of the request can be obtained from the BLM by electronic mail request to Candice Money at *cmoney@blm.gov* or by telephone request to 202–912–7144. You may also review the information collection request online at *http://www.reginfo.gov/public/do/PRAMain.*

The BLM requests comments to:

- 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.

Comments on the information collection requirements should be sent to both OMB and the BLM as directed in the **ADDRESSES** section of this preamble. OMB is required to make a decision concerning the collection of information contained in this revised proposed rule between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it by June 24, 2013.

Summary of Information Collection Requirements

The revised proposed rule is intended to increase transparency for the public regarding the fluids and additives used in hydraulic fracturing, and to protect Federal and Indian resources. The proposed provisions that include information collection requirements are amendments to 43 CFR 3162.3–2 and new 43 CFR 3162.3–3.

OMB has approved the use of Form 3160–5 under control number 1004–0137 for the operations listed in existing section 3162.3–2. As revised in the proposed rule, section 3162.3–2 would no longer include hydraulic fracturing jobs (i.e., nonroutine fracturing, routine fracturing, and acidizing) on the list of operations for which prior approval and subsequent reports would be required. Other categories of operations would remain subject to the information collection requirements in section 3162.3–2. Once the BLM is authorized to collect hydraulic fracturing information under new section 3162.3–3 and a new control number, the BLM will request revision of control number 1004–0137 by removing the hydraulic fracturing burdens from the existing approval of Form 3160–5. New section 3162.3–3 would require operators to use Form 3160–5 both to seek prior BLM approval of hydraulic fracturing operations, and to submit a report on

subsequent actual hydraulic fracturing operations. It would also encourage operators to use Form 3160–5 if they want to request a variance from the requirements of new section 3162.3–3.

In accordance with the PRA, the BLM invited public comments on the information collection in the initial proposed rule. One commenter submitted comments specifically in response to this opportunity. In addition, some commenters addressed the necessity, practical utility, and/or estimated burdens of the proposed collections.

1. Necessity/Avoidance of Unnecessary Duplication

The PRA requires each Federal agency to certify that its collections of information are necessary for the proper performance of agency functions, and are not unnecessarily duplicative of information otherwise reasonably accessible to the agency. 43 U.S.C. 3506(c)(3)(A) and (B).

One commenter stated that the proposed collections are unnecessary, given the existing Eight-Point Drilling Program associated with APDs and the subsequent well completion reports. In addition, the commenter stated that operators on Indian lands already comply with Colorado State rules that make Federal disclosure a redundant and unnecessary burden on operators.

Other commenters also questioned whether the proposed collections are necessary and avoid unnecessary duplication. For example:

- One commenter stated that the proposed collection of both pre- and post-fracturing information is a requirement to submit basically the same information twice, and recommended that the BLM consider requiring submission of pre-completion information and then requiring operators to advise the BLM of any post-completion changes or deviations;
- Another commenter recommended that operators be allowed to submit a generic or Master Plan for similar operations on a plan of development, at the field or unit level;
- One commenter stated that the proposed collection of information about the water source to be used in hydraulic fracturing duplicates protections afforded by the Environmental Protection Agency and States under the Clean Water Act and the Safe Drinking Water Act;
- One commenter stated that the proposed collections duplicate State-required collections in Colorado, New Mexico, Alabama, and Texas;
- One commenter stated that the proposal to collect an estimate of the volume of fluid to be recovered during flowback, swabbing, and recovery from production facility vessels (43 CFR 3162.3–3(c)(6)(i)) duplicates a requirement in Wyoming for post-fracturing reporting as to the amounts, handling, and disposal or reuse of hydraulic fracturing fluid; and
- One commenter stated that the information in the NOI Sundry and the Subsequent Report Sundry Notice duplicates information required and approved by individual States, and suggested that the BLM provide for exemptions for operators in States that have adopted hydraulic fracturing regulations, or accept information filed under State laws or regulations in lieu of requiring operators to submit duplicative information to the BLM for approval.

Some commenters specifically questioned the necessity of proposed section 3162.3–3(c)(2), which would have required the Notice of Intent Sundry to include the ''proposed measured depths (both top and bottom) of all occurrences of usable water and the CBLs (or another log acceptable to the authorized officer) proving that the occurrences of usable water have been isolated to protect them from contamination.''

Some comments included statements of support. One commenter stated that full disclosure of chemicals involved in the hydraulic fracturing process results in a transparent process that benefits industry, regulatory agencies, and the public.

Some other commenters generally supported transparency and full disclosure of pollution data. For example, one commenter stated that the post-fracturing collection of information on the volume of water used in the fracturing process will aid water resource managers in planning water resources on and near Federal lands, and suggested that the same type of information be collected on the Notice of Intent Sundry.

Some commenters were supportive of disclosure of information through FracFocus.org to avoid duplicating or creating another platform for disclosure.

Response: Because hydraulic fracturing has been a growing practice in recent years, the BLM has determined that the collections of information in the revised proposed rule are necessary to enable the BLM to meet its statutory obligations to regulate operations associated with Federal and some Indian oil and gas leases; prevent unnecessary or undue degradation; and manage public lands using the principles of multiple use and sustained yield. The collections of information will assist in the modernization of the BLM's management of hydraulic fracturing operations in ways not anticipated when the existing collection requirements approved under control number 1004–0137 were developed, and will enable the BLM to ensure that operators are using best practices in fracturing operations. Moreover, the information that States, tribes, or other Federal agencies collect is not necessarily reasonably accessible to the BLM. For these reasons, the BLM has determined that the collections in the revised proposed rule are necessary, and are not unnecessarily duplicative of existing Federal, tribal, or State collection requirements. Accordingly, the BLM is not adopting the suggestion that it provide for exemptions for operators on Indian lands or in States that have promulgated hydraulic fracturing regulations; or that the BLM accept information filed under State or tribal laws or regulations in lieu of information that meets BLM standards. However, if information submitted in accordance with State laws or regulations meets the standards prescribed by the BLM, such information may be submitted to the BLM in accordance with the revised proposed rule.

In response to comments that requiring both pre- and post-fracturing information amounts to a requirement to submit basically the same information twice, the BLM has deleted the following pre-fracturing collections:

- Submission of a CBL for approval before commencing fracturing operations, which was part of proposed 43 CFR 3162.3–3(c)(2); and
- Submission of a pre-fracturing certification of compliance with all applicable permitting and notice requirements, which was proposed as 43 CFR 3162.3–3(c)(4).

The revised proposed rule (at 43 CFR 3162.3–3(d)) also allows an NOI Sundry to be submitted for a single well or a type well covering a group of wells sharing substantially similar geological characteristics within the same geologic formation. If the submission is for a group of wells, the information should describe a ''type well,'' defined in the revised proposed rule to mean an oil and gas well that can be used as a model for well completion in a field where geologic characteristics are substantially similar across the field, and operations such as drilling, cementing, and hydraulic fracturing are likely to be successfully replicated using the same design. This provision will give operators an opportunity to streamline the submission of pre-fracturing information in appropriate

circumstances. However, the revised proposed rule provides (at 43 CFR 3162.3–3(e)(4)) that where there are indications of problems with the cementing of casings, the operator must submit information showing that the problem has been corrected before commencing hydraulic fracturing operations, and (at 43 CFR 3162.3–3(i)) that post-fracturing data for each well is required.

The BLM has taken these actions in recognition that:

- The BLM can meet its statutory responsibilities without collecting a full complement of pre-fracturing data; but
- The BLM needs more complete post-fracturing information in order to meet its statutory responsibilities.

The BLM has not adopted the suggestions to:

- Allow operators to meet their pre-fracturing information-submission obligations by submitting a generic or master plan for similar operations on a plan of development, at the field or unit level;
- Allow operators to meet their post-fracturing obligations solely by advising the BLM of any post-completion changes or deviations; or
- Require data about water volume in pre-fracturing as well as post-fracturing information collections.

Both the proposed rule and the revised proposed rule include provisions that require more detailed data after fracturing than before fracturing. For example, the information about water volume that is required before fracturing is limited to a plan that includes the estimated total volume of fluid to be used. See section 3162.3–3(d)(4) of the revised proposed rule (proposed as 43 CFR 3162.3–3(c)(5)).

Regarding post-fracturing information, the BLM has revised proposed section 3162.3–3(g)(1) (designated as section 3162.3–3(i)(1) of the proposed rule) to require the total water volume used and in other paragraphs within subsection (i) of the revised proposed rule, operators are required to provide:

- The actual surface pressure and rate at the end of each stage of the hydraulic fracturing operation, and the actual flush volume, rate, and final proposed pump pressure (section 3162.3–3(i)(3)); and
- The volume of fluid recovered during flowback, swabbing, or recovery from production facility vessels (section 3162.3–3 (i)(5)(i)).

In both the initial proposed and revised proposed rule, the BLM has identified water volume to be a necessary element of both pre- and post-fracturing information collections. The BLM is requiring all hydraulic fracturing and refracturing operations to isolate all usable water and other mineral-bearing formations and protect them from contamination. 43 CFR 3162.3–3(b) and 3162.5–2. Operators are thus on notice that they must meet this performance standard during all operations covered by this rule. The commenter's suggestion seems to be to collect pre-fracturing information about water volume that is as detailed, or similarly detailed, as that which will be collected after fracturing. However, upon consideration of this comment, the BLM has determined that the same amount of detail both before and after fracturing is not necessary in order to enable the BLM to verify that the proposed engineering design is adequate for safely conducting the proposed hydraulic fracturing. In addition, the BLM understands that such detail is unlikely to be available before commencing hydraulic fracturing. The BLM, therefore, has not adopted the commenter's suggestion. Regarding the comments about FracFocus, section 3162.3–3(i) of the revised proposed rule allows the following required post-fracturing information to be submitted to the BLM through FracFocus, another data base specified by the BLM, or in a Subsequent Report Sundry Notice:

- True vertical depth of the well;
- Total water volume used; and
- For each chemical used (including base fluid) the trade name, supplier, purpose, ingredients, Chemical Abstract Service Number (CAS #), maximum ingredient concentration in additive (% by mass), and maximum ingredient concentration in hydraulic fracturing fluid (% by mass).

The initial proposed rule, at 43 CFR 3162.3–3(g), would have required that this information, as well as additional information, be included in SR Sundry Notices, and provided no other options for submission. However, the preamble to the initial proposed rule indicated that this information is intended to be posted on a public Web site, and that the BLM was working with the Groundwater Protection Council to determine whether the disclosure can be integrated into FracFocus. Some commenters expressed concerns that this statement in the preamble could result in duplicative submissions of information. By clarifying the regulatory text, the BLM is preventing such unnecessary duplication.

2. Practical Utility

The PRA requires each Federal agency to certify that its collections of information have ''practical utility.'' 43 U.S.C. 3506(c)(3)(A). A collection has practical utility if the agency can use the information that is collected.

Some commenters questioned whether the BLM has sufficient expertise and staffing to use the information that is collected. One commenter specifically stated that it has seen no indication that the BLM intends to provide the training and education to enable its staff to use the information.

One commenter also stated that the proposed collections could result in submissions of inaccurate information to the BLM because the details of a hydraulic fracturing design are typically not available to operators until after a well has been drilled and specific details regarding the target formation have been obtained. The commenter suggested that a more appropriate approach would be to collect appropriate information as it is obtained and for information purposes only.

Response: The BLM employs many petroleum engineers and technicians, and they are well qualified to use the information required by the revised proposed rule, and thus disagrees with commenters that question the BLM's ability to use the information that is required in the revised proposed rule. The BLM also disagrees with statements to the effect that pre-fracturing data will be inaccurate. The industry has many years of experience collecting and enhancing the accuracy of pre-fracturing engineering and data collection.

3. Reduction of Burdens on the Public

The PRA requires each Federal agency to certify that its collections of information:

- Reduce respondents' burdens to the extent practicable and appropriate;
- Are written using plain, coherent, and unambiguous terminology that is understandable to those who are to respond;
- Will be implemented in ways consistent and compatible, to the maximum extent practicable, with respondents' existing reporting and recordkeeping practices; and
- To the maximum extent practicable, use information technology to reduce burden and improve data quality, agency efficiency, and responsiveness to the public.

43 U.S.C. 3506(c)(3)(C) through (E) and (J).

One commenter stated that the BLM underestimated the annual costs associated with the proposed rule. Some commenters commented generally that the BLM has underestimated burdens under the Paperwork Reduction Act, other statutes, and various executive orders.

Other comments included the following:

• One commenter stated that the BLM should consider ways to minimize the submission of information by allowing operators to conduct fracturing operations within acceptable operating ranges and allowing operators to use standard completion reports; and

• One commenter suggested that, to reduce the burdens on operators, the BLM should allow operators to submit generic hydraulic fracturing plans for a targeted zone in resource play areas that can be referenced when an APD is submitted. Similarly, another commenter requested that the rule provide for acceptance of a general Operator's Master Fluid Management Plan that may be used consistently across a plan of development.

Response: The BLM has revised its estimates of the burdens to respondents, in part because of responses to comments that are described above. Specifically, the BLM has deleted some aspects of the pre-fracturing collection from the revised proposed rule, and has provided in the revised proposed rule for submission of pre-fracturing data either for each well or for a type well covering a group of wells sharing substantially similar geological characteristics within the same geologic formation. These revisions of the proposed rule result in a reduction of the estimated annual number of NOI Sundries from 1,700 to 415. They also result in a reduction of the estimated number of Variance Requests, from 170 to 41, because such requests apply to NOI Sundries. These estimates are the average of the expected responses over the first 3 years of implementation.

The estimated number of annual SR Sundry Notices has increased because the revised proposed rule (at 43 CFR 3162.3–3) now requires post-fracturing data on both fracturing and re-fracturing operations. This revision results in an increase in the estimated annual responses, from 1,700 to 3,657.

The following table shows the itemized estimated burdens associated with the revised proposed rule:

A. Type of response	B. Number of responses/ revised proposed rule	C. Hours per response (same for proposed and revised proposed rule)	D. Total hours/revised proposed rule (column B × column C)
Sundry Notices and Reports on Wells/Well Stimulation/Notice of Intent Sundry (43 CFR 3162.3–3) Form 3160–5	415	8	3,320
Sundry Notices and Reports on Wells/Well Stimulation/Subsequent Report Sundry Notice (43 CFR 3162.3–3) Form 3160–5	3,657	8	29,256
Sundry Notices and Reports on Wells/Well Stimulation/Variance Request (43 CFR 3162.3–3) Form 3160–5	41	8	328
Totals	4,113		32,904

The general comments about the BLM's analysis under the Paperwork Reduction Act, other statutes, and various executive orders did not address the specific information collection associated with the proposed rule. Therefore, the BLM has not changed the collection in response to these comments. However, the BLM invites further comments on the revised collection in this revised proposed rule.

The BLM has not adopted the suggestions to allow operators to conduct fracturing operations within acceptable operating ranges, to allow operators to use standard completion reports, or to allow operators to submit Fluid Management Plans or generic hydraulic fracturing plans for a targeted zone in resource play areas that can be referenced when an APD is submitted. Such provisions would not enable the BLM to meet its statutory responsibilities.

National Environmental Policy Act

The BLM has prepared an environmental assessment (EA) that concludes that this rule would not constitute a major Federal action that may result in a significant adverse effect on the human environment under section 102(2)(C) of the National Environmental Policy Act (NEPA), 42 U.S.C. 4332(2)(C). The EA and the draft Finding of No Significant Impact are available for review and on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section.

Data Quality Act

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554).

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

Under Executive Order 13211, agencies are required to prepare and submit to OMB a Statement of Energy Effects for significant energy actions. This Statement is to include a detailed statement of ''any adverse effects of energy supply, distribution, or use (including a shortfall in supply, price increases, and increase use of foreign supplies)'' for the action and reasonable alternatives and their effects.

Section 4(b) of Executive Order 13211 defines a ''significant energy action'' as ''any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of OIRA as a significant energy action.

The BLM believes that the additional cost per hydraulic fracturing operation is insignificant when compared with the drilling costs in recent years, the production gains from hydraulically fractured wells operations, and the net incomes of entities within the oil and natural gas industries. For a single well or a type well, the compliance costs represent about 0.4 to 1.5 percent of the costs of drilling a well. For a well subsequent to a type well, the costs represent between 0.04 and 0.08 percent of the total drilling costs. For existing wells and refracture operations, the percentages are even lower, at about 0.01 to 0.03 percent. When averaging the compliance costs across all operations, the costs represent between

0.04 and 0.13 percent of the costs of drilling a well.

Since the estimated compliance costs are not a substantial when compared with the total costs of drilling a well, the BLM believes that the rule is unlikely to have an effect on the investment decisions of firms, and the rule is unlikely to affect the supply, distribution, or use of energy. As such, the rule is not a ''significant energy action'' as defined in Executive Order 13211.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

1. Are the requirements in the proposed regulations clearly stated?

2. Do the proposed regulations contain technical language or jargon that interferes with their clarity?

3. Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

4. Would the regulations be easier to understand if they were divided into more (but shorter) sections?

5. Is the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand?

Please send any comments you have on the clarity of the regulations to the address specified in the **ADDRESSES** section.

Authors

The principal authors of this rule are: Subijoy Dutta of the BLM Washington Office; Donato Judice of the BLM Great Falls, Montana Oil and Gas Field Office, assisted by the BLM's Division of Regulatory Affairs and the Department of the Interior's Office of the Solicitor.

List of Subjects 43 CFR Part 3160

Administrative practice and procedure; Government contracts; Indians—lands; Mineral royalties; Oil and gas exploration; Penalties; Public lands—mineral resources; Reporting and recordkeeping requirements.

43 CFR Chapter II

For the reasons stated in the preamble, and under the authorities stated below, the Bureau of Land Management amends 43 CFR part 3160 as follows:

PART 3160—ONSHORE OIL AND GAS OPERATIONS

■ 1. The authorities citation for part 3160 is revised to read as follows:

Authority: 25 U.S.C. 396d and 2107; 30 U.S.C. 189, 306, 359, and 1751; and 43 U.S.C. 1732(b), 1733, and 1740.

Subpart 3160—Onshore Oil and Gas Operations: General

§ 3160.0–3 [Amended]

■ 2. In § 3160.0–3 add ''the Federal Land Policy and Management Act (43 U.S.C. 1701 *et seq.*),'' after ''the Mineral Leasing Act for Acquired lands, as amended (30 U.S.C. 351–359),''.

■ 3. Amend § 3160.0–5 by adding definitions of ''annulus,'' ''bradenhead,'' ''hydraulic fracturing,'' ''hydraulic fracturing fluid,'' ''proppant,'' ''refracturing,'' ''type well,'' and ''usable water,'' in alphabetical order and by removing the definition of ''fresh water''.

The additions read as follows:

§ 3160.0–5 Definitions.

* * * * *

Annulus means the space around a pipe in a wellbore, the outer wall of which may be the wall of either the borehole or the casing; sometimes also called annular space.

* * * * *

Bradenhead means a heavy, flanged steel fitting connected to the first string of casing that allows the suspension of intermediate and production strings of casing and supplies the means for the annulus to be sealed.

* * * * *

Hydraulic fracturing means those operations conducted in an individual wellbore designed to increase the flow of hydrocarbons from the rock formation to the wellbore through modifying the permeability of reservoir rock by fracturing it. Hydraulic fracturing does not include enhanced secondary recovery such as water flooding, tertiary recovery, recovery through steam injection, or other types of well stimulation operations such as acidizing.

* * * * *

Hydraulic fracturing fluid means the liquid or gas, and any associated solids used in hydraulic fracturing, including constituents such as water, chemicals, and proppants.

* * * * *

Proppant means a granular substance (most commonly sand, sintered bauxite, or ceramic) that is carried in suspension by the fracturing fluid that serves to keep the cracks open when fracturing fluid is withdrawn after a hydraulic fracture operation.

* * * * *

Refracturing means a hydraulic fracturing operation subsequent to the completion of a prior hydraulic fracturing operation in the same well. For purposes of this definition, a hydraulic fracturing operation is completed when a well begins producing oil or gas, or when equipment necessary to inject the hydraulic fracturing fluid at sufficient pressure to fracture the stratum is removed from the well pad, whichever occurs earlier.

* * * * *

Type well means an oil and gas well that can be used as a model for well completion in a field where geologic characteristics are substantially similar within the same field, and where operations such as drilling, cementing, and hydraulic fracturing are likely to be successfully replicated using the same design.

* * * * *

Usable water means generally those waters containing up to 10,000 parts per million (ppm) of total dissolved solids. The following geologic zones are deemed to contain usable water:

(1) Underground sources of drinking water as defined by the U.S. Environmental Protection Agency or by State law (for Federal lands) or tribal law (for Indian lands);

(2) Zones in use for supplying water for agricultural or industrial purposes, regardless of the concentration of total dissolved solids, unless the operator demonstrates that the existing agricultural or industrial user would not be adversely affected;

(3) Zones designated by a State (for Federal lands) or a tribe (for Indian lands) as requiring isolation or protection from oil and gas operations; and

(4) Zones containing up to 10,000 ppm of total dissolved solids that are not excluded by paragraphs (A), (B), or (C) of this definition. The following geologic zones are deemed not to contain usable water:

(A) Zones from which an operator is authorized to produce hydrocarbons;

(B) Zones designated as exempted aquifers pursuant to the Safe Drinking Water Act; and

(C) Zones which the State (for Federal lands) or the tribe (for Indian lands) has designated as exempt from any requirement to be isolated or protected from oil and gas operations.

* * * * *

Subpart 3162—Requirements for Operating Rights Owners and Operators

■ 4. Amend § 3162.3–2 by revising the first sentence of paragraph (a) and revising paragraph (b) to read as follows:

§ 3162.3–2 Subsequent well operations.

(a) A proposal for further well operations must be submitted by the operator on Form 3160–5 for approval by the authorized officer prior to the operator's commencing operations to redrill, deepen, perform casing repairs, plug-back, alter casing, recomplete in a different interval, perform water shut off, combine production between zones, and/or convert to injection. * * *

(b) Unless additional surface disturbance is involved and if the operations conform to the standard of prudent operating practice, prior approval is not required for acidizing jobs or recompletion in the same interval; however, a subsequent report on these operations must be filed on Form 3160–5.

* * * * *

■ 5. Revise § 3162.3–3 to read as follows:

§ 3162.3–3 Subsequent well operations; Hydraulic fracturing.

(a) *Activities To Which This Section Applies.*

This section applies to all hydraulic fracturing operations, and refracturing operations. All other injection activities must comply with section 3162.3–2.

(b) *Isolation of Usable Water to Prevent Contamination.* All hydraulic fracturing and refracturing operations must meet the performance standard in section 3162.5–2(d) of this title.

(c) *When an Operator Must Submit Notification for Approval of Hydraulic Fracturing.* A proposal for hydraulic fracturing or refracturing must be submitted by the operator and approved by the BLM before commencement of operations. The proposal may be submitted in one of the following ways:

(1) The operator may submit with its application for permit to drill the information required in paragraph (d) of this section;

(2) The operator may submit a proposal for hydraulic fracturing operations on Form 3160–5 (Sundry Notices and Reports on Wells) as a Notice of Intent Sundry for approval by the authorized officer prior to hydraulic fracturing. If the hydraulic fracturing operation would cause additional surface disturbance, the proposal must include a surface use plan of operations; or

(3) If an operator has received BLM approval for hydraulic fracturing operations, it must submit a new Notice of Intent Sundry if:

(i) Hydraulic fracturing or refracturing operations have not commenced within 5 years after the effective date of approval of the fracturing operation;

(ii) The operator has significant new information about the geology of the area, the stimulation operation or technology to be used, or the anticipated impacts of the fracturing operation to any resource; or

(iii) The operator proposes refracturing of the well. For refracturing operations, the operator must submit any information in this section that is required by the authorized officer, including a mechanical integrity test.

(d) *What the Notice of Intent Sundry Must Include.* The authorized officer may prescribe that each proposal contain all or a portion of the information set forth in section 3162.3–1 of this title. The Sundry Notice may be submitted for a single well or a group of wells within the same geologic formation. If the submission is for a group of wells, the information should describe a type well. If the type well has not been completed, the cement evaluation log described in paragraph (e)(2) of this section must be provided to BLM before drilling operations may begin on the other wells in the group. If information submitted in accordance with State (on Federal lands) or tribal (on Indian lands) laws or regulations meets the standards prescribed by the BLM, such information may be submitted to the BLM as part of the Sundry Notice.

The Notice of Intent Sundry must include the following:

(1) The geological names, a geological description, and the proposed measured depth of the top and the bottom of the formation into which hydraulic fracturing fluids are to be injected;

(2) The measured or estimated depths (both top and bottom) of all occurrences of usable water by use of a drill log from the subject well or another well in the vicinity and within the same field;

(3) The proposed measured depth of perforations or the open-hole interval, estimated pump pressures, and information concerning the source and location of water supply, such as reused or recycled water, or rivers, creeks, springs, lakes, ponds, and wells, which may be shown by quarter-quarter section on a map or plat, or which may be described in writing. It must also identify the anticipated access route and transportation method for all water planned for use in fracturing the well;

(4) A plan for the proposed hydraulic fracturing design that includes, but is not limited to, the following:

(i) The estimated total volume of fluid to be used;

(ii) The anticipated surface treating pressure range;

(iii) The maximum injection treating pressure;

(iv) The estimated or calculated fracture direction, length, and height, including the estimated fracture propagation plotted on the well schematics and on a map. The map must be of a scale no smaller than 1:24,000; and

(v) The estimated vertical distance to the nearest usable water aquifer above the fracture zone;

(5) The following information concerning the handling of recovered fluids:

(i) The estimated volume of fluid to be recovered during flowback, swabbing, and recovery from production facility vessels;

(ii) The proposed methods of handling the recovered fluids, including, but not limited to, pit requirements, pipeline requirements, holding pond use, re-use for other stimulation activities, or injection; and

(iii) The proposed disposal method of the recovered fluids, including, but not limited to, injection, hauling by truck, or transporting by pipeline; and

(6) The authorized officer may request additional information prior to the approval of the Notice of Intent Sundry.

(e) *Monitoring of Cementing Operations and Cement Evaluation Log Prior to Hydraulic Fracturing.*

(1) During cementing operations the operator must monitor and record the flow rate, density, and treating pressure and submit a cement operation monitoring report to the authorized officer within 30 days after completion of the hydraulic fracturing operations.

(2) The operator must run a cement evaluation log or logs on each casing that protects usable water and the operator must submit those logs to the authorized officer within 30 days after completion of the hydraulic fracturing operations, except as provided under (e)(3) of this section. A cement evaluation log, is any one of a class of tools that verify the integrity of annular cement bonding, such as, but not limited to, a cement bond log, ultrasonic imager, variable density logs, micro-seismograms, CBLs with directional receiver array, ultrasonic pulse echo technique, or isolation scanner. An operator may select the tool used to prepare the CEL, as long as it is at least as effective in verifying the integrity of annular cement bonding as is a cement bond log.

(3) An operator is not required to run a cement evaluation log on the casings of a subsequent well where an operator:

(i) Submitted a cement evaluation log for a type well (see paragraph (d) of this section) that shows successful cement bonding to protect against downhole fluid cross-migration into water zones; and

(ii) Completes a subsequent well or wells with the same specifications and geologic characteristics as the type well, and approved in the same group sundry notice for the same field (see paragraph (d) of this section), and the cementing operations monitoring data parallels those of the type well.

(4) For any well, if there is an indication of an inadequate cement job (such as, but not limited to, lost returns, cement channeling, gas cut mud, or failure of equipment), then the operator must report that information to the authorized officer within 24 hours, followed by a written report within 48 hours. Prior to commencing hydraulic fracturing operations, the operator must run a cement evaluation log showing that the inadequate cement job has been corrected and the occurrences of usable water have been isolated to protect them from contamination. At least 72 hours before commencing the hydraulic fracturing operation, the operator must submit:

(i) A signed certification indicating that the operator corrected the inadequate cement job; and

(ii) Documentation that shows that there is adequate cement bonding.

(5) The operator must submit the information required by paragraph (e)(1), and (e)(2) of this section with the Subsequent Report Sundry Notice required in paragraph (i) of this section.

(f) *Mechanical Integrity Testing Prior to Hydraulic Fracturing.* Prior to hydraulic fracturing, or refracturing, the operator must perform a successful mechanical integrity test (MIT) of the vertical sections of the casing.

(1) If hydraulic fracturing through the casing is proposed, the casing must be tested to not less than the maximum anticipated treating pressure.

(2) If hydraulic fracturing through a fracturing string is proposed, the fracturing string must be inserted into a liner or run on a packer-set not less than 100 feet below the cement top of the production or intermediate casing. The fracturing string must be tested to not less than the maximum anticipated treating pressure minus the annulus pressure applied between the fracturing string and the production or intermediate casing.

(3) The MIT will be considered successful if the pressure applied holds for 30 minutes with no more than a 10 percent pressure loss.

(g) *Monitoring and Recording During Hydraulic Fracturing.*

(1) During any hydraulic fracturing or refracturing operation, the operator must continuously monitor and record the annulus pressure at the bradenhead. The pressure in the annulus between any intermediate casings and the production casing must also be continuously monitored and recorded. A continuous record of the annulus pressure during the fracturing operation must be submitted with the required Subsequent Report Sundry Notice (Form 3160–5, Sundry Notices and Reports on Wells) identified in paragraph (i) of this section.

(2) If during any hydraulic fracturing or refracturing operation the annulus pressure increases by more than 500 pounds per square inch as compared to the pressure immediately preceding the stimulation, the operator must take immediate corrective action and must orally notify the authorized officer as soon as practicable, but no later than 24 hours following the incident. Within 30 days after the hydraulic fracturing operations are completed, the operator must submit a report containing all details pertaining to the incident, including corrective actions taken, as part of a Subsequent Report Sundry Notice (Form 3160–5, Sundry Notices and Reports on Wells).

(h) Storage of all recovered fluids must be in either tanks or lined pits. The authorized officer may require any other BLM approved method to protect the mineral resources, other natural resources, and environmental quality from the release of recovered fluids.

(i) *Information that Must be Provided to the Authorized Officer After Completed Operations.* The information required in paragraphs (i)(1) through (i)(8) of this section must be submitted to the authorized officer within 30 days after the hydraulic fracturing or refracturing operations are completed. The information is required for each well, even if the BLM approved fracturing of a group of wells (see § 3162.3–3(d)). The information required in paragraph (i)(1) of this section must be submitted to the authorized officer through FracFocus, another BLM-designated database, or in a Subsequent Report Sundry Notice (Form 3160–5, Sundry Notices and Reports on Wells). If information is submitted through FracFocus or another designated database, the operator must specify that the information is for a Federal or an Indian well, certify that the information is correct, and certify compliance with applicable law as required by paragraph (i)(7)(ii) or (i)(7)(iii) of this section using FracFocus or the designated database. The information required in paragraphs (i)(2) though (i)(8) of this section must be submitted to the authorized officer in a Subsequent Report Sundry Notice. The operator is responsible for the information submitted by a contractor or agent, and the information is considered to have been submitted directly from the operator to the BLM. The operator must submit the following information:

(1) The true vertical depth of the well, total water volume used, and for each chemical used (including base fluid) the trade name, supplier, purpose, ingredients, Chemical Abstract Service Number (CAS #), maximum ingredient concentration in additive (% by mass), and maximum ingredient concentration in hydraulic fracturing fluid (% by mass).

(2) The actual measured depth of perforations or the open-hole interval, and actual pump pressures and the source(s) and location(s) of the water used in the hydraulic fracturing fluid.

(3) The actual surface pressure and rate at the end of each stage of the hydraulic fracturing operation, and the actual flush volume, rate, and final pump pressure.

(4) The actual, estimated, or calculated fracture length, height and direction;

(5) The following information concerning the handling of recovered fluids:

(i) The volume of fluid recovered during flowback, swabbing, or recovery from production facility vessels;

(ii) The methods of handling the recovered fluids, including, but not limited to, transfer pipes and tankers, holding pond use, re-use for other stimulation activities, or injection; and

(iii) The disposal method of the recovered fluids, including, but not limited to, injection, hauling by truck, or transporting by pipeline. The disposal of fluids produced during the flowback from the hydraulic fracturing process must follow the requirements set out in Onshore Order Number 7, Disposal of Produced Water, Section III.B. (October 8, 1993, 58 FR 58506).

(6) If the actual operations deviate from the approved plan, the deviation(s) must be documented and explained.

(7) A certification signed by the operator that:

(i) Wellbore integrity was maintained prior to and throughout the hydraulic fracturing operation, as required by paragraph (b) of this section. The operator must also certify that it complied with the requirements in

paragraphs (e), (f), (g), and (h) of this section;

(ii) For Federal lands, the hydraulic fracturing fluid used complied with all applicable permitting and notice requirements as well as all applicable Federal, State, and local laws, rules, and regulations; and

(iii) For Indian lands, the hydraulic fracturing fluid used complied with all applicable permitting and notice requirements as well as all applicable Federal and tribal laws, rules, and regulations.

(8) The operator must submit well logs and records of adequate cement bonds including the cementing operations monitoring report, any cement evaluation log, and the result of the mechanical integrity test as required by paragraphs (e)(1), (e)(2), and (f) of this section.

(9) The authorized officer may require the operator to provide documentation substantiating any information submitted under paragraph (i) of this section.

(j) *Identifying Information Claimed to be Exempt from Public Disclosure.*

(1) For the information required in paragraph (i)(1) of this section, the operator will be deemed to have waived any right to protect from public disclosure information submitted with a Subsequent Report Sundry Notice or through FracFocus or another designated database. For information required in paragraph (i)(1) of this section that the operator claims to be exempt from public disclosure, the operator must submit to the BLM an affidavit that:

(i) Identifies the Federal statute or regulation that allows withholding of the information from the BLM or prohibits the BLM from disclosing the information if it were in the BLM's possession;

(ii) Affirms that the information is not publicly available;

(iii) Affirms that the information is not required to be publicly available under any applicable law;

(iv) Affirms that the release of the information would likely harm the operator's competitive position; and

(v) Affirms that the information is not readily apparent through reverse engineering.

(2) The BLM may require any operator to disclose to the BLM any information claimed to be exempt from public disclosure, along with any other relevant information.

(3) If the BLM determines that the information is not exempt from disclosure, the BLM will make the information available to the public after providing the operator with no fewer than 10 business days' notice of the BLM's determination.

(4) The operator must maintain records of the information claimed to be exempt from disclosure for the period of time as required by section 3162.4–1(d) of this title.

(k) *Requesting a Variance from the Requirements of this Section.* The operator may make a written request to the authorized officer for a variance from the requirements under this section. The BLM encourages submission using a Sundry Notice (Form 3160–5, Sundry Notices and Reports on Wells). In cooperation with a State (for Federal lands) or a tribe (for Indian lands), the BLM may issue a variance that would apply to all wells within a State or within Indian lands, or to specific fields or basins within the State or the Indian lands, if the BLM finds that the variance meets the criteria in paragraph (k)(2) of this section.

(1) A request for a variance must specifically identify the regulatory provision of this section for which the variance is being requested, explain the reason the variance is needed, and demonstrate how the operator will satisfy the objectives of the regulation for which the variance is being requested.

(2) The authorized officer, after considering all relevant factors, may approve the variance, or approve it with one or more conditions of approval, only if the BLM determines that the proposed alternative meets or exceeds the objectives of the regulation for which the variance is being requested. The decision whether to grant or deny the variance request is entirely within the BLM's discretion.

(3) A variance under this section does not constitute a variance to provisions of other regulations, laws, or orders.

(4) Due to changes in Federal law, technology, regulation, BLM policy, field operations, noncompliance, or other reasons, the BLM reserves the right to rescind a variance or modify any conditions of approval. The authorized officer must provide a written justification if a variance is rescinded or a condition of approval is modified.

■ 6. Amend § 3162.5–2 by revising the first sentence of paragraph (d) to read as follows:

§ 3162.5–2 Control of wells.

* * * * *

(d) *Protection of usable water and other minerals.* The operator must isolate all usable water and other mineral-bearing formations and protect them from contamination.

* * * * *

Tommy P. Beaudreau,

Acting Assistant Secretary, Land and Minerals Management.

[FR Doc. 2013–12154 Filed 5–23–13; 8:45 am]

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding on Two Petitions To Delist the Preble's Meadow Jumping Mouse; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2012–0095; FXES11130900000–134–FF09E30000]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on Two Petitions to Delist the Preble's Meadow Jumping Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on two petitions to delist the Preble's meadow jumping mouse (*Zapus hudsonius preblei)* under the Endangered Species Act of 1973, as amended (Act). After review of the best available scientific and commercial information, we find that delisting the Preble's meadow jumping mouse is not warranted at this time. We base our determination on the continued loss and modification of the Preble's meadow jumping mouse's habitat to human development, the inadequacy of existing regulatory mechanisms, and other natural factors, including wildfire and threats associated with global climate change. Although delisting is not warranted at this time, we ask the public to submit to us at any time any new information that becomes available concerning conservation measures or threats to this subspecies or its habitat.

DATES: The finding announced in this document was made on May 24, 2013.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R6–ES–2012–0095. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Colorado Field Office at 134 Union Blvd., Suite 670, Lakewood, CO 80228. Please submit any new information, materials, comments, or questions concerning this finding to the above street address.

FOR FURTHER INFORMATION CONTACT: Susan Linner, Field Supervisor, U.S. Fish and Wildlife Service, Colorado Field Office (see **ADDRESSES**); by telephone at (303) 236–4773; or by facsimile at (303) 236–4005. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information that delisting the species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we will determine that the petitioned action is: (1) Not warranted, (2) warranted, or (3) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12-month findings in the **Federal Register**.

The term ''species'' is specifically defined as a term of art in the Act to include ''subspecies'' and, for vertebrate species, ''distinct population segments,'' in addition to taxonomic species. 16 U.S.C. 1532(16). Therefore, when we use the term ''species'' in this finding, with or without quotation marks, we generally mean to refer to this statutory usage, which includes species, subspecies, and distinct population segments in general. When referring more specifically to the Preble's meadow jumping mouse (PMJM), we use the term subspecies.

Previous Federal Actions

We listed the PMJM as threatened under the Act on May 13, 1998 (63 FR 26517).

On May 22, 2001, we published a final section 4(d) special rule for the PMJM that prescribed the regulations necessary and advisable to conserve the subspecies. When we establish a special rule for a threatened subspecies, the general regulations for some prohibitions under the Act do not apply and the special rule contains the prohibitions, and exemptions, necessary and advisable to conserve the subspecies. The 4(d) rule for the PMJM applied the prohibitions for threatened animals (50 CFR 17.31) except it allowed ''take'' for certain rodent control activities, ongoing agricultural activities, maintenance and replacement of existing landscaping, and existing uses of water from May 22, 2001, through May 22, 2004 (66 FR 28125). The Act defines ''take'' as harass, harm, pursue, hunt, shoot, would, kill, trap, capture, or collect any threatened or endangered species or subspecies. Harm may include significant habitat modification where it kills or injures a listed species by impairing essential behaviors, such as breeding, feeding, or sheltering. Unless allowed by special regulations or a permit, take of a listed animal is unlawful under the ESA. On October 1, 2002, we amended the 4(d) rule for the PMJM to allow take for certain noxious weed control and ditch maintenance activities from October 1, 2002, through May 22, 2004 (67 FR 61531). We made the special rule, as amended, permanent on May 20, 2004 (69 FR 29101).

After listing, we assembled a Preble's meadow jumping mouse Recovery Team (Recovery Team), composed of scientists and stakeholders to develop a plan to recover the subspecies. In June 2003, the PMJM Recovery Team provided their recommendations for the recovery of the PMJM in a draft recovery plan. The Service revised this working draft in November 2003. Although the Recovery Team drafted the Preliminary Draft Recovery Plan in the format of a Recovery Plan, and used the term ''Recovery Plan'' within the document, the document was not approved as an official draft Recovery Plan. However, this Preliminary Draft Recovery Plan (USFWS 2003b) remains the best source of scientific information available concerning the recovery needs of the PMJM. The Recovery Team intends to reconvene following this finding.

We published a final rule designating critical habitat for the PMJM on June 23, 2003 (68 FR 37276). On December 15, 2010, we published a final rule revising critical habitat for the PMJM in Colorado (75 FR 78430).

On December 23, 2003, we received two nearly identical petitions, from the State of Wyoming's Office of the Governor and Coloradans for Water Conservation and Development, seeking to remove the PMJM from the Federal List of Endangered and Threatened Wildlife (Freudenthal 2003; Sonnenberg 2003). The petitions maintained that the PMJM should be delisted based on the taxonomic revision suggested by Ramey *et al.* (2003). Additionally, the petitioners alleged that the subspecies was no longer threatened based upon new distribution, abundance, and trend data (Freudenthal 2003, p. 1; Sonnenberg 2003, p. 1).

In response to these petitions, we published a notice in the **Federal**

Register on March 31, 2004 (69 FR 16944), announcing a 90-day finding that the petitions presented substantial information indicating that the petitioned action to delist the subspecies may be warranted and initiating a status review of the subspecies. On February 2, 2005, we published a 12-month finding (70 FR 5404) that the petitioned action was warranted and published a proposed rule to remove the PMJM from the Federal List of Endangered and Threatened Wildlife.

On February 17, 2006, the Service announced (71 FR 8556) that we were extending the rulemaking process an additional 6 months, as allowed under section 4(b)(6)(B)(i) of the Act, in order to rectify the conflicting conclusions of two studies of the PMJM's taxonomy and that we were reopening the comment period on the February 2, 2005, proposed rule. We assembled a panel of experts to carefully review and assess the studies by Ramey *et al.* (2005) and King *et al.* (2006a).

On September 26, 2006, the State of Wyoming submitted a 60-day notice of intent to sue over our failure to publish a final determination on our 2005 proposed delisting rule within the timeframes allowed by the Act. On June 22, 2007, the Service and the State of Wyoming reached a settlement agreement, which required that by October 31, 2007, we submit to the **Federal Register** for publication either: (1) A withdrawal of our 2005 proposed delisting regulation; or (2) a new proposed regulation considering the PMJM's taxonomy and the subspecies' threatened status in light of all current distribution, abundance, and trends data (*State of Wyoming* v. *U.S. Department of the Interior,* No. 07CV025J (District of Wyoming 2007)). In addition, the Service agreed that if we did publish a new proposed regulation, we would submit a final determination on that proposed regulation to the **Federal Register** no later than June 30, 2008.

On November 7, 2007, we published a revised proposed rule (72 FR 62992) to amend the listing of the PMJM to specify over what portion of its range the subspecies is threatened.

On July 10, 2008, we published a final rule (73 FR 39790) amending the listing determination that removed the Act's protections for the PMJM in Wyoming. In this rule, we relied on the March 16, 2007, Memorandum Opinion from the Department of the Interior's Office of the Solicitor (Opinion M–37013) to interpret the Act's term ''significant portion of the range,'' or SPR. Under Opinion M–37013, we determined that the PMJM was not threatened throughout all of its range, but that the portion of its range located in Colorado represented a significant portion of the range where the subspecies should retain its threatened status. Therefore, this SPR determination recognized a difference in status between the Wyoming and Colorado portions of the PMJM's range.

On June 23, 2009, the Center for Native Ecosystems challenged our interpretation of the SPR language as applied to the July 10, 2008, amended PMJM decision in the United States District Court for the District of Colorado. After that lawsuit was filed, two courts vacated listing decisions for two other species that relied on the same statutory interpretation contained in Opinion M–37013. On May 4, 2011, the Solicitor of the Department of the Interior withdrew Opinion M–37013, and the Service announced its intent to propose a joint policy with the National Marine Fisheries Service (NMFS) regarding the interpretation and implementation of the Act's statutory phrase ''in danger of extinction throughout all or a significant portion of its range.'' In light of these court decisions and the subsequent withdrawal of Opinion M–37013, we filed a motion for voluntary remand and vacatur of the 2008 PMJM amended listing decision. On July 7, 2011, the United States District Court for the District of Colorado granted this motion and ordered the 2008 amended listing decision vacated and remanded as of August 6, 2011 (*Center for Native Ecosystems, et al.* v. *Salazar, et al.,* 09–cv–01463–AP–JLK, 2011 U.S. Dist. LEXIS 72664). On August 5, 2011, the Service issued a final rule (76 FR 47490) complying with the court order, which reinstated the Act's regulatory protections for the PMJM in Wyoming on August 6, 2011.

In addition to remanding the amended listing determination, the court ordered that we complete a status review for the PMJM to address the December 23, 2003, delisting petitions submitted by the State of Wyoming and Coloradoans for Water Conservation and Development. The court required that we publish our 12-month finding in the **Federal Register** by June 1, 2013. On November 26, 2012, we announced the initiation of this status review and encouraged all interested parties to submit any new information regarding the PMJM and its threats (77 FR 70410). This finding addresses these petitions.

On December 9, 2011, FWS and the National Marine Fisheries Service published a notice (76 FR 76987) of draft policy to establish a joint interpretation and application of SPR that reflects a permissible reading of the law and its legislative history, and minimizes undesirable policy outcomes, while fulfilling the conservation purposes of the Act. To date, we have not finalized our draft SPR policy.

Species Information

Meadow jumping mice (*Zapus hudsonius*) are small rodents with long tails, large hind feet, and long hind legs. The fur is coarse, shiny, and rusty, yellow-brown in color with black-tipped hairs forming a dark, distinctive stripe on the back (Hansen 2006, p. 10; Fitzgerald *et al.* 2011, pp. 188–189). Although body shape and size are similar to other small rodents, such as deer mice (*Peromyscus maniculatus*), meadow jumping mice are distinguished by their unusually long tails and large hind feet (Hansen 2006, pp. 11–13). The sparsely haired tail occupies approximately 60 percent of the total body length (Fitzgerald *et al.* 1994, p. 291; Fitzgerald *et al.* 2011, p. 188). The large hind feet enable meadow jumping mice to make long leaps, with horizontal distances recorded between 1 to 2 meters (3 to 6 feet) (Hansen 2006, p. 12). After using the hind legs to spring from the ground, meadow jumping mice whip their long tails like a rudder to change the direction of their jump in midair (Hansen 2006, p. 11; Fitzgerald *et al.* 2011, p. 191).

Streams and other watercourses with well-developed riparian vegetation, adjacent relatively undisturbed grasslands, and a nearby water source define typical PMJM habitat (Bakeman 1997, pp. 22–31; Fitzgerald *et al.* 2011, p. 190; Trainor *et al.* 2012, p. 429). PMJM prefer riparian areas featuring multi-storied, horizontal cover with an understory of grasses and forbs (Bakeman 1997, pp. 22–31; Bakeman and Deans 1997, pp. 28–30; Meaney *et al.* 1997a, pp. 15–16; Meaney *et al.* 1997b, pp. 47–48; Shenk and Eussen 1998, pp. 9–11; Schorr 2001, pp. 23–24; Schorr 2003, p. 18). Willow species (*Salix* spp.) typically dominate the shrub canopy, although other shrub species may occur (Shenk and Eussen 1998, pp. 9–11). High-use areas for the PMJM tend to be close to creeks and are associated with a high percentage of shrubs, grasses, and woody debris (Trainor *et al.* 2007, pp. 471–472). The hydrologic regimes that support PMJM's habitat range from large perennial rivers such as the South Platte River to small drainages that are only 1 to 3 meters (m) (3 to 10 feet (ft)) wide (USFWS 2013). The PMJM is likely an Ice Age (Pleistocene) relict; once the glaciers receded from the Front Range of Colorado and the foothills of Wyoming

and the climate became drier, the PMJM was confined to riparian systems where moisture was more plentiful (Fitzgerald *et al.* 1994, p. 194; Meaney *et al.* 2003, p. 611; Smith *et al.* 2004, p. 293; Fitzgerald *et al.* 2011, p. 189).

Meadow jumping mice are primarily nocturnal or crepuscular (active during twilight), but may also be active during the day (Whitaker 1963, p. 231; Fitzgerald *et al.* 2011, p. 191). During the day, mice rest within day nests that they weave from grasses (Hansen 2006, p. 136; Fitzgerald *et al.* 2011, p. 191). Although lush, riparian vegetation near water is the PMJM's primary habitat, mice venture into bordering uplands, as far out as 100 m (330 ft) beyond the 100-year floodplain (Shenk and Sivert 1999a, p. 11; Ryon 1999, p. 12; Schorr 2001, p. 14; Shenk 2004; USFWS 2003b, p. 26). During the winter, the PMJM hibernates, remaining underground longer than most hibernating mammals (Whitaker 1963, p. 232; Hansen 2006, p. 15). PMJMs typically enter their underground hibernacula to hibernate in late September or early October and emerge the following May (Whitaker 1963, p. 232; Meaney *et al.* 2003, pp. 618, 621; Fitzgerald *et al.* 2011, p. 191).

Radio telemetry and mark-recapture data provide insight into the PMJM's home ranges and dispersal capabilities. At Plum Creek in Douglas County, Colorado, the PMJM's home ranges averaged 0.50 hectares (ha) (1.24 acres (ac)) based on radio-telemetry (Trainor *et al.* 2012, p. 432). In the Pike National Forest of Colorado, travel distances averaged 413.9 m with an approximate home range size of 1.02 ac (Hansen 2006, p. 158). At the Air Force Academy in El Paso County, Colorado, home ranges were between 0.17 to 3.84 ha (0.42 to 9.49 ac), with an average home range of 1.41 ha (3.48 ac) (Schorr 2003, p. 9). During this study, the farthest distance moved by individual PMJMs ranged from 43 to 3,176 ft (13 to 968 m), with an average maximum travel distance of 1,188 ft (362 m) (Schorr 2003, p. 9). An earlier study documented a PMJM moving as far as 1.1 kilometers (km) (0.7 mile (mi)) in 24 hours (Ryon 1999, p. 12). However, compared to radio telemetry data, mark-recapture data suggest that the PMJM may have longer dispersal capabilities. Mark-recapture data between active seasons identified mice traveling more than 4 km (2.3 mi) along a linear riparian system (Schorr 2003, p. 10; Schorr 2012, pp. 1274, 1278).

For additional information on the biology of this subspecies, please reference our May 13, 1998, final rule to list the PMJM as threatened (63 FR 26517) and the October 8, 2009, proposed rule to revise the designation of critical habitat for the PMJM (74 FR 52066).

Taxonomy

The PMJM is a member of the family Dipodidae (jumping mice) (Wilson and Reeder 1993, p. 499), which contains four extant genera, or living family members. Two of these genera, *Zapus* (jumping mice) and *Napaeozapus* (woodland jumping mice), are found in North America (Hall 1981, p. 841; Wilson and Ruff 1999, pp. 665–667).

Below we summarize and evaluate the scientific studies regarding PMJM's taxonomy.

Pre-Listing Taxonomic Information

In his 1899 study of North American jumping mice, Edward A. Preble concluded the *Zapus* genus consisted of 10 species (Preble 1899, pp. 13–41). According to Preble (1899, pp. 14–21), *Z. hudsonius* (the meadow jumping mouse) included five subspecies. Preble (1899, pp. 20–21) classified all specimens of the meadow jumping mouse from North Dakota, Montana, South Dakota, Wyoming, Nebraska, Colorado, and Missouri as a single subspecies, *Z. h. campestris.* Cockrum and Baker (1950, pp. 1–4) later designated specimens from Nebraska, Kansas, and Missouri as a separate subspecies, *Z. h. pallidus.*

After studying the morphological (physical form and structure) characteristics of 3,600 specimens, Krutzsch revised the taxonomy of the *Zapus* genus (1954, pp. 352–355). His revision reduced the number of species within this genus from 10 to 3, including *Z. hudsonius* (the meadow jumping mouse), *Z. princeps* (the western jumping mouse), and *Z. trinotatus* (the Pacific jumping mouse). According to Krutzsch (1954, pp. 385–453), the meadow jumping mouse genus included 11 subspecies distributed across North America.

Krutzsch (1954, pp. 452–453) further refined the taxonomy of *Zapus* by describing and naming the subspecies the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) based on geographic separation and morphological differences from other subspecies. Krutzsch (1954, pp. 452–453) discussed the presence of physical habitat barriers and the lack of known intergradation (merging gradually through a continuous series of intermediate forms or populations) between the PMJM, known only from eastern Colorado and southeastern Wyoming, and other identified subspecies of meadow jumping mice ranging to the east and north. Additionally, Krutzsch (1954, pp. 452–453) examined the morphometric characteristics of four adult and seven non-adult specimens. Krutzsch (1954, pp. 452–453) reported seven distinguishing traits, but only published quantitative results (nine measurements) on two of these traits for three specimens (Krutzsch 1954, p. 465). Acknowledging the small number of samples upon which his conclusion was based, Krutzsch (1954, p. 453) nonetheless concluded that the differences between PMJMs and neighboring meadow jumping mice was considerable and enough to warrant a subspecific designation.

In Krutzsch's analysis, subspecies neighboring the PMJM included *Z. h. campestris* in northeastern Wyoming, southwestern South Dakota, and southeastern Montana; *Z. h. intermedius* in North Dakota, and northwestern, central, and eastern South Dakota; and *Z. h. pallidus* (Cockrum and Baker 1950) in Nebraska, Kansas, and Missouri (Krutzsch 1954, pp. 441–442, 447–452). In 1981, Hafner *et al.* (1981, p. 501) identified the New Mexico jumping mouse (*Z. h. luteus)* from Arizona and New Mexico as another neighboring subspecies of meadow jumping mouse. Scientists previously assumed that these Arizona and New Mexico populations were subspecies of western jumping mice, not meadow jumping mice (Krutzsch 1954, pp. 406–407; Hall and Kelson 1959, pp. 774–776; Jones 1981, p. iv). Among recognized subspecies, Krutzsch (1954, p. 452) found that the PMJM most closely resembled *Z. h. campestris* from northeastern Wyoming, but documented differences in coloration and skull characteristics.

Krutzsch's description (1954), as modified by Hafner *et al.* (1981, p. 501), with 12 subspecies of meadow jumping mice in North America, has been generally accepted by most small mammal taxonomists for the past half-century (Hall and Kelson 1959, pp. 771–774; Long 1965, pp. 664–665; Armstrong 1972, pp. 248–249; Whitaker 1972, pp. 1–2; Hall 1981, pp. 841–844; Jones *et al.* 1983, pp. 238–239; Clark and Stromberg 1987, p. 184; Wilson and Reeder 1993, p. 499; Hafner *et al.* 1998, pp. 120–121; Wilson and Ruff 1999, pp. 666–667).

Other Taxonomic Information Available Prior to Listing

As part of his doctoral dissertation, Jones (1981, pp. 4–29, 229–303, 386–394, 472) analyzed the morphology of 9,900 specimens within the *Zapus* genus from across North America, including 39 PMJM specimens. Jones' dissertation (1981, p. 144) concluded that the Pacific jumping mouse was not

a valid taxon and suggested reducing the number of species in the *Zapus* genus to two: The western jumping mouse and the meadow jumping mouse. At the subspecific level, Jones (1981, pp. V, 303) concluded that no population of meadow jumping mouse was sufficiently isolated or distinct to warrant subspecific status. Regarding the PMJM, Jones (1981, pp. 288–289) wrote, ''No named subspecies is geographically restricted by a barrier, with the possible exception of *Zapus hudsonius preblei* [Preble's meadow jumping mouse],'' which ''appears to be isolated,'' but that ''no characteristics indicate that these populations have evolved into a separate taxon.'' Jones' taxonomic conclusions regarding the PMJM are questionable, as he did not compare the subspecies to *Z. h. campestris,* the closest neighboring subspecies, nor did he conduct statistical tests of morphological differences between the PMJM and any other subspecies (1981, p. 144). Regardless, Jones' doctoral committee approved his dissertation in 1981, but Jones did not publish his research in a peer-reviewed journal (Jones 1981, p. ii). Thus, Jones' findings were not incorporated into the formal taxonomy for jumping mice.

Prior to our 1998 listing, the Colorado Division of Wildlife (now Colorado Parks and Wildlife (CPW)) funded a genetic analysis of the PMJM (Riggs *et al.* 1997). This analysis examined 433 base-pairs in one region of the mitochondrial deoxyribonucleic acid (mtDNA) (maternally inherited genetic material) across five subspecies of meadow jumping mouse (92 specimens) (Riggs *et al.* 1997, p. 1). The study concluded that the PMJM formed a homogenous group recognizably distinct from other nearby populations of meadow jumping mice (Riggs *et al.* 1997, p. 12). At the request of the Service, Hafner (1997, p. 3) reviewed the Riggs study, inspected Riggs' original sequence data, and agreed with its conclusions. The supporting data for this report remain privately held (Ramey *et al.* 2003, p. 3). The Riggs *et al.* (1997) results were not published in a peer-reviewed journal, but were peer reviewed by Hafner. Prior to listing, this study was the only available information concerning the genetic uniqueness of the PMJM relative to neighboring subspecies, as Krutzsch's original subspecific designation relied on morphological characteristics and geographic isolation.

Our original listing determined that Krutzsch's (1954) revision of the meadow jumping mouse species, including the description of the PMJM subspecies, was widely supported by the scientific community as evidenced by the available published literature (63 FR 26517, May 13, 1998). Our 1998 determination weighed the information in unpublished reports, such as Jones (1981), and public comments on the rule and found that they did not contain enough scientifically compelling information to suggest that revising the existing taxonomy was appropriate (63 FR 26517, May 13, 1998). Our 1998 conclusion was consistent with Service regulations that require us to rely on standard taxonomic distinctions and the biological expertise of the Department of the Interior and the scientific community concerning the relevant taxonomic group (50 CFR 424.11).

Taxonomic Information Solicited After Listing

In 2003, the Service, the State of Wyoming, and the Denver Museum of Nature and Science funded a study to resolve ongoing questions about the taxonomic relationship between the PMJM and neighboring meadow jumping mice (USFWS 2003a, pp. 1–2). In December 2003, we received a draft report from the Denver Museum of Nature and Science examining the uniqueness of the PMJM relative to other nearby subspecies of meadow jumping mice (Ramey *et al.* 2003). In 2004, the Service and other partner agencies provided additional funding to expand the scope of the original study (USFWS 2004). In August 2005, the journal *Animal Conservation* published an expanded version of this original report (Ramey *et al.* 2005). This publication included an examination of morphometric differences, mtDNA, and microsatellite DNA (a short, noncoding DNA sequence that is repeated many times within the genome of an organism). Ramey *et al.* (2005, pp. 339–341) also examined the literature for evidence of ecological exchangeability among subspecies (a test of whether individuals can be moved between populations and can occupy the same ecological niche).

Ramey *et al.'s* morphometric analysis tested nine skull measurements of 40 PMJMs, 40 *Zapus hudsonius campestris,* and 37 *Z. h. intermedius* specimens (Ramey *et al.* 2005, p. 331). Their results did not support Krutzsch's (1954, p. 452) original description of the PMJM as ''averaging smaller in most cranial measurements'' (Ramey *et al.* 2005, p. 334). Ramey *et al.* (2005, p. 334) found that only one cranial measurement was significantly smaller, while two cranial measurements were significantly larger.

Additionally, Ramey *et al.* examined 346 base-pairs in one region of the mtDNA across five subspecies of meadow jumping mice (205 specimens) (Ramey *et al.* 2005, pp. 331–332, 335). Ramey *et al.* (2005, p. 335, 338) found low levels of difference between the PMJM and neighboring subspecies. The subspecies failed Ramey *et al.'s* tests of uniqueness in that the subspecies did not show greater molecular variance among than within subspecies or did not demonstrate nearly complete reciprocal monophyly (genetic similarity) with respect to other subspecies. The data demonstrated that all of the mtDNA haplotypes (alternate forms of a particular DNA sequence or gene) found in the PMJM were also found in *Zapus hudsonius campestris.* The mtDNA data produced by the researchers demonstrated evidence of recent gene flow between the PMJM and neighboring subspecies (Ramey *et al.* 2005, p. 338).

Additionally, Ramey *et al.* (2005, pp. 333–334, 338) analyzed five microsatellite loci across five subspecies of meadow jumping mice (195 specimens). During these tests, the subspecies failed Ramey *et al.'s* uniqueness criteria: The subspecies did not show greater molecular variance between than within subspecies and that multiple private alleles were not at a higher frequency than shared alleles at the majority of loci (Ramey *et al.* 2005, p. 333). Ramey *et al.* (2005, p. 340) concluded that these results were consistent with their morphometric and mtDNA results.

Finally, Ramey *et al.'s* review of the literature found no published evidence of adaptive or ecological differences between the PMJM and other subspecies of jumping mouse. Therefore, Ramey *et al.* (2005, pp. 339–341) concluded that the lack of morphological difference supported the proposition of no adaptive or ecological difference between the subspecies.

To summarize, based on hypothesis testing using four lines of evidence (morphometrics, mtDNA, microsatellites, and a lack of recognized adaptive differences), Ramey *et al.* concluded that the PMJM and *Zapus hudsonius intermedius* should be synonymized with *Z. h. campestris* (2005, p. 340).

Prior to the publication of Ramey *et al.* (2005) in *Animal Conservation,* the CPW and the Service solicited 16 peer reviews of the 2004 draft report provided to the Service (Ramey *et al.* 2004a). Fourteen reviewers provided comments (Armstrong 2004; Ashley 2004; Bradley 2004; Conner 2004; Crandall 2004; Douglas 2004; Hafner

2004; Meaney 2004; Mitton 2004; Oyler-McCance 2004; Riddle 2004; Sites 2004; Waits 2004; White 2004). In 2005, the Service approached the same 16 experts to review Ramey *et al.* 2004b (an expansion of Ramey *et al.* 2004a). Eleven of these reviewers provided comments (Ashley 2005; Baker and Larsen 2005; Bradley 2005; Crandall 2005; Douglas 2005; Hafner 2005; Maldonado 2005; Mitton 2005; Oyler-McCance 2005; Waits 2005; White 2005). In 2006, some of these reviewers provided comments on Ramey *et al.* (2005) as part of their review of King *et al.* (2006a). Krutzsch (2004) also reviewed Ramey *et al.* (2004a). In August 2006, *Animal Conservation* published two critiques of Ramey *et al.* (2005) (Martin 2006; Vignieri *et al.* 2006) and two responses (Crandall 2006b; Ramey *et al.* 2006a).

Many of the reviewers generally supported the findings of Ramey *et al.* (Baker and Larsen 2005; Bradley 2004, 2005; Crandall 2004, 2005; Hafner 2004; Krutzsch 2004; Maldonado 2005; Meaney 2004; Mitton 2004, 2005; Riddle 2004; Sites 2004; Waits 2004, 2005). However, the reviewers raised a number of important issues. Because these experts reviewed the unpublished reports (Ramey *et al.* 2004a, 2004b), many of the criticisms were addressed prior to publication in *Animal Conservation* (Ramey *et al.* 2005). For example, reviewers recommended that the study be augmented to include microsatellite data; this information was added to the published version (Ramey *et al.* 2005). Some of the most significant unresolved issues identified included:

(1) Reliance upon museum specimens, which can be prone to contamination (Douglas 2004, 2005, 2006; Hafner 2006; Maldonado 2005);

(2) The reliability of, and failure to validate, specimens' museum identification tag (Ashley 2005; Douglas 2004, 2005; Hafner 2004; Oyler-McCance 2004, 2005, 2006);

(3) The sampling regime and its impact on the analysis (Ashley 2006; Crandall 2006a; Douglas 2006; Hafner 2006; Maldonado 2005, 2006; Oyler-McCance 2004, 2006);

(4) Reliance upon a small portion (346 base-pairs) of mtDNA (Ashley 2004, 2005; Baker and Larsen 2005; Crandall 2004, 2005, 2006a; Douglas 2004, 2005, 2006; Hafner 2005, 2006; Maldonado 2005; Oyler-McCance 2004, 2005, 2006; Riddle 2004; Sites 2004; Waits 2004, 2005);

(5) The small number of microsatellite DNA loci examined (five) (Crandall 2006a; Oyler-McCance 2006; Hafner 2006; Vignieri *et al.* 2006, p. 241);

(6) The statistical tests employed (Crandall 2004; Douglas 2004, 2005; Hafner 2006; Maldonado 2005; Mitton 2005; Oyler-McCance 2005, 2006);

(7) The criteria used and factors considered to test taxonomic validity as well as alternative interpretations of the data (Ashley 2004; Conner 2004; Douglas 2004, 2005, 2006; Hafner 2005, 2006; Oyler-McCance 2004, 2005; Vignieri *et al.* 2006, pp. 241–242; White 2004);

(8) Whether the western jumping mouse was an appropriate outgroup (a closely related group that is used as a rooting point of a phylogenetic tree) (Douglas 2004);

(9) Failure to measure all of the morphological traits examined by Krutzsch (1954) (Vignieri *et al.* 2006, p. 238); and

(10) An inadequate evaluation of ecological exchangeability and habitat differences among subspecies (Ashley 2004; Conner 2004; Douglas 2004; Meaney 2004; Mitton 2004; Oyler-McCance 2004, 2005; Sites 2004; Vignieri *et al.* 2006, p. 238; Waits 2004, 2005).

Collectively, these critiques indicated that delisting the PMJM based on the conclusions of Ramey *et al.* alone might be premature.

Post-Listing Taxonomic Scientific Debate

Because our February 2, 2005, proposed rule (70 FR 5404) to delist the PMJM relied solely upon an unpublished report (Ramey *et al.* 2004a) that had received mixed peer reviews as described above, verifying these results was a high priority for the Service (Morgenweck 2005; Williams 2004). Thus, the Service contracted with the U.S, Geological Survey (USGS) to conduct an independent genetic analysis of several meadow jumping mouse subspecies (USGS 2005, pp. 1–4). Contrary to Ramey *et al.*'s conclusion, the USGS study concluded that the PMJM should not be synonymized with neighboring subspecies (King *et al.* 2006a, pp. 2, 29). The journal *Molecular Ecology* published an expanded version of this report (King *et al.* 2006b). This study included an examination of microsatellite DNA, two regions of mtDNA, and 15 specimens critical to the conclusions of Ramey *et al.* (2005).

The USGS study analyzed more genetic material than Ramey *et al.* (2005). King *et al.*'s (2006b, p. 4336) microsatellite analysis examined approximately 4 times the number of microsatellite loci (21) and more than 1.75 times more specimens (348 specimens) than Ramey *et al.* (2005) across the same five subspecies of meadow jumping mice. King *et al.* (2006b, p. 4337) concluded that their microsatellite data demonstrated a strong pattern of genetic differentiation between the PMJM and neighboring subspecies. King *et al.* (2006b, pp. 4336–4341) also reported that multiple statistical tests of the microsatellite data verified this differentiation.

In their evaluation of mtDNA, King *et al.* (2006b, p. 4341) examined approximately 4 times the number of base-pairs across two regions (374 control region and 1,006 cytochrome-B region base-pairs) and more than 1.5 times more specimens (320 specimens for the control region analysis and 348 for the cytochrome-B analysis) than Ramey *et al.* (2005) across the same five subspecies of meadow jumping mice. King *et al.* (2006b, p. 4341) concluded that these data suggested strong, significant genetic differentiation among the five subspecies of meadow jumping mice surveyed.

Additionally, King *et al.*'s mtDNA results indicated that the PMJM did not share haplotypes with any neighboring subspecies (King *et al.* 2006b, p. 4341). Such haplotype sharing contributed to Ramey *et al.*'s (2004a, pp. 1, 9; 2005, p. 335) conclusion that the PMJM was not unique and that the PMJM was a less genetically variable population of *Zapus hudsonius campestris.* Because of these conflicting results, King *et al.* (2006b, pp. 4355–4357) reexamined 15 specimens from the University of Kansas Museum collection that were key in Ramey *et al.*'s determination that neighboring subspecies shared haplotypes. King *et al.* (2006b, p. 4357) could not duplicate the mtDNA sequences reported by Ramey *et al.* for these specimens. If these specimens were removed from the analysis, neither study would illustrate haplotype sharing between the PMJM and neighboring subspecies. Therefore, King *et al.* (2006b, p. 4357) concluded that ''these findings have identified the presence of a systemic error in the control region data reported by Ramey *et al.* (2005)'' that ''calls into question all of the results of Ramey *et al.* (2005) based on the mtDNA genome and prevents analysis of the combined data.'' King *et al.* (2006, p. 4357) noted that possible reasons for the difference in sequences included contamination, mislabeling of samples, or other procedural incongruity. Ramey *et al.* (2007, pp. 3519–3520) proposed a number of alternative explanations for these contradictory results including: Nuclear paralogs, or copies of mtDNA sequence that have been incorporated into the nuclear genome and are now pseudogenes, or non-functional genes;

heteroplasmy, or the existence of more than one mitochondrial type in the cells of an individual; different amplification primers and conditions between the studies; and template quality.

Overall, King *et al.* (2006b, p. 19) concluded that considerable genetic differentiation occurred among all five subspecies and found no evidence to support the proposal to synonymize the PMJM, *Zapus hudsonius campestris,* and *Z. h. intermedius.*

Prior to its release, King *et al.* (2006a) underwent an internal peer review per USGS policy (USGS 2003, pp. 3, 6, 12, 28–33). In an effort to provide consistent, comparable reviews, we solicited peer reviews from the same 16 reviewers asked to review Ramey *et al.* (2004a, 2004b). Nine of the experts provided comments (Armstrong 2006; Ashley 2006; Bradley 2006; Crandall 2006a; Douglas 2006; Hafner 2006; Maldonado 2006; Oyler-McCance 2006; Riddle 2006). Ramey *et al.* (2006b, 2007) also critiqued King *et al.* (2006a, 2006b).

Most of the reviewers supported the findings of King *et al.* (Armstrong 2006; Ashley 2006; Douglas 2006; Hafner 2006; Maldonado 2006; Oyler-McCance 2006; Riddle 2006). These reviews offered a number of issues and possible explanations why King *et al.'*s results differed from those of Ramey *et al.* Because reviewers were asked to review King *et al.'*s unpublished report (King *et al.* 2006a), some of their comments were addressed by the authors in their *Molecular Ecology* publication (King *et al.* 2006b). For example, numerous reviews suggested expanding the geographic range of the study by adding a PMJM population in Wyoming; this issue was addressed in the published version (King *et al.* 2006b). Similarly, the *Molecular Ecology* publication incorporated the suggestion to retest the museum specimens Ramey *et al.* (2005) identified as having shared haplotypes for signs of cross contamination. Other issues raised by the reviewers of the King *et al.* study included:

(1) The sampling regime and its impact on the analysis (Armstrong 2006; Ashley 2006; Crandall 2006a; Douglas 2006; Oyler-McCance 2006; Ramey *et al.* 2007, p. 3519; Riddle 2006);

(2) Failure to evaluate morphometrics and ecological exchangeability (Crandall 2006a);

(3) Reliance upon a small portion of control region mtDNA (Riddle 2006);

(4) The number of loci examined (*i.e.,* too many), the programs used to analyze the data, and the resulting sensitivity in detecting difference (Crandall 2006a; Ramey *et al.* 2006b; Ramey *et al.* 2007, p. 3519);

(5) A specimen collection methodology that could cause contamination (Ramey *et al.* 2007, p. 3519);

(6) The statistical tests employed (Crandall 2006a; Douglas 2006; Maldonado 2006; Riddle 2006); and

(7) The criteria used and factors considered to test taxonomic validity and alternative interpretations of the data (Bradley 2006; Crandall 2006a).

Given the discrepancies between the Ramey *et al.* and King *et al.* reports, we contracted a scientific review to analyze, assess, and weigh the reasons why the data, findings, and conclusions of the two studies differed (USFWS 2006, p. 14). Following an open and competitive bid process, we selected the Sustainable Ecosystems Institute (SEI) as the contractor (USFWS 2006).

SEI assembled a panel of genetic and systematics experts (SEI 2006a, pp. 7, 56–82). The panelists reviewed, discussed, and evaluated all of the literature relevant to PMJM's taxonomy, including published literature, unpublished reports, third-party critiques, public comments, and other materials suggested by interested parties (SEI 2006a, pp. 48–55). Additionally, the panel examined and reanalyzed the raw data (SEI 2006a, pp. 8, 21) used by Ramey *et al.* and King *et al.,* including the mtDNA data, microsatellite DNA data, and original sequence chromatograms (automated DNA sequence data output recordings) (SEI 2006a, pp. 8, 23). The scientific review panel was open to the public and allowed for interactions among panel members, Dr. King, Dr. Ramey, other scientists, and the public.

In July 2006, SEI delivered a report outlining its conclusions to the Service (SEI 2006a). Although the panelists were not obligated to reach a consensus, they did not disagree on any substantive or stylistic issues (SEI 2006a, p. 9). The panel organized its evaluation into four sections corresponding with the different types of scientific evaluations performed, including morphology, ecological exchangeability, mtDNA, and microsatellite DNA. Below, we briefly summarize the panel's findings (SEI 2006a).

Morphology: The panel found that all seven of the morphological characters examined by Krutzsch (1954, pp. 452–453) should have been reexamined in order to support Ramey *et al.'s* proposed taxonomic revision. The panel also concluded that the type specimen (the original specimen from which the description of a new species is made) of each taxon should have been included in the analysis. The panel's conclusion was that an insufficient test of the morphological definition of the PMJM had been conducted to support the synonymy of the PMJM with other subspecies (SEI 2006a, p. 41).

Ecological Exchangeability: The panel concluded that no persuasive evidence was presented regarding ecological exchangeability, and that the ecological exchangeability of the subspecies remains unknown (SEI 2006a, p. 41).

MtDNA: The panel noted that data provided by Ramey *et al.* (2005) and King *et al.* (2006b) differed in geographic sampling strategy, amount of sequence data examined, aspects of the analysis, and quality (SEI 2006a, p. 41). All of these could help explain why the two studies came to differing conclusions. However, the panel noted that the most significant difference between the two studies in terms of mtDNA was whether the PMJM shared any mtDNA haplotypes with other subspecies of meadow jumping mice. Upon review of the raw data, the panel found evidence of contamination within some of the key sequences reported by Ramey *et al.* and that the supporting data for the samples in question were of poor quality and/or quantity (SEI 2006a, pp. 23–32). The panel concluded that no reliable evidence existed of any haplotype sharing between the PMJM and neighboring subspecies (SEI 2006a, p. 42). The panel determined that if the conflicting mtDNA sequences were removed from consideration, the two studies' mtDNA data would largely agree (SEI 2006a, p. 32). The panel also suggested that because the western jumping mouse and the meadow jumping mouse are distantly related, western jumping mouse may perform poorly as an outgroup, leading to poor resolution of relationships among meadow jumping mouse subspecies. While both Ramey *et al.* and King *et al.* used western jumping mice as their outgroup, an unrooted analysis (an analysis without these genetic points of reference or any ancestral assumptions) showed clearer phylogenetic structuring between the subspecies (SEI 2006a, p. 42).

Microsatellite DNA: The panel found that the two microsatellite datasets contained similar information. The panel pointed out that both the Ramey *et al.* (2005) and King *et al.* (2006b) microsatellite data, as well as Crandall and Marshall's (2006) reanalysis of these data, strongly support a statistically significant independent cluster that corresponds to the PMJM, providing support for a distinct subspecies (SEI 2006a, pp. 42–43). The panel indicated that while the microsatellite data alone did not make a strong case for evolutionary significance, in concert

with the mtDNA data (discussed above), the two datasets corroborated the distinctness of the PMJM (SEI 2006a, pp. 43).

The panel's overall conclusion was that the available data are broadly consistent with the current taxonomic status of the PMJM as a valid subspecies and that no evidence was presented that critically challenged its status (SEI 2006a, p. 4). In August 2006, Ramey *et al.* (2006c) submitted a statement to the Service disputing the approach and conclusions of the SEI report. Some of the most significant issues raised included:

(1) Objection to the deference given to Krutzsch (1954);

(2) Disagreement with the suggestion that all seven morphometric characters examined by Krutzsch (1954) and the type specimen should be reexamined;

(3) Dispute with the assertion that Ramey *et al.'s* (2005) evaluation of ecological significance was inadequate;

(4) Dispute with the contention that the PMJM and neighboring subspecies remain weakly genetically differentiated; and

(5) Objection to SEI's failure to develop objective standards for testing the validity of suspect subspecies.

However, no new data or analyses were presented in this statement, and the panel previously considered most of these contentions (Ramey *et al.* 2003, 2004a, 2004b, 2005, 2006a, 2006b; SEI 2006a, 2006b, 2006c). Other evaluations of the available literature and data include Ramey *et al.* (2007), Crandall and Marshall (2006), Spencer (2006b), and Cronin (2007).

Taxonomic Conclusions

When listed in 1998, the scientific community widely recognized the PMJM as a valid subspecies (Hall and Kelson 1959, pp. 771–774; Long 1965, pp. 664–665; Armstrong 1972, pp. 248–249; Whitaker 1972, pp. 1–2; Hall 1981, pp. 841–844; Jones *et al.* 1983, pp. 238–239; Clark and Stromberg 1987, p. 184; Wilson and Reeder 1993, p. 499; Hafner *et al.* 1998, pp. 120–121; Wilson and Ruff 1999, pp. 666–667). At the time of listing, Krutzsch (1954) represented the best available information on the taxonomy of the PMJM (63 FR 26517, May 13, 1998). Our 1998 conclusion was consistent with Service regulations that require us to rely on standard taxonomic distinctions and the biological expertise of the Department and the scientific community concerning the relevant taxonomic group (50 CFR 424.11). We rely on the best available science in listing decisions. Such considerations influenced our February 2, 2005, proposal (70 FR 5404) to delist the PMJM based upon information that questioned the subspecies' taxonomic validity.

At the time of our 2008 final rule (73 FR 39790), the best available information supported the conclusion that the PMJM is a valid subspecies. For this status review, we extensively reviewed all of the scientific data and again determined that the best scientific and commercial data available support the conclusion that the PMJM is a valid subspecies. Specifically, the PMJM's geographic isolation from other subspecies of meadow jumping mice (Krutzsch 1954, pp. 452–453; Long 1965, pp. 664–665; Beauvais 2001, p. 6; Beauvais 2004; SEI 2006a, p. 34; Fitzgerald *et al.* 2011, p. 190) has resulted in the accretion of considerable genetic differentiation (King *et al.* 2006b, pp. 4336–4348; SEI 2006a, pp. 41–43). The available data suggest that the PMJM meets or exceeds numerous, widely accepted subspecies definitions (Mayr and Ashlock 1991, pp. 43–45; Patten and Unitt 2002, pp. 26–34; SEI 2006a, p. 44; WGFD 2012, pp. 1, 3). In reaching this conclusion, we have not presumed that we must rely on the established taxonomy in the absence of contradictory data (see SEI report at p. 39). Rather, the best scientific and commercial information currently available indicates that the PMJM is a valid subspecies. Therefore, the taxonomic revision for the PMJM proposed by the petitioners in 2003 and suggested in our proposed delisting rule (70 FR 5404, February 2, 2005) is unfounded, and we recognize the PMJM as a valid subspecies and listable entity under the Act. This determination is consistent with our 2008 determination.

We are aware of two ongoing research studies using genetics to address taxonomic or evolutionary questions regarding the PMJM. One study seeks to clarify genetic relationships between meadow jumping mice across North America (Malaney 2013, p. 1). The second study seeks to analyze genetic relationships between PMJM populations in Colorado (Schorr and Oyler-McCance 2012, p. 1). We will evaluate any new information as it becomes available for the PMJM.

Historical Range and Recently Documented Distribution

The PMJM's current range includes portions of the North Platte, the South Platte, and the Arkansas River basins in Colorado and Wyoming (Long 1965, p. 665; Armstrong 1972, pp. 248–249; Clark and Stromberg 1987, p. 184; Fitzgerald *et al.* 1994, p. 293; Clippinger 2002, p. 20; Fitzgerald *et al.* 2011, p. 189).

When listed in 1998, we used the available trapping information and historic records to approximate the subspecies' historical range. We described the historical range of the PMJM in Wyoming to include five counties (Albany, Laramie, Platte, Goshen, and Converse), but cited only two locations with recent reports of jumping mice likely to be the PMJM. Additionally, we cited a report that suggested that the subspecies might be extirpated (extinct locally) in Wyoming or highly restricted to isolated patches of suitable habitat based on a lack of known captures in over 40 years (Compton and Hugie 1993b, p. 6). At that time, the Wyoming Game and Fish Department (WGFD) also provided comments that the PMJM had likely been extirpated from most or all of its historical range in Wyoming due to the loss and degradation of riparian habitat (Wichers 1997, p. 1). The reports indicated that there were no known populations in Wyoming (Compton and Hugie 1993b, p. 6). Therefore, the best available information at the time of listing influenced our assumption that most of the subspecies' current range occurred in Colorado. The final 1998 listing rule presumed a historical range in Colorado that included portions of 10 counties (Adams, Arapahoe, Boulder, Denver, Douglas, El Paso, Elbert, Jefferson, Larimer, and Weld). The rule also cited recent documentation of the subspecies within only 7 of these 10 counties (Boulder, Douglas, El Paso, Elbert, Jefferson, Larimer, and Weld).

After listing in 1998, trapping studies increased, greatly improving our knowledge of the PMJM's distribution within this presumed historical range. More than 1,650 trapping studies in Colorado and 1,280 records in Wyoming collected over the last 15 years documented the PMJM's presence or likely absence within riparian or adjacent upland habitat (Bowe and Beauvais 2012, p. 11; USFWS 2013). Trapping studies revealed that the PMJM still occurs in both Wyoming and Colorado, although the PMJM's distribution is limited to suitable patches of riparian habitat. Additionally, the lack of captures around human development despite large trapping efforts revealed that the PMJM was likely extirpated from dense, urban areas.

While many trapping efforts targeted locations with no record of historical surveys, most surveys occurred within the presumed historical range of the PMJM or in adjacent drainages with apparently suitable habitat. Over time,

more trapping efforts identified more sites with PMJMs and improved our understanding of the PMJM's range. However, the increase in positive captures, or known occupancy data, merely reflects the increased trapping effort, not a change in the PMJM's range. In other words, while more trapping improved our understanding of the PMJM's distribution, the data did not contract or expand the presumed range of the subspecies. The trapping data refine our understanding of the PMJM's current distribution and presumed response to habitat changes. Additionally, although we have an improved understanding of the PMJM's current range, the resulting occupancy data are not long-term studies, and so provide limited insight into population sizes or trends (Beauvais 2008, p. 2). However, the low capture rates for PMJM throughout its current range, despite extensive trapping efforts in suitable habitats, suggests that population sizes may be low.

In southeastern Wyoming, trapping studies conducted after 1998 identified many additional sites occupied by jumping mice, whether genetically or morphometrically confirmed as PMJMs or western jumping mice, or left unidentified to species. Recent captures and confirmed identifications compiled by the Wyoming Natural Diversity Database (WYNDD) improved our knowledge of the distribution of the PMJM in Wyoming. Trapping studies identified 31 plains, foothills, and montane sites occupied by the PMJM in Wyoming (Bowe and Beauvais 2012, pp. 8, 16). These new data reveal that the PMJM occurs in only four of the five Wyoming counties that we originally described as the likely historical range at the time of listing. The four counties of occupancy in Wyoming are Albany, Laramie, Platte, and Converse Counties. While generalized range maps (Long 1965, p. 665; Armstrong 1972, pp. 248–249; Clark and Stromberg 1987, p. 184) historically depicted the PMJM's range extending east into Goshen County, the new data indicate that the subspecies does not occupy Goshen County (Bowe and Beauvais 2012, pp. 8, 16; Mead 2012, p. 1). This new information does not signify a real, biological contraction of the PMJM's range, but rather reflects our improved understanding of the PMJM's historical and current range in Wyoming.

WYNDD provides the most current data regarding the distribution of the PMJM in Wyoming (Bowe and Beauvais 2012, p. 8). They refute the previously reported presence of the PMJM west of the Laramie Mountains in the North Platte River basin and in the Upper Laramie River drainage in Albany County, as described in our July 10, 2008, final rule (73 FR 39813; Bowe and Beauvais 2012, p. 8). In 2008, we assumed that occurrence of PMJM populations west of the Laramie Mountains and in the Upper Laramie River drainage in Albany County would represent a significant expansion of the formerly known range of the PMJM in Wyoming. However, WYNDD's new data refute previous speculation that the range of the PMJM extends into the Upper Laramie River, Little Laramie River, Rock Creek, and possibly the Medicine Bow River (Smith *et al.* 2004, p. 12; Bowe and Beauvais 2012, p. 8). WYNDD's report concludes that no confirmed, likely, or possible records of the meadow jumping mouse fall west of the crest of the Laramie Mountains (Bowe and Beauvais 2012, p. 8).

Specifically, genetic analysis revealed that a jumping mouse from Hutton National Wildlife Refuge in Albany County, Wyoming, previously thought to be a PMJM, was a western jumping mouse (Ramey *et al.* 2005, Appendix 3). Additionally, non-genetic analysis suggested that the purported PMJM caught on private land north of Laramie was a western jumping mouse (Beauvais 2012). The elevation of capture, body size, and abundance suggest that jumping mice captured in 2011 and 2012, in the Elk Mountains, at the Little Laramie River, the Rock Creek-Rock River area, and the Upper Medicine Bow River, were potentially western jumping mice, not the PMJM (Beauvais 2012; Bowe and Beauvais 2012, p. 8). Although genetic analysis is required for definitive identification, the new data suggest that the PMJM is not as widely distributed in Wyoming as previously assumed. Genetic results for these captures are pending. Additionally, a lack of meadow jumping mouse captures in the Niobrara, Cheyenne, and Upper Powder River Basins suggests very little connectivity between the PMJM in southeastern Wyoming and *Zapus hudsonius campestris* in northern Wyoming (Bowe and Beauvais 2012, p. 8). These new data improve our understanding of the PMJM's range in Wyoming and clarify previous speculation. Because genetics have now correctly identified previously captured meadow jumping mice, the data do not represent an actual biological contraction of the PMJM's range in Wyoming.

At the time of listing, we discussed how increased trapping efforts in Colorado had recently documented the PMJM's distribution in Elbert, Larimer, and Weld Counties. We also suggested other sites where trapping should occur to determine if the PMJM was present. Additional trapping since the time of listing has expanded the documented distribution of the PMJM in Colorado to include: (1) Additional foothill and montane sites along the Front Range in Larimer, Boulder, Jefferson, and Douglas Counties; (2) previously untrapped, rural, prairie and foothill streams in southern Douglas County and adjacent portions of Elbert County; and (3) additional prairie and foothill streams in northwestern El Paso County. Although we have identified many additional sites in Colorado occupied by the PMJM since the original listing, approximately 70 percent of trapping efforts in Colorado and Wyoming that targeted the PMJM failed to capture jumping mice (USFWS 2013, p. 2). These numerous negative trapping results, even with extensive trapping efforts in suitable habitats, suggest that the subspecies is rare or extirpated from many portions of the subspecies' historical range. Under Factor A in our five-factor threats analysis, we discuss geographic areas where the PMJM may be extirpated.

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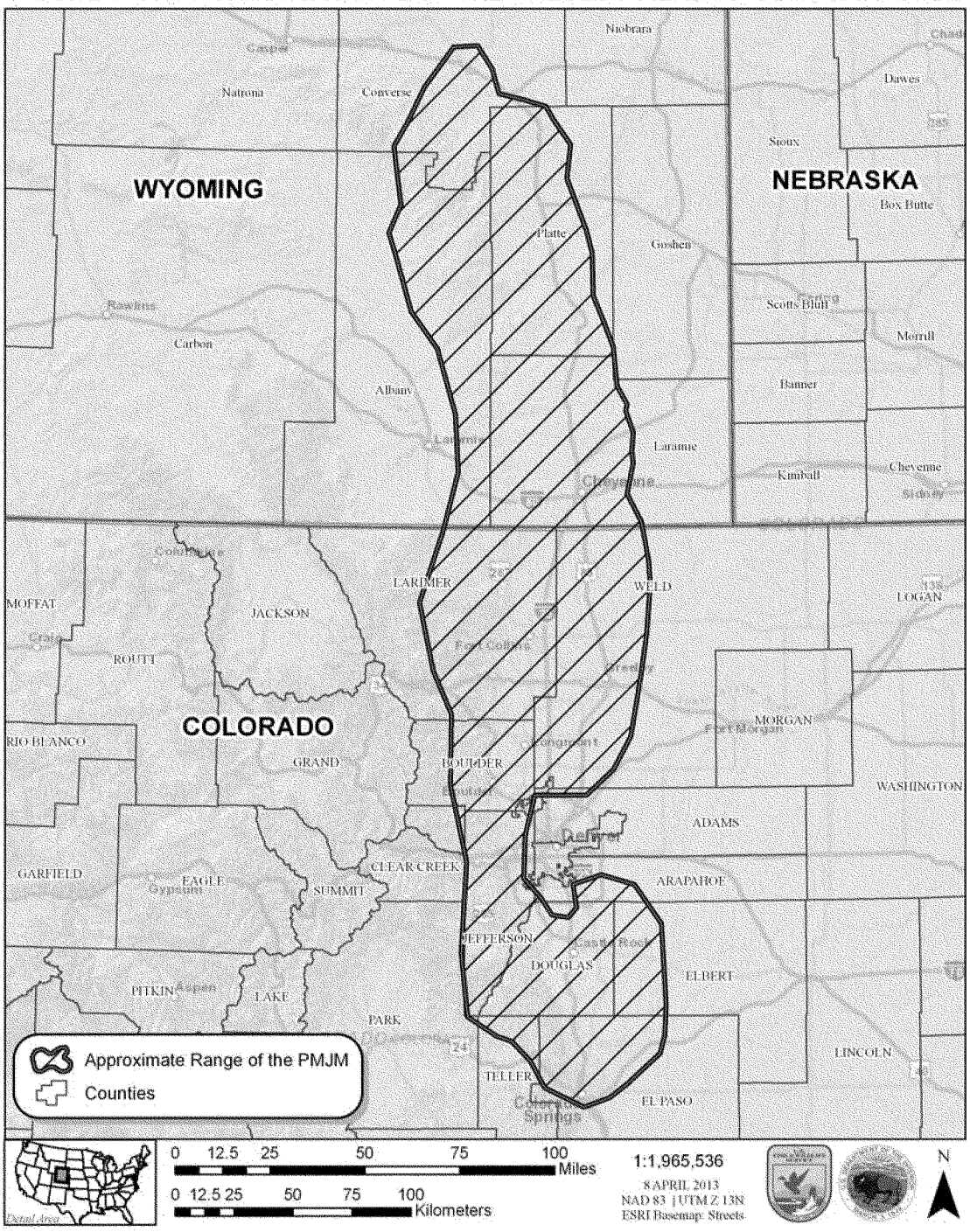
Figure 1—Map of PMJM's current range based on trapping efforts.

FIGURE 1 - APPROXIMATE RANGE OF THE PREBLE'S MEADOW JUMPING MOUSE



To summarize, the PMJM was previously assumed extirpated from Wyoming at the time of listing, but is now documented in portions of Albany, Laramie, Platte, and Converse Counties, Wyoming (Bowe and Beauvais 2012, p. 8). In Colorado, the PMJM was assumed to occupy 10 counties at the time of listing, but now occupies portions of 7 counties including: Boulder, Douglas, El Paso, Elbert, Jefferson, Larimer, and Weld Counties, Colorado (Figure 1). Although habitats are suitable and connected to occupied habitats across the Douglas County line, trapping has not captured the PMJM in Arapahoe or Teller Counties, Colorado. The North Platte River at Douglas, Wyoming, marks the northernmost confirmed location for the PMJM (Bowe and Beauvais 2012, pp. 8, 16). Specimens from Colorado Springs, Colorado, mark the southernmost documented location for the PMJM.

Elevation and Overlapping Range With the Western Jumping Mouse

The PMJM is generally found at elevations between 1,420 m (4,650 ft) and 2,300 m (7,600 ft). At the lower end of this elevation gradient, the semi-arid climates of southeastern Wyoming and eastern Colorado limit the extent of riparian corridors, thereby restricting the range of the PMJM (Beauvais 2001, p. 3). As a result, the dry, shortgrass prairies likely define the eastern

boundary for the PMJM, serving as a barrier to eastward expansion (Beauvais 2001, p. 3). In Wyoming, the PMJM has not been found east of Cheyenne, Laramie County, or west of the Laramie Mountains (Keinath 2001, p. 7; Keinath *et al.* 2010, p. A6–185, Bowe and Beauvais 2012, pp. 8, 16). In Colorado, the PMJM has not been found on the extreme eastern plains (Clippinger 2002, pp. 20–21; USFWS 2013).

At the higher elevations, overlapping range with the western meadow jumping mouse complicates discerning areas occupied by the PMJM (Long 1965, pp. 665–666; Clark and Stromberg 1987, pp. 184–187; Schorr 1999, p. 3; Bohon *et al.* 2005; Hansen 2006, pp. 24–27; Schorr *et al.* 2007, p. 5). Unfortunately, differentiation between the PMJM and the western jumping mouse is difficult in the field (Conner and Shenk 2003a, p. 1456), complicating the results of surveys at high elevations. Generally, the western jumping mouse occurs in montane and subalpine zones, and the PMJM occupies lower elevations, in the plains and foothills (Smith *et al.* 2004, p. 10; Bowe and Beauvais 2012, pp. 1, 8, 15–16). The PMJM may also have a stronger preference for riparian and wetland environments than the western jumping mouse, with limited forays into adjacent uplands (Bowe and Beauvais 2012, p. 1).

Because of this difficulty of field identification, many jumping mice have been trapped and released without being conclusively identified as either a PMJM or a western jumping mouse. Western jumping mice have been verified at elevations well below the upper elevation limit of the PMJM (Smith *et al.* 2004, p. 11) leading to difficulty in making assumptions regarding identification based on elevation. Overlapping ranges for these subspecies have been verified within the Glendo Reservoir and the Lower Laramie and Horse Creek drainages in Wyoming (Conner and Shenk 2003b, pp. 26–27, 34–37; Meaney 2003; King 2006a; King 2006b; King *et al.* 2006b, pp. 4351–4353), and within the Cache La Poudre, Big Thompson, and Upper South Platte River drainages in Colorado (Bohon *et al.* 2005; Hansen 2006, pp. 24–27; King 2005; King 2006a; King *et al.* 2006b, pp. 4351–4353; Schorr *et al.* 2007).

Although difficult to distinguish in the field, body weight, body length, dentition, skull measurements, and genetic analysis can differentiate meadow jumping mice from western jumping mice (Krutzsch 1954, pp. 351–384; Klingenger 1963, p. 252; Riggs *et al.* 1997, pp. 6–11; Conner and Shenk 2003a; Ramey *et al.* 2005, p. 332; King *et al.* 2006b, p. 4341). The approximation of the PMJM's range emphasizes locations where individual mice were positively identified through genetic analysis, or secondarily, with high probability through morphometric measurements rigorously analyzed by statistic methods, such as discriminate function analysis (DFA) (Conner and Shenk 2003a). Positive identification of individual mice through genetic analysis or other means is most important in habitats where the PMJM and the western jumping mouse coexist.

In Wyoming, the highest elevation, genetically confirmed PMJM capture is from approximately 2,300 m (7,600 ft), but the second highest is from only approximately 2,100 m (6,800 ft). The lowest confirmed western jumping mouse is from approximately 1,900 m (6,200 ft) (Bowe and Beauvais 2012, pp.15–16). Therefore, overlap with western jumping mice appears to occur in most of Wyoming's drainages that are occupied by the PMJM. In Colorado, with few exceptions, jumping mice positively identified below 2,050 m (6,700 ft) have been PMJMs. Between 2,050 m (6,700 ft) and 2,320 m (7,600 ft) in Colorado, PMJMs and western jumping mice are known to have overlapping distribution in the Cache La Poudre, Big Thompson, and Upper South Platte River drainages.

In coordination with WYNDD, the State of Wyoming, and CPW, we maintain a PMJM trapping database (Service 2013). We used this database to map the PMJM's approximate current range as illustrated in Figure 1. Given the wide areas of overlapping range between the PMJM and western jumping mice in Wyoming, we require that each Wyoming specimen be assessed via genetic analysis (consistent with Bowe and Beauvais 2012) in order to be considered a confirmed PMJM. In Colorado, we consider a jumping mouse to be a PMJM when identification has been confirmed via genetic analysis or DFA, or when, if unconfirmed, the mouse was captured below 2,050 m (6,700 ft), where western jumping mice have rarely been documented.

Trapping results approximate a species' range, but may not provide a definitive range because surveys have not occurred throughout all locations where the PMJM is likely to be present. For example, PMJMs were trapped at two sites approximately 19 km (12 mi) apart along Kiowa Creek in Elbert County (Service 2013). Suitable habitats between these capture locations suggest that the PMJM likely occurs both between these sites and farther downstream in the drainage. However, no trapping has occurred to confirm or deny this assertion. Similarly, on Trout Creek, trapping identified a PMJM in Douglas County near the Teller County line, and it is reasonable to assume the subspecies also may occur farther to the south in Teller County (Service 2013). Therefore, in the absence of trapping records, we rely on habitat suitability and connectivity to approximate the PMJM's current range.

Abundance and Populations

Due to the difficulty of implementing long-term trapping studies, quantitative studies designed to estimate PMJM populations have occurred at only a few sites in Colorado. As a result, we lack a reliable regional, Statewide, or rangewide population estimate for the PMJM. Without long-term trapping studies, our understanding of population densities is limited for the PMJM in Wyoming (WGFD 2005, p. 36; WGFD 2010, p. IV–2–66). In Colorado, we have several population estimates but little trend information for PMJM populations. In addition, because jumping mouse population sizes in a given area vary significantly from year to year (Quimby 1951, pp. 91–93; Whitaker 1972, p. 4), short-term studies may not accurately characterize abundance. In one ongoing trapping study, population highs of 24 and 69 PMJMs per site were estimated for two control sites in 1999; subsequent trapping in 2002, during regional drought conditions, found no PMJMs present at either site (Bakeman 2006, p. 11). Over 4 years, PMJM populations varied widely and were absent at certain sites during some seasons, suggesting that 10 or more years of study might be necessary to assess the full extent of variation in PMJM populations (Meaney *et al.* 2003, p. 620).

Because the PMJM occupies linear riparian communities, researchers estimate abundance as the number of mice per km (or mi) of riparian corridor. Estimates of linear abundance range widely, from 2 to 67 mice per km (3 to 107 mice per mi) with a mean of approximately 27 mice per km (44 mice per mi) (Shenk 2004).

The above abundance estimates, coupled with sufficient knowledge of occupied stream miles, may provide a rough indicator of PMJM numbers within a stream reach or drainage. The Recovery Team used the 27 mice per km (44 mice per mi) population estimate (Shenk 2004) to approximate the number of stream miles required to support varying sized populations of the PMJM (USFWS 2003b, p. 25). However, Hayward (2002) cautioned that reliance on an average number of mice per length of stream to predict population

sizes would result in the overestimation of actual population size for about half of all sites. Of additional concern in any assessment of PMJM's population size is the potential for including western jumping mice in the estimate (Bohon *et al.* 2005; Hansen 2006, p. 174; Schorr *et al.* 2007, p. 4). Overestimation is of particular importance in areas where the PMJM and western jumping mouse coexist, including many sites in Wyoming and higher elevation sites in Colorado. At these locations, actual densities of the PMJM are likely much lower than the trapping data suggest.

Although available PMJM population estimates do not incorporate estimates for riparian corridors along mountain, or montane, streams or any sites in Wyoming, capture rates provide insight into potential population sizes for these locations. At higher elevation riparian sites in Douglas, Jefferson, and Teller Counties, Colorado, capture success rates range from 0.32 percent to 0.6 percent, despite incredible trapping efforts (Hansen 2006, p. 94; Schorr *et al.* 2007, p. 4). In, Wyoming, capture rates ranged from 0.5 percent to 1.3 percent (Griscom *et al.* 2007). These low capture rates were likely lower, with results confounded by the coexistence of the western jumping mouse. Comparatively, capture rates ranged from 3.4 percent to 3.5 percent in high-quality habitat at lower elevations with similar trapping efforts (Schorr 2001, p. 18; Meaney *et al.* 2003, p. 616). Therefore, montane and headwater stream reaches likely support a lower density of mice than plains and foothill sites, and are potentially less secure than their counterparts on the plains, especially where isolated.

Population Trends

As with abundance estimates, the difficulty of implementing long-term trapping studies limits the availability of population trend data for the PMJM. Since listing, there have been few attempts to characterize changes in PMJM populations over time. One long-term study at the Air Force Academy (Academy) in El Paso County, Colorado, provides the most thorough estimate of population trends for the subspecies. Mark-recapture data over 7 years at the Academy suggested that populations were declining (Schorr 2012a, p. 1277).

Without comprehensive population estimates for the PMJM, surveys at historically documented sites provide the primary basis for assessing population trends (Smith *et al.* 2004, p. 29). As previously discussed, we now have much more information regarding PMJM's distribution in Wyoming and Colorado than we had at time of listing in 1998. For Wyoming, we initially cited only 2 known occupied sites, but trapping efforts since then have identified at least 30 occupied sites (Bowe and Beauvais 2012, p. 16). Much of what we noted at the time of listing to be historical range of the PMJM in Wyoming has now been found to currently support the subspecies, except for habitats west of the Laramie Mountains and in Goshen County. However, while many jumping mice captures have been confirmed as PMJM in the North Platte River basin through genetics or other techniques, trapping records suggest the subspecies is uncommon in the South Platte River basin, with only western jumping mice confirmed at several locations within the presumed historical range of the PMJM. Because trapping efforts targeting the PMJM prior to listing were few compared to those post-listing, we cannot infer population trends from the Wyoming trapping data. However, low capture rates for the PMJM suggest that the mouse may not be widely distributed (Cudworth and Grenier 2011, p. 154).

In Colorado, historical trapping records establish that the PMJM was present in a range that included major plains streams from the base of the Colorado Front Range east to at least Greeley, Weld County (Armstrong 1972, p. 249; Fitzgerald *et al.* 1994, p. 293; Clippenger 2002, p. 18). However, recent trapping efforts have documented that the PMJM is currently rare or absent from these same areas (Ryon 1996, p. 2; Clippinger 2002, p. 22; USFWS 2013). This pattern is especially apparent along prairie riparian corridors directly or indirectly impacted by human development.

Summary of Information Pertaining to the Five Factors

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations (50 CFR 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened based on any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

We must consider these same five factors in delisting a species. We may delist a species according to 50 CFR 424.11(d) if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for the following reasons:

(1) The species is extinct;

(2) The species has recovered and is no longer endangered or threatened; or

(3) The original scientific data used at the time the species was classified were in error.

In making this finding, information pertaining to the PMJM in relation to the five factors provided in section 4(a)(1) of the Act is discussed below. In considering what factors might constitute threats, we must look beyond the mere exposure of the species (or in this case, subspecies) to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant a threat it is. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively is not sufficient to compel a finding that listing is appropriate; we require evidence that these factors are operative threats that act on the species to the point that the species meets the definition of an endangered or threatened species under the Act.

Foreseeable future is determined by the Service on a case-by-case basis, taking into account a variety of species-specific factors such as lifespan, genetics, breeding behavior, demography, threat-projection timeframes, and environmental variability. For the purposes of this finding, we define foreseeable future based upon a threat-projection timeframe because future development intensity and patterns are likely to be the single greatest factor contributing to the subspecies' future conservation status. As described in more detail below, human-population-growth projections extend out to 2040 in Colorado and 2030 in Wyoming. Similarly, water requirements are estimated through 2030 in Colorado and

2035 in Wyoming. A Center for the West model predicting future land-use patterns projects development changes within the range of the PMJM through 2040 in Colorado and 2050 in Wyoming. Climate change models formulate predictions through 2050 for the PMJM's range. Such projections frame our analysis as they help us understand what factors can reasonably be anticipated to meaningfully affect the subspecies' future conservation status. Therefore, we consider the foreseeable future for PMJM, based on the currently available data, to extend to approximately 2040. While it is likely some of the above estimates could be extrapolated out into the more distant future, development projections beyond this point are of increasingly lower value as uncertainty escalates. We also believe that not all threat factors are necessarily foreseeable over the same time horizon. When reliable data are available, we consider a longer time horizon, while recognizing that there may not necessarily be just one foreseeable future.

In making our 12-month finding on these petitions, we considered and evaluated the best available scientific and commercial information.

Factor A. Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Introduction: Decline in the extent and quality of PMJM habitat due to land-use changes associated with human development remains the primary factor threatening the subspecies (Bakeman 1997, p. 78; Hafner *et al.* 1998, p. 122; Pague and Grunau 2000). In our 1998 final rule to list the PMJM as threatened, we stated that land in Colorado, east of the Front Range, and adjacent areas of southeastern Wyoming had changed over time from predominantly prairie habitat intermixed with perennial and intermittent streams, and associated riparian habitats, to an agricultural and increasingly urban setting (63 FR 26517, May 13, 1998). We find that this trend continues, with human development contributing to the continued loss and degradation of PMJM habitat, as discussed further below.

In our original listing decision, we determined that PMJM populations had experienced a decline and faced continued threats linked to widespread loss and fragmentation of the subspecies' required riparian habitat from human land uses. Threats included: Urban, suburban, and recreational development; highway and bridge construction; water development; instream changes associated with increased runoff and flood control efforts; aggregate (sand and gravel) mining; and overgrazing (63 FR 26517, May 13, 1998). These human land-use activities affect the PMJM by directly destroying its protective cover, nests, food resources, and hibernation sites; disrupting normal feeding, breeding, or sheltering behaviors; or acting as a barrier to movement. We noted that such impacts reduced, altered, fragmented, and isolated habitat to the point where PMJM populations may no longer persist. We also noted that patterns of capture suggested that PMJM populations fluctuate greatly over time at occupied sites, raising questions regarding security of currently documented populations that are isolated and affected by human development.

For this status review, we received no new information or data that dispute these assertions. Rather, human populations and the corresponding threats associated with human development continue to expand and affect the PMJM and its habitats. Therefore, we find that the PMJM continues to face threats associated with loss and degradation of its habitats from human development, as is described below.

Absence of PMJM from historically occupied sites: Pre-1980, historical records of the PMJM in Colorado illustrate areas of occupancy along the Front Range within both foothill and prairie riparian corridors (Armstrong 1972, p. 249; Fitzgerald *et al.* 1994, p. 293; Fitzgerald *et al.* 2011, p. 189). Between 1980 and 2011, the human population of Colorado counties within this historic part of the PMJM's range increased by approximately 84 percent, from approximately 1.9 million to 3.5 million (Colorado Demography Office 2011). As explained below, the apparent absence of the PMJM in areas affected by substantial development, where trapping had previously confirmed the subspecies' presence, supports the conclusion that human land uses adversely affect PMJM populations.

Trapping studies and investigations into land-use changes suggest that urban development directly altered or fragmented habitats such that the PMJM disappeared from these habitats (Ryon 1996, pp. 1, 25, 30). PMJMs were captured at only one of seven historically occupied sites with suitable habitats (Ryon 1996, p. 1). Additionally, distribution maps developed from museum records, published accounts, and unpublished reports suggest a loss of PMJM populations in expanding urban and suburban areas, especially around Cheyenne, Denver, Colorado Springs, and along the eastern extent of historical range (Clippinger 2002, pp. 14–29). The apparent loss of the PMJM from historically occupied sites suggests that human development negatively impacts PMJM's habitats.

As a result of habitat loss due to human development, PMJM populations have little likelihood of occurrence along large portions of major river and stream reaches within the subspecies' historical range in Colorado including:

- The Cache La Poudre River within the Fort Collins and downstream to its confluence with the South Platte River at Greeley, 60 km (37 mi);
- The Big Thompson River and Little Thompson River through the Front Range urban corridor east to I–25, approximately 50 km (32 mi);
- The Saint Vrain River from Hygiene to its confluence with the South Platte River, 35 km (22 mi);
- Boulder Creek from the Boulder east to its confluence with the Saint Vrain River, approximately 35 km (22 mi);
- Walnut, Woman, and Dry creeks downstream from Rocky Flats National Wildlife Refuge (NWR) to the confluence of Dry Creek, and beyond to the South Platte River, 40 km (25 mi);
- Ralston Creek and Clear Creek through the urban corridor to the South Platte River, approximately 40 km (25 mi);
- The South Platte River downstream of Chatfield Reservoir through Denver to Brighton, 60 km (38 mi);
- The South Platte River downstream from Brighton to Greeley, approximately 55 km (34 mi) (one recent nearby capture is described above);
- Cherry Creek from the Arapahoe County-Douglas County line downstream through Denver to the South Platte River, 30 km (19 mi); and
- Monument Creek downstream from its confluence with Cottonwood Creek through Colorado Springs, approximately 15 km (9 mi).

In summary, PMJM populations appear to have little likelihood of occurrence along historically occupied river and stream reaches within and downstream from areas of concentrated human development. Despite these downstream extirpations, many of these same rivers and streams continue to support PMJM populations in their upstream foothills or montane reaches and tributaries, where human development is limited or has not occurred.

The PMJM Science Team developed a conservation planning handbook that addressed threats within each of seven Colorado counties supporting PMJM populations (Pague 1998; Pague and

Grunau 2000). The document identified potential threats operating in known or suspected PMJM habitat, and assigned a qualitative risk assessment level to each of the identified threats. The document provides important, science-based insight into threats to, and potential conservation strategies for, the PMJM in Colorado on a county-by-county basis (Pague and Grunau 2000). Habitat-related ''issues'' identified by the Science Team as high or very high priority include: Habitat conversion through housing, commercial, and industrial construction; travel corridor, or roadway, construction; travel corridor maintenance; fragmentation of habitat and corridors; hydrological flow impairment; habitat conversion to a reservoir; bank stabilization; high-impact livestock management; rock and sand extraction; invasive weeds; and catastrophic fire (Pague and Granau 2000, pp. 1–15, 2–12, 3–13, 4–14, 5–14, 6–15, 7–14; Pague 2007).

CPW's Comprehensive Wildlife Conservation Strategy cites threats to PMJM habitat and range including habitat conversion due to housing, urban, and exurban development, and habitat degradation due to altered native vegetation and altered hydrological regime (CPW 2006, p. 102). The Wyoming State Wildlife Action Plan (SWAP) describes suitable PMJM habitat as widely distributed, but naturally fragmented and very limited (WGFD 2010, p. IV–2–66). Wyoming's SWAP noted that while distribution is restricted with limited ability to increase distribution, extirpation is not imminent in Wyoming. However, the SWAP considers human activity to be a moderate limiting factor for the PMJM in Wyoming (WGFD 2010, p. IV–2–66). Wyoming's Comprehensive Wildlife Conservation Strategy identified potential threats to habitat areas most likely to support the PMJM as invasive plants, residential development radiating from Cheyenne, and recreation (WGFD 2005, pp. 53, 55, 56)

The loss of the PMJM from historically occupied sites suggests that human land uses adversely affect the PMJM. It is unlikely that the PMJM can return to historically occupied habitats that are now heavily developed. Furthermore, the PMJM's apparent local extirpation from areas of human development foreshadows the potential impacts of future development within the remaining range of the PMJM. Threats associated with human development, as discussed in more detail below, will continue to adversely affect the PMJM in large portions of its current range now and into the foreseeable future. If the protections of the ESA were to be removed, threats from human development would go unchecked.

Since listing in 1998, the Act's protections have slowed impacts of development on the PMJM and its habitat. One indication of human development pressure is the number of formal consultations performed to date under section 7 of the Act and the number of section 10 permits issued to date in conjunction with approved habitat conservation plans (HCPs). Section 7 of the Act requires Federal agencies to consult with the Service to ensure that their actions do not jeopardize the continued existence of the subspecies or cause destruction or an adverse modification of critical habitat. Thus far, the section 7 process has been successful in preventing Federal actions from jeopardizing the continued existence of the subspecies or resulting in the destruction or adverse modification of critical habitat. Section 10(a)(1)(B) of the Act authorizes the Service to issue permits for non-Federal actions that result in the incidental taking of listed wildlife. Incidental take permit applications must be supported by an HCP that identifies conservation measures that the permittee agrees to implement for the species to avoid, minimize, and mitigate the impacts of the requested incidental take. Below, we summarize our regulatory activities for the PMJM under the Act to illustrate the scope of impacts that would potentially occur in the absence of the Act's protections.

As of April 8, 2013, we have conducted 170 formal section 7 consultations (153 in Colorado, 17 in Wyoming) since the time of listing. Additionally, we issued 21 HCP-related incidental take permits (all in Colorado) for projects affecting the PMJM. We authorized take of the PMJM for actions that did not jeopardize the subspecies, but may have resulted in permanent impacts to over 320 ha (790 ac) of PMJM habitat, and temporary impacts to 609 ha (1,505 ac) of habitat, or approximately 0.8 percent and 1.7 percent of the subspecies' occupied range based on data layers provided by Colorado Parks and Wildlife (USFWS 2013). These projects incorporated conservation measures or mitigation to avoid or minimize the adverse impacts to the PMJM. Since 2006, we collaborated on more than 1,900 Federal or non-Federal projects, to avoid and minimize impacts to the PMJM and its habitat such that formal consultation under section 7 or an HCP was unnecessary.

However, even with the protections afforded to the subspecies under the Act, we have concluded that habitat overall has continued to decline in quality and quantity since listing, especially in Colorado. In the absence of listing, development projects in PMJM habitat would go forward with reduced Federal oversight. Under Factor D, we evaluate other Federal, as well as State and local regulatory mechanisms that may provide protection for the PMJM and its habitat.

Below we evaluate specific modes of human development and how they affect the PMJM, including: (1) Residential and commercial development; (2) transportation, recreation, and other rights-of-way through PMJM habitats; (3) hydrologic changes associated with human development; (4) aggregate mining; (5) oil and gas exploration and extraction; (6) agriculture; and (7) cattle grazing.

Residential and Commercial Development: Clippinger (2002) assessed the impacts of residential development on the PMJM. He analyzed Colorado land-cover data compared to positive and negative trapping results for the PMJM in a GIS analysis and concluded that the likelihood of successful trapping of PMJMs within its historical range was reduced by either low- or high-density residential developments when the developments were within 210 m (690 ft) of the trapping sites (Clippinger 2002, pp. iv, 94). The PMJM can be a useful indicator of environmental integrity in riparian areas and associated upland areas in the Colorado Piedmont (Clippinger 2002, p. iv). These data suggest that nearby development increases the risk of local extirpation of the PMJM from occupied sites.

Both housing density and spatial patterns can influence effects of residential development on wildlife habitat (Theobald *et al.* 1997). While clustered development can decrease habitat disturbance (Theobold *et al.* 1997, p. 34), much of the Rocky Mountain West is experiencing ''rural sprawl,'' where rural areas are growing at a faster rate than urban areas (Theobold *et al.* 2001, p. 4). In Colorado, residential demand and State law encourage developers to design subdivisions with lots of at least 14 ha (35 ac) each with one house, to avoid detailed county subdivision regulations (Riebsame *et al.* 1996, p. 420). The Larimer County Master Plan (Larimer County Planning Division 1997) cites a trend toward residential properties with relatively large lots that leads to scattered development and more agricultural land taken out of production. Where public and private lands are intermingled, private land

ownership typically follows valley bottoms (Theobald *et al.* 2001, p. 5), thus rural development is likely to disproportionately affect valley-bottom riparian areas (Riebsame *et al.* 1996, p. 402), the favored habitat of the PMJM. Beyond direct impact to habitat, when ranches are subdivided, subsequent residential construction and associated disturbance can result in the disruption of wildlife movement along stream corridors (Riebsame *et al.* 1996, p. 402). Rural development also disproportionately occurs around edges of undisturbed public lands and affects the conservation value of the undisturbed public lands (Hansen *et al.* 2005, p. 1900).

Human development often has subtle effects on riparian habitat. Human settlement results in declines in native trees and shrubs, greater canopy closure, and a more open understory with reduced ground cover within riparian habitat (Miller *et al.* 2003, p. 1055; Pennington *et al.* 2008, pp. 1235, 1240–1244). An open understory does not favor the PMJM, which prefers dense ground cover of grasses and shrubs and is less likely to use open areas where predation risks are higher (Clippinger 2002, pp. 69, 72; Trainor *et al.* 2007, pp. 472–476). Human development tends to increase densities of invasive plants that can outcompete native riparian and upland vegetation. Human development also increases populations of human-associated predators, such as domestic cats, red fox, or racoons that may impact PMJM populations.

Furthermore, human development fragments PMJM habitats, which isolates populations and reduces connectivity. The PMJM is closely associated with narrow riparian systems that represent a small percentage of the overall landscape within the subspecies' range. As a result, PMJM habitats may be naturally fragmented by a lack of connectivity, as montane and foothill drainages form rivers that flow onto the plains and may only join east of the potential range of the PMJM. However, human development, most intense on the plains and nearby foothills, further limits downstream connectivity and fragments habitats. Fragmentation of these linear riparian habitats limits the extent and size of PMJM populations. As populations become fragmented, isolated, and smaller, it becomes more difficult for them to persist (Caughley and Gunn 1996, pp. 165–189). The Recovery Team determined that small, fragmented units of habitat will not be as successful in supporting the PMJM in the long term as would larger areas of contiguous habitat (USFWS 2003b, p. 21). On a landscape scale, maintenance of dispersal corridors linking patches of PMJM habitat, and therefore connecting populations, may be crucial to the subspecies' conservation (Shenk 1998, p. 21; Schorr 2012a, pp. 1273, 1279). Limited travel distances recorded for the PMJM underscore the importance of continuous, interconnected suitable habitats.

Rapid development accompanied the growth of human populations along Colorado's Front Range (Kuby 2007; Schorr 2012, p. 1279). Population forecasts predict that Colorado's human population will increase by 1.5 percent per year between 2012 and 2017, with the growth rate increasing to 1.7 percent per year by 2020 (DeGroen 2012, p. 3). The State of Colorado expects the population of counties supporting the PMJM to increase by an additional 1.2 million people, a 50 percent increase, from 2011 to 2040 (Colorado Demography Office 2012). These expected population increases into the foreseeable future accompanied by more development, support Pague and Grunau's (2000) conclusion that habitat conversion to human development is a very high concern to the PMJM.

Although Wyoming has a smaller human population than Colorado, Wyoming's human population continues to increase within the range of the PMJM. Between 1980 and 2011, Wyoming's human population within the counties supporting the PMJM increased by 23 percent, from 123,755 to 152,120 people. In Cheyenne, Wyoming, human populations increased by 27 percent, from 47,283 to 60,096 (Wyoming Department of Administration and Information 2012). Over the 10-year period between 2000 and 2010, human populations increased by an average of 9.8 percent in Albany, Converse, Platte, and Laramie Counties, with a population decrease recorded for Platte County (Wyoming Department of Administration and Information 2012). Population forecasts predict that all four Wyoming counties within the PMJM's range will experience population increases by 2030. The models predict that populations in the counties supporting the PMJM will increase by 20,410 people, or 13 percent, between 2012 and 2030 (Wyoming Department of Administration and Information 2012). Laramie County will experience the largest increase, approximately 13,470 people between 2012 and 2030, or a 14 percent increase, with Cheyenne gaining approximately 8,372 people (Wyoming Department of Administration and Information 2012).

Population growth rates and projections provide valuable insight into future development pressures throughout the PMJM's range, but may overestimate impacts to areas that are already developed. For example, human population increases within already dense metropolitan centers, such as Cheyenne, Fort Collins, Greeley, Longmont, Denver, and much of Colorado Springs, are likely to have little direct impact on the PMJM because the mouse is likely absent within these heavily developed areas and any habitats downstream. However, development-related impacts would likely concentrate at the edges of these metropolitan areas, especially as they expand outward into undeveloped habitats to accommodate increasing populations. For example, substantial human population increases in the Laramie Foothills of Larimer County, Colorado, or southern portions of Douglas County, Colorado, are likely to impact the PMJM. In Wyoming, given the smaller projected population increases, rural development may continue to have fewer or more-localized impacts to the PMJM than in Colorado. However, rural development in the Wyoming and Colorado foothills targets valley bottoms with riparian habitats (Riebsame *et al.* 1996, p. 402; Theobold *et al.* 2001, pp. 4–5), resulting in an increased loss and fragmentation of PMJM habitats.

Modeling exercises also provide insights into future land-use development patterns. While these models have weaknesses, such as an inability to accurately predict economic upturns or downturns, uncertainty regarding investments in infrastructure that might drive development (such as roads, airports, or water projects), and an inability to predict open-space acquisitions or conservation easements, such models can add to our understanding of likely development patterns. For example, in 2005, the Center for the West produced a series of maps predicting growth through 2040 for the West, including the Colorado Front Range and Wyoming (Travis *et al.* 2005, pp. 2–7). The projections for the Colorado Front Range illustrate significant increases in urban/suburban, low-density suburban, and exurban land uses across virtually all private lands within the Colorado portion of the PMJM's range. These models also predict urban and exurban expansion around Cheyenne through 2050 (Center of the American West 2001). These projections depict that only small, isolated patches of PMJM habitat in public ownership, including headwater areas in Federal ownership, would avoid the direct impacts of residential and associated commercial

development. While land-use modeling and projections retain uncertainties and are not at a resolution useful for assessing habitat patterns, both the empirical record and the projections show development filling gaps along the Colorado Front Range (Travis 2008).

Our regulatory activities under the Act provide insight into the scope of development-related impacts that have occurred since listing. Of the 153 formal consultations and 21 HCPs completed in Colorado, 19 section 7 consultations and 10 HCPs were specifically for residential and commercial developments with direct adverse effects to the PMJM or its habitat. Approved projects allowed for permanent or temporary adverse impacts in excess of 210 ha (520 ac) of PMJM habitat. While conservation measures or mitigation in various forms have been incorporated into all permitted projects, implementation of these habitat restoration and enhancement measures has been hampered by factors such as drought or flooding. We also have worked with other Federal agencies and a substantial number of landowners and developers on more than 1,900 projects to avoid adverse impacts to PMJM habitat, thus avoiding formal consultation or the need for HCPs.

Additional planned residential and commercial development projects that would adversely affect PMJM habitat in Colorado are continually being reviewed by the Service. Since 2006, our biologists provided technical assistance to more than 470 development projects in Colorado with potential impacts to the PMJM (TAILS 2013). These data indicate that listing did not eliminate development pressures due to residential or commercial developments. Since listing, protections afforded under the Act have slowed, but not eliminated, the loss of PMJM habitat due to residential and commercial development in Colorado. Therefore, we conclude that in the absence of the protections under the Act, PMJM habitat in Colorado and the populations it supports would be lost at a greatly increased rate from residential and commercial development.

Based upon known impacts to the PMJM associated with current development and best available projections for future development, we conclude that residential and commercial development constitutes a substantial threat to the PMJM, now and into the future.

Transportation, Recreation, and Other Rights-of-Way through Habitat: At the time of listing, we concluded that roads, trails, or other linear development through the PMJM's riparian habitat could act as partial or complete barriers to dispersal (63 FR 26517, May 13, 1998). These forms of development have continued to affect and fragment PMJM habitat. Since listing, we have conducted 69 formal consultations under section 7 of the Act for road or bridge projects (62 in Colorado and 7 in Wyoming), resulting in permitted impacts to approximately 84 ha (207 ac) of PMJM habitat. In addition, a formal 2005 programmatic section 7 consultation with the Federal Highway Administration for the Wyoming Statewide Transportation Improvement Program could result in 19 future highway projects with impacts to 42 ha (104 ac) of PMJM habitat. Under the Douglas County (Colorado) Regional HCP for the PMJM, completed in May 2006, 67 approved road and bridge construction projects by Douglas County, and the cities of Parker and Castle Rock, may affect up to 122 ha (302 ac) of PMJM habitat over a 10-year period.

One of the largest proposed road projects in PMJM habitat is the improvement to I–25 in El Paso County, Colorado. The proposed construction will affect all of the eastern tributaries of Monument Creek thought to support the PMJM (Bakeman and Meaney 2001, p. 21). Impacts to the PMJM will include habitat fragmentation and modification, change in population size, and behavioral impacts (Bakeman and Meaney 2001, pp. 18–20). While measures to avoid, minimize, and mitigate impacts were identified, the project will have significant cumulative effects on the PMJM in the Monument Creek drainage, especially east of I–25 (Bakeman and Meaney 2001, pp. i, ii, 22–27). Anticipated impacts include the permanent loss of 26 acres and temporary impacts to 36 acres of PMJM habitat (USFWS 2003, p. 23). A second large transportation project is the improvement of U.S. Highway 36 in Boulder County, Colorado. This project will permanently impact 42 acres of PMJM habitat along Boulder Creek (USFWS 2009, p. 23).

As the human population increases, more road construction and maintenance projects will be necessary to accommodate new development and transportation needs. Based on ongoing and anticipated transportation projects within the range of the PMJM, we determine that transportation-related threats continue to affect the PMJM. In the absence of the Act's protective measures, impacts to the PMJM and its habitats from these activities would likely increase.

Anthropogenic impacts associated with recreation include the development and use of backcountry roads, trails, and campgrounds, which are often located along streams and near water (WGFD 2005, p. 56). Recreational trail systems are frequently located within riparian corridors (Meaney *et al.* 2002, p. 116). The development of trail systems can affect the PMJM by modifying its habitat, nesting sites, and food resources in both riparian and upland areas. Use of these trails by humans or pets can alter wildlife activity and feeding patterns (Theobold *et al.* 1997, p. 26). Fewer PMJMs are found within sites near trails than on sites without trails (Meaney *et al.* 2002, pp. 131–132). While temporal and spatial variation in PMJM numbers resulted in low precision of population estimates and weak statistical support for a negative trail effect, the authors considered the magnitude of the potential effect sufficient to encourage careful management and additional research (Meaney *et al.* 2002, pp. 115, 131–132).

Since the listing of the PMJM in 1998, 18 recreational trail projects with proposed impacts to PMJM habitat in Colorado received authorization for take or permits through section 7 consultations or HCPs, with impacts to approximately 36 ha (90 ac) of PMJM habitat. The Douglas County Regional HCP permitted an additional 24 trail projects in Colorado. Demand for recreational development in public open space and on conservation properties will likely increase as human populations increase (Bowker *et al.* 2012, pp. 1, 5, 25–26). While human population growth is expected to be significant only along the Front Range of Colorado and perhaps in the Cheyenne, Wyoming area, increased recreational demand will radiate outward from dense, urban centers and extend into more, undeveloped rural lands. For example, the Pike National Forest immediately to the west of Denver, Colorado, experienced a 50 percent increase in recreational visitors between 2001 and 2006 (USFS 2013, p.1). Without protections afforded by the Act, PMJM populations on properties free from residential and commercial development threats will still be subject to threats from future recreational development and increased human use.

Many utility lines (sewer, water, gas, communication, and electric lines, and municipal water ditches) cross PMJM habitat. Current and future utility rights-of-way through these habitats will cause habitat destruction and fragmentation from periodic maintenance and new construction. Since the listing of the PMJM, 68 utility projects adversely affecting the PMJM and its habitat have

been evaluated through section 7 consultations (64 in Colorado, 4 in Wyoming). In addition, an approved HCP with Denver Water permits impacts to 34 ha (84 ac) of PMJM habitat at multiple sites in Colorado. While often more costly than trenching, avoidance measures such as directional drilling under riparian crossings can reduce or avoid impacts to the PMJM. If the PMJM were to be delisted, it is unlikely that project proponents would voluntarily avoid adverse impacts to the PMJM by directionally boring underneath habitat of Prebles to avoid impacts.

To summarize, as human populations increase, threats associated with transportation, recreation, and other rights-of-way through PMJM habitats will also increase. Because human populations are increasing and are projected to grow in the future, we expect these threats will continue to impact PMJM populations in Colorado and Wyoming in the foreseeable future. Wyoming's population will increase more slowly than Colorado's population, suggesting that there will be relatively lower impacts resulting from transportation, recreation and rights of way to PMJM populations in Wyoming.

Hydrologic Changes: Establishment and maintenance of riparian plant communities depend on the interactions between surface-water dynamics, groundwater, and river-channel processes (Gregory *et al.* 1991, pp. 542–545). Changes in hydrology can alter the channel structure, riparian vegetation, and valley-floor landforms (Gregory *et al.* 1991, pp. 541–542; Busch and Scott 1995, p. 287). Thus, changes in the timing and abundance of water can be detrimental to the persistence of the PMJM in these riparian habitats due to the resultant changes in vegetation (Bakeman 1997, p. 79). Changes in hydrology may occur in many ways, but two of the more prevalent are the excessively high and excessively low runoff cycles in watersheds with increased areas of paved or hardened surfaces, and disruption of natural flow regimes downstream of dams, diversions, and alluvial wells (Booth and Jackson 1997, pp. 3–5; Katz *et al.* 2005, pp. 1019–1020).

Urbanization can dramatically increase the frequency and magnitude of flooding while decreasing base flows (the portion of stream flow that is not surface runoff and results from seepage of water from the ground into a channel slowly over time; base flow is the primary source of running water in a stream during dry weather) (Booth and Jackson 1997, pp. 8–10; National Research Council 2002a, pp. 182–186). Impervious surfaces significantly reduce infiltration of precipitation by natural soil substrates. The magnitude of peak flows increases in urban areas as water runs off as direct overland flow. Increased peak flows can exceed the capacity of natural channels to transport flows, trigger increased erosion, and degrade habitat (Booth and Jackson 1997, pp. 3–5). Changes in hydrology associated with urbanization can result in channel downcutting, lowering of the water table in the riparian zone, and creation of a ''hydrologic drought,'' which in turn alters vegetation, soil, and microbial processes (Groffman *et al.* 2003, p. 317). Meanwhile, reduced infiltration results in reduced groundwater recharge, reduced groundwater contributions to stream flow, and, ultimately, reduced base flows during dry seasons (National Research Council 2002a, p. 182; Groffman *et al.* 2003, p. 317). Established methods of mitigating downstream impacts of urban development, such as detention basins, have only limited effectiveness; downstream impacts are probably inevitable without limiting the extent of watershed development (Booth and Jackson 1997, p. 17).

In response to altered hydrology, stormwater-management, flood-control, and erosion-control efforts occur along many streams within the former and current range of the PMJM. The methods used include channelization; construction of detention basins, outfall structures, drop structures, riprap banks, and impervious cement channels; and other structural stabilization. Structural stabilization methods designed to manage runoff and control erosion can increase the rate of stream flow, shorten channel length, narrow riparian areas, destroy riparian vegetation, and prevent or prolong the time required for vegetation reestablishment (Booth and Jackson 1997, p. 4). These impacts may affect plant composition, soil structure, and physiography of riparian systems to the point where habitat supporting the PMJM is so altered that populations can no longer persist. Bank stabilization is a high-priority issue for the PMJM in Weld and El Paso Counties (Pague and Grunau 2000, p. 15). Since the listing of the PMJM, 22 stormwater management, stream stabilization, or outfall structure projects with impact to PMJM habitat have been addressed through formal section 7 consultations in Colorado; none have occurred in Wyoming.

The PMJM's apparent absence downstream from most areas of extensive urbanization (including Cheyenne, Wyoming, and Fort Collins, Longmont, Boulder, Golden, Denver, Parker, and Colorado Springs, Colorado) may be attributed to such changes in hydrology described above. Multiple researchers expressed concern regarding upstream development activities and the integrity of protected riparian habitats on Monument Creek and its tributaries through the Air Force Academy (Corn *et al.* 1995, p. 14; Schorr 2001, p. 30; Schorr 2012a, p. 1279). In 2007, all eastern tributaries of Monument Creek on the Academy experienced adverse impacts to occupied PMJM habitat due to erosive head cutting, channel degradation, and impacts to vegetation attributed to regional stormwater management, and commercial and residential developments that occurred upstream and downstream (Mihlbachler 2007; Schorr 2012a, p. 1279). Despite the Air Force Academy's conservation efforts, damage to habitats on the Academy due to adjacent urbanization may be irreparable (Carley 2012).

If we were to delist the PMJM, runoff-related impacts to riparian habitats within and downstream of development would likely increase. Additionally, in the absence of the Act's protection the restoration of impacted riparian systems would be less likely to occur.

Hydrologic factors, such as surface flows and groundwater, influence the riparian habitats on which the PMJM depends. Water development and management alters vegetation composition and structure, riparian hydrology, and flood-plain geomorphology directly, as well as through alterations to habitats located downstream. The creation of irrigation reservoirs at the expense of native wetlands is a factor that negatively affected PMJM populations over the previous century (Fitzgerald *et al.* 1994, p. 293). Reservoirs with barren shorelines can fragment populations and create barriers to the PMJM's movements. As reservoirs are maintained and developed, these factors continue to impact the PMJM and its habitats.

Population growth drives water consumption, so as Colorado's population doubles by the year 2050, so will the demand for water (CWCB 2010, pp. ES–4, ES–7). Current and future reservoir construction will be necessary to respond to municipal water needs. By 2050, municipal and industrial demand for water in Colorado's South Platte River basin would increase by 93 percent and by 78 percent in the Arkansas River basin, as measured in acre feet (af) per year under medium-use scenarios (Colorado Water Conservation Board 2010, p. 3–11, Table 3–3). Additionally, demand within the

Denver metropolitan area would increase by 59 percent under medium-use scenarios (Colorado Water Conservation Board 2010, p. 3–11, Table 3–3). The expanded storage and transport of water that will be needed to address these demands has the potential to significantly impact PMJM habitat. Pague and Grunau (2000) considered hydrological impacts (water quality, flow regime, and groundwater) to be a high-priority issue to the PMJM in all Colorado counties supporting populations.

Since the listing of the PMJM, we have conducted two section 7 consultations for new reservoirs in Colorado, the Reuter-Hess Reservoir in Douglas County and the Pinewood Springs Reservoir in Larimer County. Through these consultations, 7 ha (17 ac) of impacts to PMJM habitat were authorized. Three water projects currently proposed would, if developed, significantly affect PMJM habitat, including the proposed expansions of existing Halligan Reservoir and Seaman Reservoir in the Cache La Poudre drainage, Larimer County, Colorado, and Chatfield Reservoir Storage Reallocation Project in the Upper South Platte drainage, Jefferson and Douglas Counties, Colorado. Options being considered at Halligan Reservoir could inundate up to 4.0 km (2.5 mi) of PMJM habitat and affect the PMJM's critical habitat at the site of the proposed dam. At Seaman Reservoir, the currently favored option would inundate about 4.0 km (2.5 mi) of the PMJM's critical habitat. The preferred alternative for the Chatfield Reservoir Storage Reallocation Project estimates that up to 183 ha (453 ac) of existing PMJM habitat, including 63 ha (155 ac) of critical habitat, would be inundated. These and other water projects also will result in alteration of flows that could further affect PMJM habitat downstream.

In Wyoming, estimates of projected water use in the Platte River Basin through 2035 range from a 38 million m^3 (31,000 af) decrease to a 90 million m^3 (73,000 af) increase (Wyoming Water Development Commission 2006, p. 10). No significant reservoir projects are currently planned within PMJM habitat in Wyoming. While the Platte River Plan identifies ''upper Laramie River storage'' as a future storage opportunity (Wyoming Water Development Commission 2006, p. 31), potential impacts to the PMJM are uncertain because it is not known whether the PMJM occurs in the drainage.

Beyond direct effects to the PMJM and its habitat through construction or inundation, changes in flows related to water diversion, storage, and use also affect downstream riparian habitats in a variety of ways. In the future, a number of changes in amount and timing of diversions, water uses, and return flows will affect many streams supporting the PMJM. However, the cumulative impacts of such changes to specific PMJM populations, both adverse and some potentially beneficial, are difficult to predict. As flows are captured or diverted, or as groundwater supplies are depleted through wells, natural flow patterns are changed, and more xeric plant communities may replace the riparian vegetation. On-stream reservoirs disrupt natural sediment transport and deposition. Loss of sediment encourages channel downcutting, which in turn affects groundwater levels (Katz *et al.* 2005, p. 1020). The resulting conversion of habitats from moist or mesic, shrub-dominated systems to drier grass- or forb-dominated systems make the area less suitable for the PMJM.

Considering the projected future demands for water, we conclude that major water development projects affecting the PMJM would likely occur regardless of the status of the subspecies under the Act. However, if we delisted the PMJM, conservation measures designed to minimize and compensate impacts to PMJM and its habitats are less likely to be incorporated into project plans. Although development pressures for water resources are likely less in Wyoming, a similar scenario of increased population growth, followed by increased development and demand for water, suggests that if delisted, fewer projects would incorporate PMJM-specific conservation measures. Therefore, we determine that hydrologic changes are a threat to the PMJM.

Aggregate Mining: At the time of listing, we concluded that alluvial aggregate mining was a threat to the PMJM. Aggregate mining removes mineral materials from floodplains, where mineral resources most commonly occur. These mining operations often occur on the same gravel deposits that provide important PMJM hibernation sites (63 FR 26517, May 13, 1998). As a result, alluvial aggregate mining continues to be a threat to the PMJM and may produce long-term changes to PMJM habitat by altering hydrology and permanently removing shrub and herbaceous vegetation. Additionally, after mining removes the aggregate minerals, operators often line the remaining pits with impervious substrates, effectively converting the mine pit into a water reservoir. This conversion precludes the restoration of riparian shoreline vegetation and alters adjacent groundwater flow.

Since listing, we have conducted formal consultation under section 7 of the Act regarding impacts to the PMJM at two aggregate mines in Colorado. We have worked with project proponents to avoid impacts at others. Previously, private aggregate mining activities at Rocky Flats National Wildlife Refuge (NWR) in Colorado could potentially affect PMJM habitat directly or through alteration of hydrology along Rock Creek. However, a recent land exchange and donation of mineral estates prevents future mining on an additional 245 ha (605 ac) within the Refuge boundary (USFWS 2012, pp. 19–20). Therefore, aggregate mining is not likely to impact the PMJM or its habitat at Rocky Flats NWR.

Elsewhere, aggregate mining continues to affect floodplains along Colorado's Front Range, but many project sites are along downstream reaches of larger streams and rivers where PMJM populations now appear absent. Pague and Grunau (2000) considered ''rock and sand extraction'' to be a high-priority issue in Weld, Jefferson, and Douglas Counties. While some stream channels within the range of the PMJM in Wyoming have historically been mined for aggregate, including the Laramie River at Laramie and Lodgepole and Crow creeks at Cheyenne, mining is not as widespread as in Colorado (Wyoming State Geological Survey (WSGS) 2008, 2012).

Construction aggregates are low in value relative to their weight, so transporting the minerals is expensive and mines are usually located as close to the point of use as possible (WSGS 2008). As a result, threats related to aggregate mining are likely to be more intense near areas with human development. Thus, we deduce that aggregate mining will continue throughout the subspecies' range, but may have a greater impact on PMJM populations in Colorado where development pressures are greater than in Wyoming. However, these pressures could increase in Wyoming alongside projected increases in human population and urban development, particularly around Cheyenne. Therefore, we conclude that aggregate mining is a threat to the PMJM.

Oil, Gas, and Mineral Exploration and Extraction: We investigated whether oil, gas, and mineral exploration and extraction pose a threat to the PMJM. A large portion of the subspecies' Wyoming range overlaps with exposed, undifferentiated precambrian rocks or other formations with low potential for oil and gas development (DeBruin

2002). A GIS analysis of oil and gas potential (Anderson 1990) relative to the subspecies' likely range (Beauvais 2004) indicates that approximately 79 percent of the PMJM's range in Wyoming occurs in areas with low oil and gas potential. This analysis also indicates that less than 1 percent of the PMJM's range in Wyoming occurs in areas with high oil and gas potential, while approximately 20 percent of the range overlaps with areas of moderate oil and gas potential. Even within these moderate and high potential areas, only one oil and gas field occurs in PMJM habitat (DeBruin 2002). In addition, coalfields and the range of the PMJM have little overlap in Wyoming (DeBruin 2004, p. 2), indicating a minimal risk of PMJM habitat being altered for coal production. Additionally, the PMJM's range does not overlap with coal production areas in Colorado.

In Colorado, many new wells are drilled on the plains within or to the east of the Front Range urban corridor, with many new wells in Weld County. Few PMJMs exist in areas of current oil and gas exploration and production, and few PMJM habitats overlap with these areas. In addition, wells are usually located in upland areas away from riparian habitats that support PMJM populations, though associated roads and pipelines may cross or parallel creeks and riparian habitats. Based on the limited potential for development of these resources within the range of the PMJM, we conclude that oil and gas activities (directly or indirectly) will not meaningfully affect the conservation status of the PMJM throughout its range now or in the future. Therefore, we conclude that oil and gas exploration and extraction are not currently threats to the PMJM.

Agriculture: At the time of listing, we cited conclusions by Compton and Hugie (1993a; 1993b) that human activities, including conversion of grasslands to farms and livestock grazing, had adversely impacted the PMJM. They concluded that development of irrigated farmland had a negative impact on PMJM habitat, and that any habitat creation it produced was minimal (Compton and Hugie 1993a; Compton and Hugie 1993b). In general, negative trapping results suggest that the PMJM does not occur in areas cultivated for row crops. Historically, the rapid rate of native habitat conversion to row crops likely had a significant adverse impact on the PMJM. Because conversion of native habitat to row crops has become increasingly rare in both Colorado and Wyoming (USDA 2009, Tables 2, 3, & 9), such conversions are unlikely to present a similar threat in the future in any portion of the subspecies' range.

Although future pressures to increase agricultural production may result from changes in the industry, including potential demand for biofuels, we are not aware of information that suggests this would result in meaningful decreases in the PMJM's riparian habitat in Colorado or Wyoming. We conclude that in the absence of protections afforded by the Act, only a little of the subspecies' habitat is at risk from agricultural conversion. In Wyoming, where such a scenario in PMJM habitat appears more likely than in Colorado, we explored whether former cropland removed from production for conservation purposes is now being returned to production. For example, through the Farm Bill's Conservation Reserve Program (CRP), farmers and ranchers enroll eligible agricultural land in 10- to 15-year contracts and plant appropriate cover, such as grasses and trees, in crop fields and along streams. The plantings help prevent soil and nutrients from running into regional waterways and affecting water quality. The long-term vegetative cover also improves wildlife habitat and soil quality. Wildlife habitat provided through the CRP can be at risk when CRP contracts expire and lands are returned to agricultural production.

Within the current range of the PMJM in Wyoming, Laramie County has the largest percent of croplands enrolled in the CRP program, at 9 percent (FSA 2013, p. 97). Total enrollment within the four counties (Converse, Laramie, Platte, and Albany) is approximately 17 percent (FSA 2013, p. 97). Between 2013 and 2027, CRP contracts that will eventually expire for Wyoming counties within the current range of the PMJM include: 1,146 ha (2,832 ac) currently enrolled in Converse County; 17,891 ha (44,210 ac) currently enrolled in Laramie County; 17,436 ha (43,086 ac) currently enrolled in Platte County (FSA 2012); and 25 ha (63 ac) currently enrolled in Albany County. Between 2007 and 2012, enrollments declined 969 ha (2,395 ac) in Converse County; declined 11,923 ha (29,463 ac) in Laramie County; declined 6,971 ha (17,225 ac) in Platte County; and did not change in Albany County (Farm Service Agency 2012). However, with only 17 percent of croplands currently enrolled in the CRP program in Wyoming, future changes in enrollments are unlikely to affect the PMJM or its habitats.

The PMJM uses native grass and alfalfa hayfields that are in or adjacent to suitable riparian habitat. Because hay production requires large amounts of water, hayfields are often near waterways and, thus, PMJM's riparian habitat. Mowing of hay may directly kill or injure PMJMs; reduce food supply, especially if plants do not mature to produce seed; and remove cover. Late season mowing may be especially problematic, because PMJM are approaching hibernation and their nutritional needs are high (Clippinger 2002, p. 72). Additionally, hay production may preclude the growth of willows and other shrubs that provide important hibernation sites for the PMJM. Ditch systems often irrigate hayfields, and the PMJM may use overgrown water conveyance ditches and pond edges, or other agricultural ditches as dispersal routes (Meaney *et al.* 2003, pp. 612–613). As a result, ditch maintenance activities may kill individual PMJMs and periodically alter their habitat. However, existing special regulations at 50 CFR 17.40(1) exempt certain ditch maintenance operations from the take prohibitions of the Act in recognition that habitat that the ditches provide is dependent on the ditches retaining their function. Furthermore, PMJM populations have persisted in hayed areas for many years (Taylor 1999), so haying operations that allow dense riparian vegetation to remain in place are likely compatible with persistence of PMJM populations. Therefore, agriculture is not currently a threat to the PMJM.

Livestock grazing. Multiple scientific studies document the affects to riparian habitats from livestock grazing (Kauffman and Krueger 1984, pp. 431–435; Armour *et al.* 1991, pp. 7–11; Fleischner 1994, pp. 629–638; Belsky *et al.* 1999, pp. 419–431; Freilich *et al.* 2003, pp. 759–765). Livestock have damaged 80 percent of stream and riparian ecosystems in the western United States (Belsky *et al.* 1999, p. 419). Adverse impacts of grazing include: Changes to stream channels (downcutting, trampling of banks, increased erosion), flows (increased flow and velocity, decreased late-season flow), the water table (lowering of the water table), and vegetation (loss to grazing, trampling, and through altered hydrology) (Kauffman and Krueger 1984, pp. 432–435).

Researchers have documented impacts to meadow jumping mice from cattle grazing (Medin and Clary 1989; Giuliano and Homyack 2004; Frey and Malaney 2009). Livestock grazing contributes to the lack of structural habitat diversity on historical PMJM sites in Colorado (Ryon 1996, p. 3). Grazing practices that assure maintenance of riparian shrub cover may be a key consideration in maintaining PMJM populations (Ensight

Technical Services 2004, p. 9). On a working ranch in Douglas County, Colorado, PMJMs were detected within cattle exclosures, but not on grazed areas. Previous trapping had documented PMJMs upstream and downstream of the working ranch, but not on the grazed ranch itself (Ensight Technical Services 2004, p. 9). On private lands in Douglas County, Colorado, Pague and Schuerman (1998, pp. 4–5) observed a swift rate of residential land development and significant fragmentation of habitat, but noted that in some cases accompanying secession of grazing had allowed recovery of degraded riparian habitats. Along the Poudre River in the Arapaho Roosevelt National Forest in Larimer County, Colorado, continued vegetation monitoring reveals that resting overgrazed areas improved PMJM's riparian and upland habitats (Hansen and Ellwood 2013).

A 5-year study of factors affecting jumping mice (*Zapus* spp.) on the Medicine Bow National Forest in Wyoming demonstrated an inverse relationship between percent utilization of cattle forage (mostly grasses) and nearby jumping mouse numbers. Grazing levels that resulted in more than 40 percent forage utilization were more influential in reducing jumping mouse numbers than lower grazing intensities (Griscom *et al.* 2009, pp. 11–12). In Colorado, City of Boulder lands endured intensive grazing, farming, or haying regimes until they became part of the Boulder Open Space system. Grazing and haying, used as land management tools, continue on Boulder Open Space sites currently supporting the PMJM. However, in their study of small mammals on Boulder Open Space, Meaney *et al.* (2002, p. 133) found no adverse effects of managed grazing on abundance of individual small mammal species or on species diversity.

Overgrazing threats are not limited to large livestock producing operations. On subdivided ranch properties, often termed ''ranchettes,'' horses and other livestock can heavily affect the small tracts within which they are fenced (Pague and Grunau 2000, pp. 1–14). In Colorado, many large ranch properties are subdivided into smaller ranchettes, with multiple homes and grazing pastures. We have concluded that this represents a widespread threat to undeveloped areas of Colorado, where an increase in rural development is forecast in the future. Pague and Grunau (2000) considered ''high impact livestock grazing'' to be a high-priority issue for the PMJM in Larimer, Weld, Elbert, and El Paso Counties in Colorado, largely due to the projected increase in such ranchettes.

In Wyoming, where large-scale commercial ranching is more prevalent in the PMJM's range than in Colorado, overgrazing occurs sporadically across the landscape, in particular where cattle congregate in riparian areas during the winter and spring. Grazing has occurred within PMJM habitat for many decades, and populations of PMJMs have been documented on sites with a long history of grazing. For example, jumping mice were trapped at 18 of 21 sites on True Ranches properties (mice from 14 of these sites have since been confirmed as PMJMs (King *et al.* 2006b, pp. 4351–4353)), primarily within sub-irrigated hay meadows that have been subjected to livestock grazing and hay production for approximately 100 years (Taylor 1999, p. 5).

At the time of listing, we addressed overgrazing by livestock. We stated that it may cause significant impacts to PMJM habitat, but that timing and intensity of grazing were probably important in maintaining habitat and that maintenance of woody vegetative cover could be key (63 FR 26517, May 13, 1998). Overgrazing was thought to have eliminated the PMJM from much of its former Wyoming range (Clark and Stromberg 1987, p. 185; Compton and Hugie 1993b, p. 4). However, trapping efforts since listing identified PMJM in Wyoming and greatly expanded our understanding of the subspecies' range, disproving early theories that overgrazing eliminated the PMJM in Wyoming.

As suggested by Bakeman (1997, p. 79) and Pague and Grunau (2000, pp. 1–17), and as supported by the examples above, grazing is compatible with the PMJM when timing and intensity are appropriately managed. We now believe that agricultural operations that have maintained habitat supportive of PMJM populations are consistent with conservation and recovery of the subspecies. As a result, we adopted special regulations at 50 CFR 17.40(1) in 2001, which exempted existing agricultural activities, including grazing, plowing, seeding, cultivating, minor drainage, burning, mowing, and harvesting, from the prohibitions of the Act. The exemption does not apply to new agricultural activities or to those that expand the footprint or intensity of the activity. We established the exemption to provide a positive incentive for agricultural interests to participate in voluntary conservation activities and to support surveys and studies designed to determine status, distribution, and ecology of the PMJM, which in turn could lead to more effective recovery efforts.

The number of cattle in counties currently known to support the PMJM in Wyoming totaled 288,000 head in 2012 (National Agriculture Statistics Service 2012). Cattle numbers appear stable in Albany, Converse, and Laramie Counties, but higher than the average for the last 20 years in Platte County. Cattle numbers in Colorado counties supporting the PMJM totaled 706,900 head in 2012. Approximately 80 percent, or 565,000 cattle, were in Weld County, where limited occupied PMJM habitat is known to exist (National Agriculture Statistics Service 2012). Excluding Weld, all of these Colorado counties have shown a marked downward trend in cattle numbers over the past 20 years, reflecting human development on former agricultural lands (National Agriculture Statistics Service 2012).

Overall, we expect traditional grazing operations to continue in Wyoming. Such operations have generally proven compatible with maintenance of PMJM populations, suggesting timing and intensity have generally been managed appropriately. This management has taken place without oversight of the Act as allowed in the special regulations at 50 CFR 17.40(1). Researchers observed a correlation between grazing and drought while studying the New Mexico meadow jumping mouse, with populations more tolerant of grazing during wet years (Frey and Malaney 2009, p. 37). While the management of these ranches may not change in a manner adverse to the PMJM into the future, cumulative impacts with future climate change and grazing present concerns (see Factor E discussion below).

Conservation Efforts To Reduce Habitat Destruction, Modification, or Curtailment of Its Range

In Colorado, restoration of degraded riparian habitats has occurred in part as mitigation for adverse impacts to the PMJM. Restoration of 0.86 km (0.54 mi) of PMJM habitat on East Plum Creek, Douglas County, appears to have increased vegetation cover and the PMJM's use (Bakeman 2006, pp. 4, 8). The effort has restored connectivity of upstream and downstream riparian habitat through this previously degraded urban stream reach. Similarly, recent projects on Cherry Creek, Douglas County, have restored groundwater levels and downcut channels in or near PMJM habitat by employing rock or sheet pile drop structures.

State programs have been available to help preserve the PMJM through the

acquisition, preservation, and management of its habitat. These include the Great Outdoors Colorado Trust Fund and the Species Conservation Trust Fund. There are many State and local initiatives that could provide for conservation of the PMJM, independent of Federal oversight, including nearly 40 conservation projects in 5 Front Range Colorado counties where the PMJM ''may be present'' (George 2004). However, the conservation value of many of these and other more recent projects is uncertain, since most were developed without specific regard to the PMJM's distribution and its conservation.

Service-approved HCPs and their incidental take permits contain management measures and protections for identified areas that protect, restore, and enhance the value of these lands as habitat for the PMJM. These measures, which include explicit standards to avoid, minimize, and mitigate any impacts to the covered (sub)species and its habitat, are designed to ensure that the biological value of covered habitat for the PMJM is maintained, expanded, or improved. Large regional HCPs expand upon the basic requirements set forth in section 10(a)(1)(B) of the Act and reflect a voluntary, cooperative approach to large-scale habitat and (sub)species conservation planning. The primary goal of such HCPs is to provide for the protection and management of habitat essential for the conservation of the (sub)species while directing development to other areas. In any HCP, permittees may terminate their participation in the agreement and abandon the take authorization set forth in the permit.

To date, we have approved 19 single-species HCPs for the PMJM, all in Colorado. These 19 HCPs and their 21 associated permits allow approximately 282 ha (696 ac) of permanent or temporary impacts to PMJM habitat. The HCPs describe the preservation and enhancement of habitats to offset impacts from proposed activities. The approved HCP for Douglas County and the Towns of Castle Rock and Parker allows impacts of up to 170 ha (430 ac), in exchange for the acquisition of 24 km (15 mi) of stream (455 ha (1,132 ac) of habitat) acquired and preserved for the long-term benefit of the PMJM.

Another HCP, issued in January 2006, is the Livermore Area HCP in Larimer County. The planning area for this HCP includes a large portion of Larimer County, approximately 1,940 square km (750 square mi), including a PMJM ''conservation zone'' estimated at approximately 324 km (201 mi) of stream and 8,570 ha (21,320 ac). The HCP cites protection of 114 km (71 mi) of stream, mostly on CPW lands; however, it is not clear what proportion of these areas support the PMJM. Local landowners and public agencies holding land within the boundaries of this HCP may opt for coverage under the HCP and receive take permits on their own from us for activities consistent with the HCP. The Livermore Area HCP is designed to support current land uses, including ranching and farming. However, inclusion of landowners is optional, and they may choose to pursue land uses inconsistent with those specified in the HCP. Thus far, we have issued no individual permits under this HCP.

Of the two other regional HCPs that have been in development, the El Paso County effort is proceeding slowly, if at all, and the Boulder County effort has been discontinued. It is unlikely that these or other conservation plans would be completed or implemented if the PMJM did not remain listed under the Act.

Summary of Factor A: Human land uses within the PMJM's current range continue to destroy, degrade, and fragment habitats. Since the time of listing, the Act's protections have avoided, minimized, and helped to compensate for many direct human land-use impacts to PMJM habitats. Direct and secondary impacts to riparian habitats have likely diminished the areas capable of sustaining PMJM populations. Given the projections for future human population growth in Colorado and Wyoming, and absent protections associated with Federal activities and listing under the Act, we have concluded that threats posed by human development activities as discussed above will increase in the foreseeable future. Regulatory mechanisms other than the Act could help reduce such negative impacts, but are currently limited, as is discussed under Factor D below.

Wyoming's human population is expected to increase by 2030. Human populations will grow more slowly in Wyoming than in Colorado, suggesting that fewer development-related threats are likely to occur in this portion of the subspecies' range than in Colorado. In the North Platte River basin in Wyoming, the PMJM appears to be more widely distributed than assumed at the time of listing, but the confirmed range is limited to a relatively narrow band east of the crest of the Laramie Mountains (Bowe and Beauvais 2012, p. 8). An improved understanding of the subspecies' distribution suggests that to date the PMJM has largely coexisted with historical and well-managed agricultural activities, such as grazing and haying. A continuation of these long-standing activities may support existing PMJM populations. However, we have little information to suggest if or how these agricultural practices are likely to change in the future.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We have no information to suggest that the PMJM is currently collected for commercial or recreational purposes. We also have no information to indicate that collection or overutilization of the subspecies for commercial or recreational purposes would occur if the species were delisted.

Conversely, collection of PMJM specimens for scientific and educational purposes does occur, primarily for research or during presence or absence trapping surveys related to development projects. The Act largely motivates these surveys and ensures that the collection does not jeopardize the subspecies. If delisted, we assume that scientific collection would decrease. Additionally, we assume that State wildlife agencies would continue to recognize PMJM as a non-game species if delisted; thus scientific and commercial activities would continue to be permitted under existing State regulations in both Colorado and Wyoming. Although the capture and handling of the PMJM by permitted researchers has resulted in unintentional mortalities, levels of take associated with scientific collection are very small and do not rise to a level that would affect populations of the subspecies. It follows that levels of take associated with scientific collection would not likely increase should we remove the protections of the Act. Furthermore, we have no information to indicate that collection for scientific or educational reasons is likely to become a significant threat to the subspecies, even if the protections afforded the subspecies under Colorado and Wyoming State laws were removed (see our discussion below under Factor D). Therefore, we determine that overutilization for commercial, recreational, scientific, or educational purposes is not a threat to the PMJM.

Factor C. Disease or Predation

At the time of listing, we had no evidence of disease causing significant impacts to the PMJM (63 FR 26517, May 13, 1998). At this time, we have no additional evidence that any disease or parasite has caused a significant impact to the subspecies. Although

relationships between plague and North American rodents are poorly understood, plague may interact synergistically with other natural and human-induced disturbances, thereby increasing risk of local extirpation and rangewide extinction (Biggins and Kosoy 2001, p. 913). Although plague has not been documented in the PMJM, Pague and Grunau (2000, p. 19) considered disease to be a potentially high-priority issue for the subspecies. They cited a lack of information regarding immunological resistance of the PMJM to plague and other diseases. The researchers also noted that small, isolated populations could be especially vulnerable to effects of disease.

In 1998, we evaluated potential predators of the PMJM whose densities could increase in the suburban or rural environment, including striped skunk (*Mephitis mephitis*), raccoon (*Procyon lotor*), and the domestic cat (*Felis catus*) (63 FR 26517, May 13, 1998). The increased impacts of native and exotic predators that accompany rural development can affect PMJM's viability (Hansen *et al.* 2005, p. 1899). We noted that free-ranging domestic cats and feral cats presented a problem to PMJM populations in habitats near human development. Where generalist predator populations increase through human land uses, they may contribute to the loss or decrease of the PMJM.

Proponents of new residential developments near PMJM habitats are generally receptive to instituting prohibitions on free-ranging cats and dogs (*Canis domesticus*) when negotiating minimization measures through section 7 of the Act. However, enforcement is often through covenants administered by homeowners' associations, with uncertain success. Additionally, introduction of nonnative bullfrogs (*Rana catesbeiana*) in Colorado has resulted in predation on the PMJM (Trainor 2004, p. 58). However, we have no information to suggest that predation from bullfrogs has affected PMJM populations.

While uncertainties remain regarding disease and predation, we believe the best available scientific and commercial data suggest that disease is most likely to affect only small and fragmented PMJM populations. Additionally, increases in predation will likely only contribute to the reduction, fragmentation, and loss of PMJM populations when such populations are exposed to increased human presence. As noted under Factor A, increased human presence is expected to be more significant along the Front Range of Colorado or surrounding towns or cities in Wyoming, where predation may have a more of an effect than in rural areas. If the PMJM were to be delisted, covenants that address PMJM predation by domestic pets would be less likely to be enacted or enforced. Therefore, we conclude that disease is currently not a threat to the PMJM. However, when analyzed cumulatively with increases in commercial and residential development, as discussed under Factor A, predation by human-associated predators may be a threat to the PMJM.

Factor D. Inadequacy of Existing Regulatory Mechanisms

The Act requires us to examine the adequacy of existing regulatory mechanisms with respect to existing and foreseeable threats that may affect PMJM. The existing regulatory mechanisms were found to be inadequate to protect the PMJM from the threats identified at the time of listing (63 FR 26517, May 13, 1998). Since it was listed as threatened, the Act has been and continues to be the primary Federal law that affords protection to PMJM. As explained below, the Service uses sections 7, 9, and 10 of the Act to assist in the conservation of the PMJM.

Section 7(a)(1) of the Act requires all Federal agencies to utilize their authorities in furtherance of the purposes of the Act by carrying out programs for the conservation of endangered and threatened species. Section 7(a)(2) of the Act requires Federal agencies to ensure that actions they fund, authorize, or carry out do not ''jeopardize'' the continued existence of a listed species or result in the destruction or adverse modification of habitat in areas designated by the Service to be critical. Critical habitat has been designated for the PMJM. A jeopardy determination is made for a project that is reasonably expected, either directly or indirectly, to appreciably reduce the likelihood of both the survival and recovery of a listed species in the wild by reducing its reproduction, numbers, or distribution (50 CFR 402.02). A project may receive a non-jeopardy determination, documented in a biological opinion, if it includes reasonable and prudent measures that minimize the extent of impacts to listed species associated with a project.

Section 9 of the Act and Federal regulations pursuant to section 4(d) of the Act prohibit the ''take'' of federally listed wildlife. Section 3(18) defines ''take'' to mean ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.'' Service regulations (50 CFR 17.3) define ''harm'' to include significant habitat modification or degradation which actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. ''Harassment'' is defined by the Service as an intentional or negligent action that creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. The Act provides for civil and criminal penalties for the unlawful taking of listed species.

Listing the PMJM provided a variety of protections within areas under Federal jurisdiction and the conservation mandates of section 7 for all Federal agencies. Since it was first listed in 1998, we have consulted and coordinated with multiple Federal agencies regarding the effects of proposed actions on the PMJM. For example, the USFS consulted and coordinated with us on more than 80 projects regarding the effects of recreation, forestry, or transportation projects occurring on federally owned National Forests. The U.S. Army Corps of Engineers has consulted and coordinated with us on more than 320 projects regarding various impacts to PMJM and its habitat associated with commercial and residential developments, mining, or other activities impacting jurisdictional wetlands or waters. Additionally, the Federal Highway Administration coordinated and consulted with us on more than 262 projects regarding the effects of various transportation related activities to PMJM and its habitat. If the PMJM were not listed, these protections would not be provided. Thus, we must evaluate whether other regulatory mechanisms would provide adequate protections absent the protections of the Act.

National Environmental Policy Act (NEPA)

All Federal agencies must comply with the NEPA of 1970 (42 U.S.C. 4321 *et seq.*) for projects they fund, authorize, or carryout. The Council on Environmental Quality's regulations for implementing NEPA (40 CFR parts 1500–1518) state that agencies shall include a discussion on the environmental impacts of the various project alternatives (including the proposed action), any adverse environmental effects that cannot be avoided, and any irreversible or irretrievable commitments of resources involved (40 CFR part 1502). NEPA does not regulate activities that might affect

the PMJM, but does require full evaluation and disclosure of information regarding the effects of contemplated Federal actions on sensitive species and their habitats. It also does not require minimization or mitigation measures by the Federal agency involved. Therefore, Federal agencies may include conservation measures for the PMJM as a result of the NEPA process, but such measures would be voluntary in nature and are not required by the statute. Absent the listing of the PMJM, we would expect Federal agencies to continue to meet the procedural requirements of NEPA for their actions. However, as explained above, NEPA does not itself regulate activities that might affect the PMJM or its habitat

Clean Water Act (CWA)

The CWA (33 U.S.C. 1251 *et seq.*) protects rivers and streams of the United States. The CWA establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters. The CWA's general goal is to ''restore and maintain the chemical, physical, and biological integrity of the Nation's waters'' (33 U.S.C. 1251 (a)). When practicable, section 404 of the CWA generally requires avoidance, minimization, and mitigation of adverse impacts associated with filling jurisdictional wetlands and waters of the United States. Human impacts to jurisdictional wetlands may be permitted when alternatives that would avoid wetlands are found not to be practicable. Section 404 of the CWA does not apply to non-jurisdictional waters or wetlands. In these cases, activities affecting these waters or wetlands would not require Federal permits under section 404 of the CWA. More importantly, section 404 of the CWA provides no comparable safeguards for non-jurisdictional riparian and upland habitat areas important to the PMJM.

Section 303 of the CWA establishes the water quality standards and total maximum daily load (TMDL) programs. Water quality standards are set by States, Territories, and Tribes. They identify the uses for each waterbody, for example, drinking water supply, contact recreation (swimming), and aquatic life support (fishing), and the scientific criteria to support that use. A TMDL is a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. Colorado and Wyoming are required under section 305(b) of the CWA to complete an assessment of their surface waters. From this assessment, a CWA 303(d) list of impaired water bodies is developed. These are waters that are not currently meeting their designated uses because of impairments to the waters.

Through the CWA, the Environmental Protection Agency (EPA) encourages communities, watershed organizations, and local, State, tribal, and Federal environmental agencies to develop and implement watershed plans to meet water quality standards and protect water resources. These plans can include measures that will help protect riparian areas and may in some cases provide benefits to the PMJM. For example, in Wyoming, the Crow Creek Watershed Plan coordinated by the Laramie County Conservation District includes recommendations to protect riparian habitat because of the benefits to water quality (LCCD 2007, p. 1). The plan's amendment also recognizes suitable PMJM habitats within the Pole Mountain Area and encourages proponents to recognize and comply with the Act's protections (LCCD 2007, pp. 17, 21). While these efforts to improve water quality have the potential to improve or protect riparian habitat, the measures are typically not mandatory, and such watershed planning efforts do not encompass the range of the subspecies. Thus, the CWA provides only limited protection of habitats utilized by the PMJM and is not capable of substantially reducing threats to individual PMJM populations or to the subspecies as a whole.

National Forest Management Act (NFMA)

The NFMA (16 U.S.C. 1600 *et seq.*) requires the USFS to prepare management plans for each National Forest. These management plans address management issues such as recreation, range, timber, biological diversity, and economic and social factors. On lands administered by the USFS, the PMJM's threatened status under the Act promotes USFS policies that contribute to its protection and recovery. Of the three National Forests supporting PMJM populations, the Medicine Bow-Routt National Forest has a forest management plan that includes standards and guidelines specific to conservation of the PMJM. The Arapahoe-Roosevelt National Forest and the Pike-San Isabel National Forest have forest plans that predate the listing of the PMJM (Warren 2007). If delisted, the USFS could potentially continue to recognize the PMJM as a subspecies warranting conservation concern with some degree of conservation priority. However, without the Act's protections, there is no guarantee that Federal agencies would continue to prioritize PMJM conservation.

Sikes Act Improvement Act (Sikes Act)

The Sikes Act of 1997 (16 U.S.C. 670) authorizes the Secretary of Defense to develop cooperative plans with the Secretaries of Agriculture and the Interior for natural resources on public lands. The Sikes Act requires Department of Defense installations to prepare Integrated Natural Resources Management Plans (INRMPs) that provide for the conservation and rehabilitation of natural resources on military lands consistent with the use of military installations to ensure the readiness of the Armed Forces. INRMPs incorporate, to the maximum extent practicable, ecosystem management principles and provide the landscape necessary to sustain military land uses. INRMPs are developed in coordination with the State and the Service, and are generally updated every 5 years. Although an INRMP is technically not a regulatory mechanism, because its implementation is subject to funding availability, it is an important guiding document that helps to integrate natural resource protection with military readiness and training

The Air Force Academy (Academy) in El Paso County, Colorado, has an INRMP in place, a conservation and management plan, and a programmatic consultation under section 7 of the Act, which provide guidance for Air Force management decisions for certain activities that may affect the PMJM. Research on the PMJM is ongoing at the Academy, and the conservation and management plan is designed to be updated as new information is collected. Warren Air Force Base in Laramie County, Wyoming, also has an INRMP and a conservation and management plan, which addresses the PMJM, even though the base may only support the western jumping mouse. These plans adequately reduce threats to the PMJM on these bases. Both plans are updated every 5 years, but the emphasis given to conservation of the PMJM may decline in the future if the subspecies were to be delisted.

National Wildlife Refuge System Improvement Act

The National Wildlife Refuge System Improvement Act of 1997 and the Fish and Wildlife Service Manual (601 FW 3, 602 FW 3) require maintaining biological integrity and diversity, comprehensive conservation planning for each refuge, and set standards to ensure that all uses of refuges are compatible with their purposes and the

Refuge System's wildlife conservation mission. The comprehensive conservation plans (CCP) address conservation of fish, wildlife, and plant resources and their related habitats for a refuge, while providing opportunities for compatible wildlife-dependent recreation uses. An overriding consideration reflected in these plans is that fish and wildlife conservation has first priority in refuge management, and that public use be allowed and encouraged as long as it is compatible with, or does not detract from, the Refuge System mission and refuge purpose(s).

Although survey efforts for PMJMs at National Wildlife Refuges (NWRs) have been limited, trapping surveys documented PMJM at the Rocky Flats NWR near Boulder, Colorado, and a jumping mouse at Hutton Lake NWR near Laramie, Wyoming. However, genetic analysis later determined that the mouse field-identified as a PMJM at Hutton Lake NWR was actually a western jumping mouse (Ramey *et al.* 2005, Appendix 3). Therefore, the capture at Rocky Flats NWR represents the only documentation of a PMJM on an NWR. The Service continues to manage Rocky Flats NWR in a manner consistent with conservation of the PMJM. Management of Rocky Flats or other NWRs that may support PMJM or its habitats is unlikely to change if the PMJM were to be delisted.

Fish and Wildlife Coordination Act (FWCA)

The FWCA requires that proponents of Federal water development projects, including those involving stream diversion, channel deepening, impoundment construction, and/or general modifications to water bodies, consider their impacts to fish and wildlife resources. FWCA also requires that impacts to water bodies be offset through mitigation measures developed in coordination with the Service and the appropriate State wildlife agency. Therefore, FWCA may provide some protection for the PMJM and its habitat through avoidance and minimization measures that may be incorporated into Federal projects. Therefore, the FWCA is an adequate regulatory mechanism to address threats within the confines of its applicability, but its applicability is limited. The minor benefits provided by FWCA would continue in the absence of the Act's protection.

State Protections: Under the nongame provisions of the CPW Regulations (Chapter 10, Article IV) the PMJM currently may only be taken legally by permitted personnel for educational, scientific, or rehabilitation purposes. Wyoming classifies meadow jumping mice as a ''nongame species'' under section 11 of chapter 52 (Nongame Wildlife) of the Wyoming Game and Fish Commission regulations. As in Colorado, these regulations protect the PMJM from takings and sales by allowing the issuance of permits only for the purpose of scientific collection. As described under Factor B, overutilization for commercial, recreational, scientific, or educational purposes is not now, nor is it likely to become, a significant threat to the subspecies, even if the protections afforded the subspecies under Colorado and Wyoming laws were removed. However, classification of the PMJM as a nongame species in Colorado or Wyoming, which prohibits non-scientific collection, does not address threats associated with habitat loss and modification as described under Factor A.

Numerous State lands (CPW and WFGD lands, State Park lands, State Land Board lands) and mitigation properties (such as those of the Colorado Department of Transportation) would continue to provide a measure of protection for the PMJM, should it be delisted. While some of these conservation properties may have management specifically designed to preserve and enhance PMJM habitat, others are managed more generally for wildlife habitat, for human recreation, or for multiple uses.

Local Protections: At the time of listing, we noted that, while a myriad of regional or local regulations, incentive programs, and open-space programs existed, especially in Colorado, few specifically protected the PMJM or its habitat from inadvertent or intentional adverse impacts (63 FR 26517, May 13, 1998). Many local regulations create a process of site-plan review that ''considers'' or ''encourages'' conservation of wildlife, wetlands, and other natural habitats, but have no mandatory measures requiring avoidance or mitigation of impacts. Effectiveness of local regulations in maintaining naturally functioning riparian corridors varies greatly depending on how these apparently flexible regulations are implemented.

Following listing under the Act, development and other projects in and near PMJM habitat have received increased scrutiny from local jurisdictions, often in coordination with the Service. Open-space acquisitions and easements also have taken the PMJM and its habitat into account. It is not clear what level of interest in PMJM conservation would continue following delisting. Local governments would likely relax review procedures for projects in known or suspected PMJM habitat. Beyond the direct impact to PMJM habitat, secondary impacts of development (including increased recreational use, altered flow regimes and groundwater levels, and increased domestic predators) are unlikely to be adequately addressed. While certain local regulations are designed to conserve wetlands or floodplains on private lands, it is unlikely they would effectively control land uses (grazing, mowing, cutting, and burning) that may affect the hydrology, vegetation, and hibernacula sites on which the PMJM depends. The adequacy of such protective measures is more important within Colorado than Wyoming given the intense development pressures in the Colorado counties where the PMJM occurs.

Douglas County, Colorado, owns 14 properties that encompass 24 km (15 mi) of stream and associated riparian habitats potentially beneficial to the PMJM (Matthews 2004). Of Douglas County streams on non-Federal property within the county-mapped Riparian Conservation Zone, 105 km (65 mi), or 23 percent, are under some form of permanent protection (Matthews 2004), including 77 km (48 miles) on Plum Creek and its tributaries and 25 km (16 mi) on Cherry Creek and its tributaries (Matthews 2008, Douglas County HCP). However, occurrence of the PMJM on many of these properties has not been extensively documented. For example, while there are 23.4 km (14.5 mi) of mapped riparian corridors on the large Greenland Ranch conservation property, the presence of the PMJM has been documented at only two sites. Future conservation efforts to augment protected areas and to link protection over large expanses of connected streams in Douglas County could contribute greatly to maintaining secure PMJM populations in the Upper South Platte and Middle South Platte-Cherry Creek drainages. If the PMJM were delisted, management priorities on protected lands and the direction of future conservation efforts would likely change in the absence of formalized agreements or plans.

Larimer County has acquired or secured easements to considerable lands, including some properties under the Laramie Foothills Project, in partnership with The Nature Conservancy, the City of Fort Collins, and the Legacy Land Trust. While conservation efforts have increased, especially in the Livermore Valley, residential development remains the largest threat to the PMJM in the county (Pague 2007). The extent to which

PMJM populations are supported by these properties, the fate of remaining private lands in the North Fork and Cache La Poudre River and its tributaries, and the ability to link conservation lands and traditional agricultural lands supporting the PMJM along stream reaches are key to protecting the potentially large PMJM population thought to exist in this area.

The City of Boulder, Boulder County, and Jefferson County have extensive lands protected under their open-space programs. While the extent of known PMJM occurrences in these counties is limited compared to that documented in Larimer and Douglas Counties, known populations exist on open space protected from residential and commercial development.

Overall, the CPW examined land ownership on over 58,000 ha (143,000 ac) in Colorado that they considered occupied by the PMJM. The CPW estimated the area of PMJM occupancy in Colorado by buffering habitats around documented capture locations. The CPW's analysis estimated that approximately 45 percent of the PMJM occupied area occurs on protected lands, such as those in public ownership, land trusts, or conservation easements (Nesler 2008). However, the trapping surveys used in this buffer analysis disproportionally targeted public lands or sites of proposed development, due largely to ease of accessibility. Therefore, the 45 percent statistic may overestimate the actual amount of PMJM habitat that occurs on protected lands. Although this percentage suggests meaningful progress toward recovery of the subspecies in Colorado, it does not indicate that protected status adequately reduces threats to the PMJM.

At the request of the Service, in 2008, the CPW conducted a similar evaluation for specific areas we consider of high importance to PMJM conservation in Colorado. These included units designated as PMJM critical habitat and additional units of proposed critical habitat that were excluded from the 2010 final designation (75 FR 78430, December 15, 2010) due to ongoing conservation efforts. While our proposal and designation of critical habitat units focused on lands in public ownership, which may bias the results, examination of these areas provides some perspective into potential protections in place in Colorado. Public lands, land trusts, or conservation easements comprise approximately 51 percent of the critical habitat.

While estimated percentages of lands in protected ownership categories are encouraging, and these lands may be critical to the PMJM's recovery, existing protections on these lands do not fulfill preliminary draft recovery plan objectives, nor do they assure the future viability of these PMJM populations. Therefore, these local regulatory mechanisms on protected lands inadequately reduce threats to the PMJM at this time.

As discussed under Factor A, fragmentation of PMJM habitat and resulting impacts on the future security of PMJM populations is a significant concern. Even in drainages where lands in public ownership or private properties dedicated to conservation are relatively extensive, development of intervening private lands is likely to fragment habitat and may impact PMJM populations.

Many of the public ownership areas are relatively high-elevation, montane headwater habitats. As discussed previously, such areas may have less suitable habitat that supports lower density PMJM populations than at plains and foothill sites. Additionally, as elevation increases, there is an increased occurrence of the western jumping mouse. Overlap in ranges of the two species seems greatest in Wyoming, where a more gradual rise from the plains to the Laramie Mountains allows for a greater extent of mid-range elevations occupied by both species. Thus, in order to rely upon the contribution that protection or public ownership of these higher elevation areas provides to the long-term security of the PMJM, positive identification to species and localized demographic data would be required.

Finally, public ownership may not preclude properties from human development, other land uses, or management priorities that may affect the PMJM or its habitat. Although public lands may be protected and managed in a manner compatible with the needs of the PMJM, activities off site may indirectly affect the PMJM. Most prominent among these secondary impacts are those resulting from changes in stream flow regimes. Recent evidence suggests secondary impacts from development of private land upstream from the Academy (proposed as critical habitat Unit A1, now designated as critical habitat Unit 11) threaten the integrity of habitat present and the PMJM population it supports (Schorr 2012a, p. 1277).

In Wyoming, as would be expected in areas where development pressures are substantially less, the regional and local regulations affecting PMJM habitat appear to be less extensive than in the Colorado portion of its range. Currently Albany, Laramie, Converse, and Platte Counties in Wyoming have zoning regulations, including the regulation of subdivision development (USFWS 2012b). These and other local protections provide some protection of water resources and floodplains and reduce soil erosion. However, overall, there are few local regulatory protections in the Wyoming portion of the PMJM's current range.

Summary of Factor D: In the absence of the Act's protective measures, Federal conservation efforts for the PMJM would largely be limited to Federal properties, where the subspecies could be maintained as a priority or sensitive subspecies and conserved through existing or future management plans. However, in the absence of the Act's protections, there are no guarantees at this time that Federal agencies would continue to recognize PMJM as sensitive or in need of protection.

If retained as a non-game species, State regulations in both Colorado and Wyoming would continue to regulate purposeful killing of the PMJM, which we do not view as a significant concern as summarized under Factor B. State and local regulations do little to conserve the PMJM or its habitat on private lands. Public land holdings, conservation easements, and other conservation efforts, past and future, could support the PMJM on specific sites. The extent and pattern of conservation efforts in relation to PMJM's distribution, and the appropriate management of PMJM habitat, would largely dictate the long-term viability of PMJM populations.

As described in the preliminary draft recovery plan (USFWS 2003b), no large populations and few medium-sized populations are known to exist on contiguous stream reaches that are secure from development. Management plans that specifically address threats to the PMJM are few, and management priorities would likely change if we were to delist the subspecies. Much of the intervening private lands would likely be subject to development in the future (this issue is described in more detail under Factor A above). If we were to delist the subspecies, given current and projected levels of population protections, we believe that existing regulatory mechanisms would not be adequate to mitigate the impacts of identified threats to most PMJM populations in Colorado and in the vicinity of Cheyenne, Wyoming.

Factor E. Other Natural or Manmade Factors Affecting the Subspecies' Continued Existence

The PMJM is susceptible to other natural or manmade factors, including

impacts from floods, wildfire, drought, invasive weeds and weed control programs, pesticides and herbicides, and secondary impacts associated with human-caused development (63 FR 26517, May 13, 1998). For most of these factors, we have little more information now than we had at the time of listing. Additional concerns that were not considered at the time of listing include the potential for competition between the PMJM and the western jumping mouse, small population sizes, and future effects of changing climate, including its potential to augment threats from fire and drought. We evaluate each of these factors below.

Floods: Floods are natural components of the Wyoming and Colorado foothills and plains. PMJMs and their habitats evolved under historic flood regimes, so populations and habitats naturally respond to flooding events. While floods may affect PMJM populations by killing individuals and destroying riparian and adjacent upland habitats, the effects to vegetation are usually temporary. Vegetation typically reestablishes quickly after floods, although larger floods may delay recovery. Normal flooding may help maintain the vegetative communities that provide suitable habitat for the PMJM.

However, manmade increases in impervious surfaces and the loss of vegetation caused by human activities or catastrophic wildfire can result in an increased frequency and severity of flood events. Flooding is often a byproduct of wildfires and may act synergistically to alter the composition and structure of riparian ecosystems for many years (Ellis 2001, p. 159). Therefore, extreme floods may prevent the re-establishment of the PMJM's favored riparian vegetation, forcing mice to disperse until habitats recover. While an extreme flood can eliminate an entire PMJM population in an affected stream reach, floods are less likely to eliminate the PMJM across an entire drainage system if populations extend into side tributaries or headwater unaffected by the flood. Therefore, maintaining the connectivity of riparian habitats between stream reaches is crucial to maintaining the security of PMJM populations faced with an increased incidence of flooding.

At this time, we lack information to conclude that flooding alone is a threat to the PMJM. However, flooding will increase under a warming climate (Milly *et al.* 2002, p. 514), with extreme floods potentially becoming increasingly problematic throughout the PMJM's range. Additionally, floods could develop into more a substantial threat as more human development increases impervious surfaces and removes vegetation.

Wildfire: Over the last 50 years, more dry summers, more human-caused fires, and a history of fire suppression have increased the frequency, size, and severity of wildfires (Auclair and Bedford, 1994, p. 249; Sackett *et al.,* 1994, p. 115; Swetnam and Betancourt, 1998, p. 3128; Ellis, 2001, p. 160). In the western United States, large wildfire activity increased in the mid-1980s, marked by higher large-wildfire frequency, longer wildfire durations, and longer wildfire seasons (Westerling *et al.* 1996, p. 940). In Colorado and Wyoming, temperatures and numbers of wildfires have increased since 1970 (Climate Central 2012, p. 4). Rising spring and summer temperatures, along with shrinking snowpacks, increased the risk of wildfires in most parts of the West, with global climate change likely to further increase the frequency of wildfires throughout the region in the future (Westerling *et al.* 1996, p. 940; Climate Central 2012, p. 1). Satellite data and climate models predict an increase in fire risk across the United States by 2050, and drier conditions and more extreme fire events augment the risk (Hansen and Gran 2012, p. 1). Within the PMJM's range, climate models predict that wildfires will be more frequent and more severe, potentially burning 4 to 5 times more area, even when the models account for uncertainty associated with precipitation (Climate Central 2012, p. 9). Extreme fire years, such as 2002 with the Hayman Fire and 2012 with the High Park and Hewlett Fires, may occur 2 to 4 times more per decade than they do currently by 2050 (Hansen and Gran 2012, p. 1).

As wildfires burn, the intense heat, combustion gases, and consumption of organic material kills or displaces animals and may dramatically alter the structure and composition of habitats (Quinn 1979, p. 126). Small mammals die during wildfires from burns, asphyxiation, heat stress, overexertion, stampedes, and predation (Kaufman *et al.* 1990, p. 47). Wildfires may also interrupt the breeding cycles and movements of surviving animals, while affecting the quality and quantity of food, the availability of nest sites, the pressures of predation and competition, and the incidence of disease and parasites (Kaufman *et al.* 1990, p. 47). Although riparian plants do not depend on fire for regeneration, wildfire influences these habitats by changing their structure and composition (Ellis 2001, p. 159). Wildfire may promote the invasion of nonnative plants, which when established, alter fire regimes, increase water use, and change the structure of the native community (Fornwalt *et al.* 2003, p. 515). Additionally, where wildfires destroy vegetation and change soil properties, they alter hydrology and sediment-transport processes, which increase erosion and the deposition of sediment (Verdin *et al.* 2012, pp. 1–2). Because these factors may affect the PMJM during or following a wildfire, Pague and Granau (2000) considered catastrophic fire to be a high-priority issue.

Wildfires burn riparian habitats, although the fires within these ecosystems may be less frequent or less intense than the adjoining uplands. Because the plant species, hydrology, microclimates, and fuel characteristics of riparian ecosystems differ from adjacent uplands, riparian areas possess different fire environments, fire regimes, and fire properties (Dwire and Kaufmann 2003, pp. 61, 71). Compared to upland habitats, moist fuels and the rapid decomposition of organic litter lessen the frequency of wildfires within riparian habitats (Busch 1995, p. 259). Generally, fire frequencies and intensities are lower in riparian habitats than in adjoining uplands (Dwire and Kaufmann 2003, pp. 61, 71). In Colorado for example, the Hayman Fire of 2002 burned significantly cooler in riparian areas than upslope areas, although burn intensities correlated positively to the burn intensity of the surrounding watershed (Decker *et al.* 2006, pp. 1, 3). Additionally, riparian habitats along smaller streams burned hotter, like the uplands, but riparian habitats along larger streams experienced cooler burns (Decker *et al.* 2006, pp. 1, 3). Wildfires in PMJM's riparian habitats during Colorado's High Park Fire of 2012 exhibited similar fire characteristics, where light, wet fuels either slowed the burn at the riparian zone or restricted burning to herbaceous, understory vegetation (Oberlag 2012, p. 2).

Periodic, low-severity wildfires may actually maintain PMJM habitats by removing understory fuels and promoting the regrowth of willows and other riparian vegetation. In the tallgrass prairies of Illinois, meadow jumping mouse populations displayed a positive response to fire in one study, but no response to fire in a second study (Kaufman *et al.* 1990, p. 55). Alternatively, in Colorado, trapping and telemetry data indicated that PMJMs did not enter burned habitats for at least 3 years after the Hayman Fire (Hansen 2006, pp. 163–164). Wildfires, especially those with high-severity burns, may render habitats unsuitable to

the PMJM for many years. If left untreated, nonnative, invasive plants may alter the post-fire dynamics of riparian areas 50 to 100 years after a wildfire (Graham 2003, pp. 22–23).

Although wildfires within riparian habitats may be less frequent or less intense than burns in uplands, wildfires have burned PMJM habitats throughout the subspecies' range. Colorado's High Park Fire of 2012 burned PMJM habitats lightly, with burned herbaceous vegetation expected to regrow in 1 to 3 years (Oberlag 2012, p. 2). Similarly, the majority of PMJM habitats burned by Colorado's Hewlett Fire of 2012 and Crystal Fire of 2011 experienced low-intensity burns, with some loss of herbaceous vegetation (Oberlag 2011, p. 1; Oberlag 2012, pp. 1–2). Comparatively, the Fourmile Canyon Fire in Colorado during the summer of 2010 moderately and severely burned approximately 37 percent of potential PMJM habitats within the fire perimeter (Baker 2010, p. 2). Severe, high-intensity burns also occurred in PMJM habitats during 2002. During the early summer of 2002, the Hayman and Schoonover fires in Colorado burned over 3,000 ha (7,500 ac) of potential PMJM habitat, or approximately 20 percent of the potential habitat within the boundaries of the Pike National Forest (Elson 2003, p. 2). Additionally, the Hayman Fire severely burned approximately 342 ha (844 ac) of proposed critical habitat for the PMJM, which prompted the removal of several proposed areas from the final 2003 critical habitat designation (68 FR 37276, June 23, 2003).

Superimposing PMJM's critical habitat and occupied habitats with perimeters of wildfires provides estimates of PMJM habitats potentially burned by wildfires over the last 12 years. Burn area perimeter analyses for wildfires collected since 2000 calculate that wildfires potentially burned approximately 2,376 ha (5,873 ac), or 17 percent, of designated PMJM critical habitat in Colorado (USFWS 2013, p. 1). Perimeter datasets also estimate that Colorado wildfires potentially burned approximately 4,150 ha (10,254 ac), or approximately 10 percent, of trapped habitats identified as occupied by PMJM (USFWS 2013, p. 1). In Wyoming, burn area perimeter datasets collected since 2000 identify three wildfires that potentially burned PMJM habitats: The Hensel and Reese Mountain Fires of 2002 and the Arapaho Fire of 2012 (USFWS 2013, p. 1). However, none of these wildfires have likely impacted areas formerly designated as PMJM critical habitat in Wyoming and we lack an estimate for occupied habitats in Wyoming in order to approximate burned habitats (USFWS 2013, p. 1). Although these analyses do not account for variance in burn severity within the perimeter of the wildfire, they illustrate that wildfires potentially burned more than 17 percent of PMJM's designated critical habitats in Colorado over the last 12 years. The perimeter analyses also do not consider any auxiliary effects of wildfire, such as flooding, erosion, or sedimentation, that may affect habitats within or outside the burn area perimeter, so these estimations may underestimate actual impacts to PMJM habitats. Additionally, these perimeter datasets may not capture all wildfires that burned within PMJM habitats.

Wildfires continue to affect the PMJM and its habitats. In the future, a warmer, drier climate will increase the frequency and intensity of wildfires throughout the PMJM's range. Therefore, wildfires continue to be a threat to the PMJM.

Drought: Like wildfire and floods, drought is another factor that negatively affects the PMJM. Drought lowers stream flows and the adjacent water table, in turn impacting the PMJM's riparian habitats. Frey (2005, p. 62) found that drought had a major influence on the status and distribution of another subspecies, the New Mexico jumping mouse in New Mexico. In 2002, a year with regional drought conditions, Bakeman (2006, p. 11) failed to capture any PMJMs at two sites where he had previously documented substantial populations. While PMJM populations have coexisted with periodic drought, significant increases in frequency or severity of drought, as is predicted as a consequence of global climate change throughout the subspecies' range, could impact the persistence of PMJM. Models predict increased global aridity, with severe and widespread droughts over the next 30 to 90 years resulting from decreased precipitation and increased evaporation (Dai 2012, p. 52). The effects of drought will likely be a more significant factor for small and fragmented populations, while large populations with substantial tracts of suitable habitat with steady hydrologic regimes will be better isolated from the effects of drought. However, drought may exacerbate adverse impacts of cattle grazing on PMJM habitat as livestock seek forage in riparian habitats. Additionally, climate change and the promotion of noxious weeds may exacerbate the effects of drought. Therefore, drought is a threat to the PMJM.

Nonnative plants: Invasive, noxious plants can encroach upon a landscape, displace native plant species, form monocultures of vegetation, and may negatively affect food and cover for the PMJM. The control of noxious weeds may entail large-scale removal of vegetation and mechanical mowing operations, which also may affect the PMJM. The tolerance of the PMJM for invasive plant species remains poorly understood. Leafy spurge (*Euphorbia esula*) may form a monoculture, displacing native vegetation and thus reducing available habitat (Selleck *et al.* 1962; Pague and Grunau 2000, p. 1–18). Nonnative species including tamarisk, or saltceder (*Tamarix ramosissima*), and Russian olive (*Elaeagnus angustifolia*) may adversely affect the PMJM (Garber 1995, p. 16; Pague and Grunau 2000, p. 18). Existing special regulations at 50 CFR 17.40(1) exempt incidental take of the PMJM during the control of noxious weeds. This exemption recognizes that control of noxious weeds is likely to produce long-term benefits to the native vegetation of PMJM habitats.

Although we lack information to conclude that nonnative plants are a threat to the PMJM, nonnative plants may become increasingly problematic as climate change and drought favor drought-tolerant species that alter the structure and function of riparian communities.

Pesticides and Herbicides: The effect of point and non-point source pollution (sewage outfalls, spills, urban or agricultural runoff) that degrades water quality in potential habitats on the abundance or survival of the PMJM remains unclear. From an examination of their kidney structure, it is uncertain whether the PMJM requires drinking water from open water sources, or may obtain water exclusively through dew and food (Wunder 1998), which would influence its potential exposure to pollution. Likewise, it is unknown whether pesticides and herbicides, commonly used for agricultural and household purposes within the range of the PMJM, pose a threat to the PMJM directly, or through its food supply, including possible bioaccumulation of hazardous chemicals. Therefore, at this time we lack information to conclude that pesticides and herbicides are a threat to the PMJM.

Secondary Impacts of Human Development: Human development creates a range of additional potential impacts (through human presence, noise, increased lighting, introduced animals, and the degradation of air and water quality) that could alter the PMJM's behavior, increase its levels of stress, and ultimately contribute to loss of vigor or death of individuals, and eventual extirpation of populations. Introduced animals associated with human development may displace, prey upon, or compete with the PMJM. Feral

cats and house mice were common in and adjacent to historical capture sites where the PMJM was no longer found (Ryon 1996, p. 26). While no cause-and-effect relationships were documented, the PMJM was 13 times less likely to be present at sites where house mice were found (Clippinger 2002, p. 104). As described under Factor A, the absence of the PMJM in portions of drainages where riparian habitat appears relatively favorable but human encroachment is pervasive, suggests a potential cause-and-effect relationship attributable to a variety of primary or secondary influences. Cumulative impacts from a variety of factors in addition to habitat loss and fragmentation may contribute to local extirpations.

Instability of Small Populations: Colorado's Comprehensive Wildlife Conservation Strategy identifies ''scarcity'' as a threat to meadow jumping mice that may lead to inbreeding depression (CPW 2006, p. 102). Stochastic, or random, changes in a wild population's demography or genetics can threaten small populations (Brussard and Gilpin 1989, pp. 37–48; Caughley and Gunn 1996, pp. 165–189). A stochastic demographic change in small populations, such as a skewed age or sex ratios (for example, a loss of adult females), can depress reproduction and increase the risk of extirpation. Isolation of populations, whether through habitat loss or fragmentation, may disrupt gene flow and create unpredictable genetic effects that could impact the persistence of PMJM populations in a given area. While the susceptibility of the PMJM to stochastic events has not been specifically researched, the documented tendency for PMJM population estimates to vary widely over time heightens concern for small and isolated populations. Within populations, periodic lows in numbers of PMJMs present more accurately reflect potential vulnerability than typical or average numbers present. Although many trapping efforts have targeted the PMJM in small, isolated reaches of apparently acceptable habitat, few have documented presence. Small, fragmented PMJM populations, including those fragmented in the future by human development, are likely to be unsustainable. Therefore, we conclude that the instability of small populations is a threat to the PMJM.

Intraspecific Competition: The relative ranges, abundance, and relationship between the PMJM and the western jumping mouse are not yet clearly understood, especially in Wyoming. However, recent confirmation of extensive range overlap in Wyoming and the apparent predominance of the western jumping mouse in some southern Wyoming drainages with few or no recent records of PMJM provide reason for concern (Bowe and Beauvais 2012, p. 15). It is unclear whether western jumping mice are actively competing with PMJMs, affecting PMJM population size, and possibly limiting distribution, or if this distribution pattern is unrelated to their interaction. Additional study is needed to clarify these issues. Although questions remain, we do not have information to indicate that presence of the western jumping mouse and potential intraspecific competition currently constitutes a threat to the PMJM.

Global Climate Change: Our analyses under the Act include consideration of ongoing and projected changes in climate. The terms ''climate'' and ''climate change'' are defined by the Intergovernmental Panel on Climate Change (IPCC). The term ''climate'' refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2007a, p. 78). The term ''climate change'' thus refers to a change in the mean or variability of one or more measures of climate (*e.g.,* temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007a, p. 78).

Scientific measurements spanning several decades demonstrate that changes in climate are occurring, and that the rate of change has been faster since the 1950s. Examples include warming of the global climate system, and substantial increases in precipitation in some regions of the world and decreases in other regions. (For these and other examples, see IPCC 2007a, p. 30; and Solomon *et al.* 2007, pp. 35–54, 82–85). Results of scientific analyses presented by the IPCC show that most of the observed increase in global average temperature since the mid-20th century cannot be explained by natural variability in climate, and is ''very likely'' (defined by the IPCC as 90 percent or higher probability) due to the observed increase in greenhouse gas (GHG) concentrations in the atmosphere as a result of human activities, particularly carbon dioxide emissions from use of fossil fuels (IPCC 2007a, pp. 5–6 and figures SPM.3 and SPM.4; Solomon *et al.* 2007, pp. 21–35). Further confirmation of the role of GHGs comes from analyses by Huber and Knutti (2011, p. 4), who concluded it is extremely likely that approximately 75 percent of global warming since 1950 has been caused by human activities.

Scientists use a variety of climate models, which include consideration of natural processes and variability, as well as various scenarios of potential levels and timing of GHG emissions, to evaluate the causes of changes already observed and to project future changes in temperature and other climate conditions (*e.g.,* Meehl *et al.* 2007, entire; Ganguly *et al.* 2009, pp. 11555, 15558; Prinn *et al.* 2011, pp. 527, 529). All combinations of models and emissions scenarios yield very similar projections of increases in the most common measure of climate change, average global surface temperature (commonly known as global warming), until about 2030. Although projections of the magnitude and rate of warming differ after about 2030, the overall trajectory of all the projections is one of increased global warming through the end of this century, even for the projections based on scenarios that assume that GHG emissions will stabilize or decline. Thus, there is strong scientific support for projections that warming will continue through the 21st century, and that the magnitude and rate of change will be influenced substantially by the extent of GHG emissions (IPCC 2007a, pp. 44–45; Meehl *et al.* 2007, pp. 760–764 and 797–811; Ganguly *et al.* 2009, pp. 15555–15558; Prinn *et al.* 2011, pp. 527, 529). (See IPCC 2007b, p. 8, for a summary of other global projections of climate-related changes, such as frequency of heat waves and changes in precipitation. Also see IPCC 2011(entire) for a summary of observations and projections of extreme climate events.)

Various changes in climate may have direct or indirect effects on species. These effects may be positive, neutral, or negative, and they may change over time, depending on the species and other relevant considerations, such as interactions of climate with other variables (*e.g.,* habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19). Identifying likely effects often involves aspects of climate change vulnerability analysis. Vulnerability refers to the degree to which a species (or system) is susceptible to, and unable to cope with, adverse effects of climate change, including climate variability and extremes. Vulnerability is a function of the type, magnitude, and rate of climate change and variation to which a species is exposed, its sensitivity, and its adaptive capacity (IPCC 2007a, p. 89; see also Glick *et al.* 2011, pp. 19–22). There is no single method for conducting such analyses that applies to

all situations (Glick *et al.* 2011, p. 3). We use our expert judgment and appropriate analytical approaches to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

As is the case with all stressors that we assess, even if we conclude that a species is currently affected or is likely to be affected in a negative way by one or more climate-related impacts, it does not necessarily follow that the species meets the definition of an ''endangered species'' or a ''threatened species'' under the Act. If a species is listed as endangered or threatened, knowledge regarding the vulnerability of the species to, and known or anticipated impacts from, climate-associated changes in environmental conditions can be used to help devise appropriate strategies for its recovery.

Global climate projections are informative, and, in some cases, the only or the best scientific information available for us to use. However, projected changes in climate and related impacts can vary substantially across and within different regions of the world (*e.g.,* IPCC 2007a, pp. 8–12). Therefore, we use ''downscaled'' projections when they are available and have been developed through appropriate scientific procedures, because such projections provide higher resolution information that is more relevant to spatial scales used for analyses of a given species (see Glick *et al.* 2011, pp. 58–61, for a discussion of downscaling).

We reviewed climate records and projections for western North America, Wyoming, and Colorado to evaluate potential impacts of climate change on the PMJM. As described in more detail below, climate models predict a trend of continued warming, with hotter summers, warmer winters, decreased snowpack, earlier spring melts, increased evaporation, more droughts, and reduced summer flows throughout the PMJM's range. These conditions will favor more drought-tolerant nonnative plants, dramatically altering species compositions within riparian habitats and inducing upstream migrations of plants and animals to cooler refugia (Perry *et al.* 2012, p. 828). Drier conditions and weaker spring flows will lower water tables and narrow riparian corridors (Perry *et al.* 2012, p. 830), effectively shrinking the PMJM's riparian habitats. As a riparian obligate, the PMJM completes the majority of its life cycle within the lush, multi-storied riparian vegetation that borders streams or other waterbodies. Riparian trees and shrubs, such as cottonwoods and willows, dominate the overstory and provide cover, while a diverse, grassy understory with beds of dense herbaceous vegetation provides food and shelter. The riparian vegetation, and in turn, the entire riparian ecosystem, depends on water and other hydrologic processes, which the models predict will change or be limited under a warmer, drier climate (Perry *et al.* 2012, p. 826). Additionally, increased human populations, development, and demand for water may exacerbate the impacts of climate change on riparian habitats. Overall, climate change will decrease the quality and quantity of the PMJM's riparian habitats, and as a result, the PMJM is especially vulnerable when faced with a changing climate.

The climatic record for western North America indicates that concentrations of GHG emissions and mean annual temperatures have increased within the range of the PMJM. Atmospheric levels of carbon dioxide (CO_2), the product of GHG emissions, have increased from 280 parts per million (ppm) to 390 ppm by volume since 1750, with CO_2 concentrations predicted to potentially reach 850 ppm by 2100 (IPCC 2007, p. 37; Perry *et al.* 2012, p. 824). Mean annual temperatures in western North America increased by 0.5 to 2 degrees C (32.9 to 35.6 degrees F) between 1948 and 2002 Perry *et al.* 2012, p. 824). Winter and spring temperatures increased significantly and spring warming occurred earlier, while autumn temperatures remained relatively stable during this time (Perry *et al.* 2012, p. 824).

Climate models predict that temperatures within the range of the PMJM will continue to increase over time. Most models predict that annual temperatures in western North America will increase by an additional 2 to 4 degrees C during the 21st century (Perry *et al.*2012, p. 824). Projections for Wyoming predict that the annual mean temperature will increase by 4 degrees by 2050 and 6 degrees by 2080 (WWA 2010). Wyoming will likely experience more warming during the summer, with less warming in the winter (WWA 2010). Colorado summers are also expected to warm more than winters (CWCB 2008, p. 1). Between 1997 and 2006, Colorado's mean annual temperature increased by approximately 2 degrees (WWA 2010). Relative to the 50-year temperature baseline, climate models predict that Colorado will warm by 2.5 degrees by 2025 and 4 degrees by 2050 (WWA 2010). As a result, summer temperatures typical of the eastern Colorado plains will shift westward and upslope, with temperature regimes of the Front Range eventually mirroring those currently experienced at the Kansas border (CWCB 2008, p. 1). In both Wyoming and Colorado, climate models predict an approximately 4 degrees increase in mean annual temperatures throughout the range of the PMJM by 2050.

Precipitation predictions for western North America are less clear than the temperature predictions, with variation and uncertainty largely attributable to weather systems, such as El Nino (Perry *et al.* 2012, p. 824). However, most models agree that in the southwest, winter and spring precipitation will decline (Perry *et al.* 2012, p. 825). Over the last 50 to 100 years, the climatic record shows that warming has reduced total snow cover and snow water equivalents over much of western North America, with continued declines in mountain snowpack (Perry *et al.* p. 825). The warming trend throughout the mountains of western North America has decreased snowpack, hastened spring runoff, and reduced summer flows (IPCC 2007, p. 11). As a result, over the last 50 to 100 years, warming and changes in precipitation increased the frequency and severity of droughts (Perry *et al.* 2012, p. 825). As precipitation decreases and warmer temperatures increase evaporation, the models predict that the frequency and magnitude of droughts will intensify during the next century (Perry *et al.* 2012, p. 825). Increased evaporation due to warming will likely offset any projected increases in precipitation, leading to greater aridity throughout western North America (Perry *et al.* 2012, p. 825).

Increased warming, evaporation, and drought, coupled with decreased precipitation throughout the range of the PMJM, have strong implications for its riparian habitats. The IPCC summarized that changes in climate and land use will inflict additional pressures on already stressed riparian ecosystems, impacting wetland plants and animals and potentially resulting in the loss of biodiversity (IPCC 2007, p. 234). Riparian ecosystems depend on water and hydrologic processes, such as base streamflows, the magnitude and timing of floods, and water management and use, factors that are sensitive to climate change (Perry *et al.* 2012, p. 822). As a result, scientists expect that climate change will greatly alter riparian hydrology across the world (Perry *et al.* 2012, p. 822).

Specifically, climate change will likely impact the physiology and geographic distribution of the riparian vegetation that define PMJM habitats. Although increased levels of atmospheric CO_2 may physiologically benefit riparian vegetation, such as

cottonwoods or willows, by improving water use and uptake, limited water availability by warming-induced drought, hydrologic changes, and increased evaporation will likely supersede any gains (Perry *et al.* 2012, p. 826). Additionally, maximum summer temperatures above 45 degrees C may damage or kill leaf tissues of most riparian plant species, increasing heat stress and stunting growth in riparian plants (Perry *et al.* 2012, p. 827). Lower maximum temperatures between 25 degrees C and 45 degrees C can reduce germination, growth, flowering, fruit ripening, and seed set (Perry *et al.* 2012, p. 827). Relatively drought-intolerant species, such as cottonwoods and willows, may be particularly vulnerable to less water, promoting colonization by more drought-tolerant, nonnative species, such as tamarisk and Russian olive (Perry *et al.* 2012, pp. 826–827). Monocultures of these drought-tolerant, nonnative species may adversely affect the PMJM (Garber 1995, p. 16; Pague and Grunau 2000, p. 1–18). As water levels drop and vegetative communities change in favor of drought-tolerant, nonnative plants, warming will shift plant species upstream toward higher elevations, potentially displacing other plants at these upper limits (Perry *et al.* 2012, p. 828). Therefore, by physiologically impacting riparian plants and dramatically altering species compositions toward unfavorable, nonnative plant communities, global climate change will likely diminish the quality of PMJM habitats throughout the subspecies' range.

Furthermore, earlier and weaker spring floods associated with a warming climate may constrict available PMJM riparian habitats. Earlier spring floods may decrease the recruitment and establishment of riparian tree species by desynchronizing spring runoff with the release of seeds (Perry *et al.* 2012, p. 829). Although earlier and weaker spring floods may stabilize streams, eventual channelization and narrowing of the flood plains will favor more drought-tolerant plants (Perry *et al.* 2012, p. 829). Where reduced spring flows channelize or lower the water table, plant roots will deepen and soil moistures will decrease, effectively narrowing the riparian corridor (Perry *et al.* 2012, p. 830). Within these narrowed riparian corridors, canopy heights and cover will decrease as species shift from drought-intolerant cottonwoods, willows, and perennial herbs to more drought-tolerant, nonnative species, such as tamarisk or Russian olive (Perry *et al.* 2012, p. 830). Communities dominated by nonnative plants with short canopies that provide less cover and an open understory do not provide suitable PMJM habitat (Garber 1995, p. 16; Pague and Grunau 2000, p. 1–18; Clippinger 2002, pp. 69, 72; Trainor *et al.* 2007, pp. 472–476). Some waterways may dry seasonally, drastically transitioning from perennial to intermittent flows, radically altering species composition such that obligate wetland species may disappear (Perry *et al. 2012,* p. 830). Therefore, as a warming climate reduces spring flows, constricts riparian corridors, and favors nonnative plants over willows, cottonwoods, and lush, herbaceous understories, PMJM and its habitats may similarly disappear.

Stark alterations to riparian plant communities stemming from climatic warming may reduce the quality and quantity of PMJM habitat throughout its range. As habitats diminish and disappear, it follows that the diversity and abundance of animal species that rely on these habitats will also decrease (Perry *et al.* 2012, p. 836). As with plants, compositions of animals under a warming climate will shift to species that are more drought-tolerant and adapted to drier conditions. Additionally, warmer maximum temperatures will increase animal mortality from heat stress and dehydration (Perry *et al.* 2012, p. 831–832). As a riparian obligate, the PMJM will likely be maladapted to the drier and hotter habitats expected by 2050.

Like plants, animal species may escape rising temperatures and diminishing habitats by expanding northward, to higher elevations, or by retreating upstream (Perry *et al.* 2012, p. 832). As the climate dries and riparian habitats disappear from the eastern boundary of the PMJM's range, mice may move upstream toward the west, seeking refuge in higher elevation habitats. However, maximum travel distances for PMJM as recorded by trapping do not exceed 4.3 km (2.7 mi) (Schorr 2012a, p. 1274). This travel distance may limit the PMJM's dispersal capabilities, especially where riparian habitats are already fragmented and isolated by expansive tracts of dry, inhospitable prairies, mountains, or human development. In Colorado, a western migration of the PMJM may be further limited by the steep, inhospitable, decomposing-granite terrain of the Front Range foothills that may geographically isolate montane PMJM populations from the prairie populations to the east. In Wyoming, the Laramie Range may similarly inhibit a western retreat as the climate dries and riparian habitats slowly disappear. Additionally, these upstream, smaller-order streams and tributaries may be too small to support or develop extensive riparian habitats and hence will be unable to sustain larger populations of the PMJM. Therefore, a warming climate may further confine the PMJM to shrinking habitats within its already narrow range, with little possibility of mice seeking refuge within remaining upstream habitats.

The degree of human development, the natural variability in stream flow, the ratio of precipitation lost to evaporation, and rates of groundwater depletions in the three major river basins that support the PMJM may augment the effects of climate change throughout its range (Hurd *et al.* 1999, p. 1404). In other words, impacts associated with human development, including groundwater depletions, may exacerbate predicted impacts of climate change on the PMJM. Therefore, we conclude that the effects of climate change are a threat to the PMJM.

Summary of Factor E: While uncertainties remain regarding the impacts of other natural or manmade factors on the PMJM and its habitats, the best available scientific and commercial information indicate that these factors are a threat to the long-term conservation of the PMJM. Specifically, wildfires and droughts continue to impact the PMJM by reducing the quality and quantity of its riparian habitats. Intensities and frequencies of these events are predicted to increase over time, coupled with increases in floods and nonnative species, especially under a warming climate resulting from global climate change. Additionally, to the extent that meaningful impacts are possible, small and fragmented mouse populations are likely to be more vulnerable to these threats.

Cumulative Effects From Factors A Through E

Many of the threats described in this finding may cumulatively or synergistically impact the PMJM beyond the scope of each individual threat. For example, residential and commercial development may reduce and fragment PMJM habitats. However, development also increases the frequency and intensity of floods and wildfires, promotes the establishment of nonnative plants, and increases predation. Additionally, water use and management by humans strongly reduces flows and influences the effects and properties of wildfire, which are likely to be frequent and intense during periods of drought (Gresswell 1999; Dwire and Kaufman 2003, p. 71). Consequently, increased frequencies

and intensities of wildfires within riparian habitats or adjacent uplands encourage more intense, destructive floods. Furthermore, human population growth and demand for more water may intensify the drying effects of droughts by promoting the establishment of drought-tolerant, nonnative plants, which are in turn more susceptible to wildfire. In addition, livestock grazing alone may have little effect on the PMJM or its habitats, but when coupled with invading nonnative plants and increasing drought, improper grazing may degrade and fragment PMJM habitats across larger landscapes.

Finally, climate change may ultimately augment many of these threats acting on the PMJM and its habitats. Within the three river basins that support the the PMJM, climate change may exacerbate the effects of human development, stream flows, the ratio of precipitation lost to evaporation, and rates of groundwater depletions (Hurd *et al.* 1999, p. 1404). The warming climate could intensify conflicts between human need for water and the sustainability of wetlands and riparian areas that are critical to the PMJM. Similarly, hotter summer temperatures resulting from climate change may increase the frequency and intensity of wildfires, while expanding the influence of drought across larger landscapes (IPCC 2007, p. 13). Streamflow reductions or seasonal changes in flow due to climate change and increased human demand will probably cause a greater disruption in those watersheds with a high level of human development (Hurd *et al.* 1999, p. 1402). Therefore, multiple threats, whether stemming from human development, improper grazing, wildfire, floods, or climate change, are likely acting cumulatively to further increase the likelihood that the PMJM will become endangered within the foreseeable future.

Finding

As required by the Act, we considered the five factors in assessing whether the PMJM is endangered or threatened throughout all of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the PMJM. We reviewed the two petitions, information available in our files, and other available published and unpublished information, and we consulted with recognized PMJM experts and other Federal, State, and local agencies. New information revealed that the PMJM occupies a smaller range in Wyoming than previously thought, and is likely limited to areas east of the crest of the Laramie Mountains (Bowe and Beauvais 2012, p. 8). Additionally, PMJM populations at the Air Force Academy in El Paso County, Colorado, declined over 7 years, despite conservation efforts, underscoring the importance of reducing upstream impacts and maintaining habitat connectivity (Schorr 2012a, p. 1277).

Our review determined that the alteration, degradation, loss, and fragmentation of habitat resulting from urban development, flood control, water development, aggregate mining, and other human land uses have adversely affected PMJM populations. These threats are ongoing and will increase in magnitude as human populations in Colorado and Wyoming continue to expand. Additional threats to the PMJM include wildfire, drought, small population sizes, and modifications to habitat resulting from climate change. We determined that floods, agriculture, grazing, and nonnative plants are not currently threats to the PMJM, but may increase in magnitude over time as human populations expand and climate change increases the frequency and intensity of wildfires and droughts. Many of these threats act cumulatively to further degrade habitats and negatively impact PMJM populations. Furthermore, we concluded that in the absence of the Act, the existing regulatory mechanisms are not currently adequate to mitigate the effects of identified threats to PMJM.

Based on our review of the best available scientific and commercial information pertaining to the five factors, we find that the threats have not been removed nor their imminence, intensity, or magnitude sufficiently reduced, and that the species is likely to become endangered within the foreseeable future throughout all of its range. Therefore, we find that delisting the PMJM is not warranted at this time.

Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. The Act defines ''endangered species'' as any species which is ''in danger of extinction throughout all or a significant portion of its range,'' and ''threatened species'' as any species which is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The definition of ''species'' is also relevant to this discussion. The Act defines ''species'' as follows: ''The term 'species' includes any subspecies of fish or wildlife or plants, and any distinct population segment [DPS] of any species of vertebrate fish or wildlife which interbreeds when mature.'' The phrase ''significant portion of its range'' (SPR) is not defined by the statute, and we have never addressed in our regulations: (1) The consequences of a determination that a species is either endangered or likely to become so throughout a significant portion of its range, but not throughout all of its range; or (2) what qualifies a portion of a range as ''significant.''

Two recent district court decisions have addressed whether the SPR language allows the Service to list or protect less than all members of a defined ''species'': *Defenders of Wildlife* v. *Salazar,* 729 F. Supp. 2d 1207 (D. Mont. 2010), *vacated as moot,* 2012 U.S. App. Lexis 26769 (9th Circ. Nov. 7, 2012), concerning the Service's delisting of the Northern Rocky Mountain gray wolf (74 FR 15123, April 2, 2009); and *WildEarth Guardians* v. *Salazar,* 2010 U.S. Dist. LEXIS 105253 (D. Ariz. September 30, 2010), concerning the Service's 2008 finding on a petition to list the Gunnison's prairie dog (73 FR 6660, February 5, 2008). The Service had asserted in both of these determinations that it had authority, in effect, to protect only some members of a ''species,'' as defined by the Act (*i.e.,* species, subspecies, or DPS), under the Act. Both courts ruled that the determinations were arbitrary and capricious on the grounds that this approach violated the plain and unambiguous language of the Act. The courts concluded that reading the SPR language to allow protecting only a portion of a species' range is inconsistent with the Act's definition of ''species.'' The courts concluded that once a determination is made that a species (*i.e.,* species, subspecies, or DPS) meets the definition of ''endangered species'' or ''threatened species,'' it must be placed on the list in its entirety and the Act's protections applied consistently to all members of that species (subject to modification of protections through special rules under sections 4(d) and 10(j) of the Act).

In our July 10, 2008, final rule (73 FR 39790) we stated that the SPR language allowed us to list less than all members of a defined ''species'' and we amended the listing for PMJM to specify that the subspecies was threatened in only the Colorado portion of its range, effectively delisting the subspecies in Wyoming. We determined that the PMJM was not likely to become endangered in the foreseeable future throughout all of its range. We based this conclusion primarily on a lack of present or

threatened impacts to the PMJM or its habitat in Wyoming. We found that PMJM populations and corresponding threats were concentrated in Colorado such that the Colorado portion of the PMJM range warranted further consideration as a SPR. Through our analysis, we determined that the Colorado portion of the range constituted a SPR and that the PMJM was threatened in this SPR. Consistent with our interpretation of the SPR phrase at that time, we amended the listing for PMJM to specify that the subspecies was threatened in only the Colorado portion of its range, effectively delisting PMJM in the Wyoming portion of its range.

Consistent with the district court decisions discussed above, and for the purposes of this finding, we now interpret the phrase ''significant portion of its range'' in the Act's definitions of ''endangered species'' and ''threatened species'' to provide an independent basis for listing; thus there are two situations (or factual bases) under which a species would qualify for listing: A species may be endangered or threatened throughout all of its range; or a species may be endangered or threatened in only a significant portion of its range. If a species is in danger of extinction throughout a significant portion of its range, the species is an ''endangered species.'' The same analysis applies to ''threatened species.'' Based on this interpretation and supported by existing case law, the consequence of finding that a species is endangered or threatened in only a significant portion of its range is that the entire species shall be listed as endangered or threatened, respectively, and the Act's protections shall be applied across the species' entire range.

We conclude, for the purpose of this finding, that interpreting the significant portion of its range phrase as providing an independent basis for listing is the best interpretation of the Act because it is consistent with the purposes and the plain meaning of the key definitions of the Act; it does not conflict with established past agency practice (*i.e.,* prior to the 2007 Solicitor's Opinion), as no consistent, long-term agency practice has been established; and it is consistent with the judicial opinions that have most closely examined this issue. This interpretation of the significant portion of its range phrase does not allow us to reach a similar conclusion for the PMJM in Colorado as we did in our 2008 final rule. Instead, as discussed below, if we find a species to be endangered or threatened in a significant portion of its range, the entire species would be listed as endangered or threatened. Having concluded that the phrase ''significant portion of its range'' provides an independent basis for listing and protecting the entire species, we next turn to the meaning of ''significant'' to determine the threshold for when such an independent basis for listing exists.

Although there are potentially many ways to determine whether a portion of a species' range is ''significant,'' we conclude for the purposes of this finding that the significance of the portion of the range should be determined based on its biological contribution to the conservation of the species. For this reason, we describe the threshold for ''significant'' in terms of an increase in the risk of extinction for the species. We conclude that a biologically based definition of ''significant'' best conforms to the purposes of the Act, is consistent with judicial interpretations, and best ensures species' conservation. Thus, for the purposes of this finding, and as explained further below, a portion of the range of a species is ''significant'' if its contribution to the viability of the species is so important that without that portion, the species would be in danger of extinction.

We evaluate biological significance based on the principles of conservation biology using the concepts of redundancy, resiliency, and representation. *Resiliency* describes the characteristics of a species and its habitat that allow it to recover from periodic disturbance. *Redundancy* (having multiple populations distributed across the landscape) may be needed to provide a margin of safety for the species to withstand catastrophic events. *Representation* (the range of variation found in a species) ensures that the species' adaptive capabilities are conserved. Redundancy, resiliency, and representation are not independent of each other, and some characteristic of a species or area may contribute to all three. For example, distribution across a wide variety of habitat types is an indicator of representation, but it may also indicate a broad geographic distribution contributing to redundancy (decreasing the chance that any one event affects the entire species), and the likelihood that some habitat types are less susceptible to certain threats, contributing to resiliency (the ability of the species to recover from disturbance). None of these concepts is intended to be mutually exclusive, and a portion of a species' range may be determined to be ''significant'' due to its contributions under any one or more of these concepts.

For the purposes of this finding, we determine if a portion's biological contribution is so important that the portion qualifies as ''significant'' by asking whether *without that portion,* the representation, redundancy, or resiliency of the species would be so impaired that the species would have an increased vulnerability to threats to the point that the overall species would be in danger of extinction (*i.e.,* would be ''endangered''). Conversely, we would not consider the portion of the range at issue to be ''significant'' if there is sufficient resiliency, redundancy, and representation elsewhere in the species' range that the species would not be in danger of extinction throughout its range if the population in that portion of the range in question became extirpated.

We recognize that this definition of ''significant'' (a portion of the range of a species is ''significant'' if its contribution to the viability of the species is so important that without that portion, the species would be in danger of extinction) establishes a threshold that is relatively high. On the one hand, given that the consequences of finding a species to be endangered or threatened in a significant portion of its range would be listing the species throughout its entire range, it is important to use a threshold for ''significant'' that is robust. It would not be meaningful or appropriate to establish a very low threshold whereby a portion of the range can be considered ''significant'' even if only a negligible increase in extinction risk would result from its loss. Because nearly any portion of a species' range can be said to contribute some increment to a species' viability, use of such a low threshold would require us to impose restrictions and expend conservation resources disproportionately to conservation benefit: Listing would be rangewide, even if only a portion of the range of minor conservation importance to the species is imperiled. On the other hand, it would be inappropriate to establish a threshold for ''significant'' that is too high. This would be the case if the standard were, for example, that a portion of the range can be considered ''significant'' only if threats in that portion result in the entire species' being currently endangered or threatened. Such a high bar would not give the significant portion of its range phrase independent meaning, as the Ninth Circuit held in *Defenders of Wildlife* v. *Norton,* 258 F.3d 1136 (9th Cir. 2001).

The definition of ''significant'' used in this finding carefully balances these concerns. By setting a relatively high threshold, we minimize the degree to which restrictions will be imposed or

resources expended that do not contribute substantially to species conservation. But, we have not set the threshold so high that the phrase ''in a significant portion of its range'' loses independent meaning. Specifically, we have not set the threshold as high as it was under the interpretation presented by the Service in the *Defenders of Wildlife* v. *Norton,* 258 F.3d 1136 (9th Cir. 2001), litigation. Under that interpretation, the portion of the range would have to be so important that current imperilment there would mean that the species would be *currently* imperiled everywhere. Under the definition of ''significant'' used in this finding, the portion of the range need not rise to such an exceptionally high level of biological significance. (We recognize that if the species is imperiled in a portion that rises to that level of biological significance, then we should conclude that the species is in fact imperiled throughout all of its range, and that we would not need to rely on the significant portion of its range language for such a listing.) Rather, under this interpretation we ask whether the species would be endangered everywhere without that portion, *i.e.,* if that portion were completely extirpated. In other words, the portion of the range need not be so important that even the species being in danger of extinction in that portion would be sufficient to cause the species in the remainder of the range to be endangered; rather, the *complete extirpation* (in a hypothetical future) of the species in that portion would be required to cause the species in the remainder of the range to be endangered.

The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that have no reasonable potential to be significant or to analyzing portions of the range in which there is no reasonable potential for the species to be endangered or threatened. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that: (1) The portions may be ''significant,'' *and* (2) the species may be in danger of extinction there or likely to become so within the foreseeable future. Depending on the biology of the species, its range, and the threats it faces, it might be more efficient for us to address the significance question first or the status question first. Thus, if we determine that a portion of the range is not ''significant,'' we do not need to determine whether the species is endangered or threatened there; if we determine that the species is not endangered or threatened in a portion of its range, we do not need to determine if that portion is ''significant.'' In practice, a key part of the determination that a species is in danger of extinction in a significant portion of its range is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats to the species occurs only in portions of the species' range that clearly would not meet the biologically based definition of ''significant,'' such portions will not warrant further consideration.

If a species has been found to meet the definition of ''threatened species'' throughout its range, as we have found for PMJM, we must then analyze whether there are any significant portions of the range that meet the definition of ''endangered species.'' If the subspecies is determined to be ''endangered'' within the ''significant'' portion of the range, then the entire subspecies should be listed as ''endangered.'' We consider the ''range'' of the PMJM to include portions of four counties (Albany, Laramie, Platte, and Converse) in Wyoming and portions of seven counties (Boulder, Douglas, El Paso, Elbert, Jefferson, Larimer, and Weld) in Colorado.

To determine whether the PMJM could be considered an endangered species in a ''significant portion of its range,'' we reviewed the best available scientific information with respect to the geographic concentration of threats and the significance of portions of the range to the conservation of the species. We evaluated whether substantial information indicated (i) The threats are so concentrated in any portion of the species' range that the species may be currently in danger of extinction in that portion; and (ii) whether those portions may be significant to the conservation of the species. Our rangewide review of the species concluded that the PMJM is a threatened species throughout its range. As described above, to establish whether any areas may warrant further consideration, we reviewed our analysis of the five listing factors to determine whether any of the potential threats identified were so concentrated that some portion of the PMJM's range may be in danger of extinction now or in the foreseeable future.

We found that threats occur throughout the PMJM's range, in both Colorado and Wyoming, but are more concentrated in Colorado. These threats include, but are not limited to: Wildfire, drought, climate change, small populations, and the inadequacy of existing regulations. We identified the continued decline in the extent and quality of habitat as the primary threat to the PMJM. Activities resulting in this decline, include, but are not limited to: Residential and commercial development, transportation projects, hydrologic changes, and aggregate mining. Additionally, we found that many of these threats act cumulatively to further reduce the extent and quality of PMJM habitat now and in the future. Although threats occur throughout the PMJM's range, human population projections suggest that the magnitude of many of these threats will increase over time more in Colorado than Wyoming. For instance, Colorado's human population will grow more than populations in Wyoming, suggesting that threats associated with development, transportation, and hydrologic changes will be greater in Colorado than Wyoming. Given this concentration of threats in Colorado, we analyzed whether the Colorado portion of the PMJM's range meets the definition of ''significant.'' Because the Colorado portion of the range comprises the majority of the PMJM population, if this portion were to become extirpated, it is likely that the remaining portion in Wyoming would be imperiled due to its small size and the continued presence of threats. In other words, the representation, redundancy, or resiliency of the remaining, smaller PMJM populations in Wyoming following the extirpation of the PMJM in Colorado would be so impaired that the subspecies would have an increased vulnerability to threats to the point that the overall species would be in danger of extinction (*i.e.,* would be ''endangered''). Therefore, the Colorado portion of the range meets the definition of ''significant.''

After determining that Colorado represents a significant portion of the PMJM's range, we analyzed whether threats rise to a level such that the subspecies is currently in danger of extinction, or ''endangered,'' in Colorado. We determined that they do not, because none of those threats, either independently or collectively, reduced, destroyed, or fragmented habitats such that the PMJM is currently in danger of extinction in Colorado. While these threats continue and may have increased since our original listing, we have no information to indicate that populations declined or the threats increased such that the PMJM is

currently in danger of becoming extinct in Colorado. Although capture rates are low and populations have declined, trapping surveys continue to capture the PMJM in habitats previously identified as occupied. Therefore, the available information suggests that the PMJM is not currently in danger of becoming extinct in Colorado, but remains threatened throughout its range as described above in Factors A through E.

Our review of the best available scientific and commercial information indicates that the PMJM is likely to become endangered within the foreseeable future throughout all of its range. Therefore, we find that delisting the PMJM under the Act is not warranted at this time. We request that you submit any new information concerning the status of, or threats to, the PMJM to our Colorado Fish and Wildlife Office (see **ADDRESSES** section) whenever it becomes available. New information will help us monitor the status of the PMJM and contribute to its conservation and recovery.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* at Docket No. FWS–R6–ES–2012–0095 and upon request from the Colorado Field Office (see **ADDRESSES**).

Authors

The primary authors of this document are staff located at the Colorado Field Office (see **ADDRESSES**).

Dated: May 13, 2013.

Stephen Guertin,

Deputy Director, Fish and Wildlife Service

[FR Doc. 2013–12387 Filed 5–23–13; 8:45 am]

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Part IV

Department of State

Office of the Chief of Protocol; Gifts to Federal Employees From Foreign Government Sources Reported to Employing Agencies in Calendar Year 2010; Notice

DEPARTMENT OF STATE

[Public Notice 8331]

Office of the Chief of Protocol; Gifts to Federal Employees from Foreign Government Sources Reported to Employing Agencies in Calendar Year 2010

The Department of State submits the following comprehensive listing of the statements which, as required by law, Federal employees filed with their employing agencies during calendar year 2010 concerning gifts received from foreign government sources. The compilation includes reports of both tangible gifts and gifts of travel or travel expenses of more than minimal value, as defined by statute. Also, included are gifts received in previous years including one gift in 2003, two gifts in 2005, one gift in 2006, five gifts in 2007, seven gifts in 2008, 72 gifts in 2009, and eleven gifts with unknown dates of receipt. These latter gifts are being reported in 2010 as the Office of the Chief of Protocol, Department of State, did not receive the relevant information to include them in earlier reports.

Publication of this listing in the **Federal Register** is required by Section 7342(f) of Title 5, United States Code, as added by Section 515(a)(1) of the Foreign Relations Authorization Act, Fiscal Year 1978 (Pub. L. 95–105, August 17, 1977, 91 Stat. 865).

Dated: May 3, 2013.

Patrick F. Kennedy,

Under Secretary for Management, Department of State.

AGENCY: THE WHITE HOUSE—EXECUTIVE OFFICE OF THE PRESIDENT

[Report of Tangible Gifts Furnished by The White House]

Name and title of person accepting the gift on behalf of the U.S. Government.	Gift, date of acceptance on behalf of the U.S. Government., estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Barack Obama, President of the United States.	Four books. Fiorentina Italian leather backgammon set, presented in a 17″ × 9″ presentation box. Baccarat crystal figurine, presented in a 7″ × 4.5″ red presentation box. Thinkashmir Scialli Charles black cashmere shawl. Plush stuffed animal. Two framed photo prints from the Providence Picture Frame Company. 28″ × 23″ dark brown wicker basket with white and red-colored bow tied to handle. Three scented Persian candles in individual 5″ × 3″ white boxes. Rec'd—2/1/2009. Est. Value—$2,045.00. Disposition—Archives Foreign; Perishable items handled pursuant to U.S. Secret Service policy.	His Majesty Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah ibni Al-Marhum Sultan Haji Omar 'Ali Saifuddien Sa'adul Khairi Waddien, Sultan and Yang Di-Pertuan of Brunei Darussalam.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	12.75″ × 7″ cylindrical ''Franz Collection'' vase featuring high relief blue iris leaves against a cream color background. Rec'd—4/1/2009. Est. Value—$1,000.00. Disposition—Archives Foreign.	His Excellency Hu Jintao, President of the People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	16.5″ × 12″ Pineider brown leather briefcase embossed with seal of the 2009 G8 Summit with a yellow dust bag and black handling gloves. Navy silk tie. Plastic watch. Book, title: ''L'Aquila: Saving an Art City.'' Office supplies with 2009 G8 Summit seal. Book, title: ''G8 Now''. Rec'd—7/1/2009. Est. Value—$3,007.00. Disposition—Archives Foreign.	His Excellency Silvio Berlusconi, Prime Minister of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	Four bottles of tequila, presented in display boxes. Wooden trunk containing a silver ark with a decorative ceramic design on the front and silver bells on each side. Rec'd—8/9/2009. Est. Value—$1,880.00. Disposition—Archives Foreign; Perishable Items Handled Pursuant to U.S. Secret Service Policy.	The Honorable Dr. Alfonso Petersen, Mayor of Guadalajara, Jalisco, United Mexican States.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	26″ × 32.5″ framed portrait of President Obama. Rec'd—9/30/2009. Est. Value—$1,200.00. Disposition—Archives Foreign.	His Excellency Asif Ali Zardari, President of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	16″ × 23.75″ metal panel with cityscape view of Singapore, presented in a wooden box with a plaque on the top that reads ''APEC Singapore 2009.'' 9.5″ × 6.75″ × 2.75″ bronze abstract sculpture in a braided motif inscribed, ''From the 2009 APEC Conference in Singapore,'' presented in a fitted wooden presentation box. Rec'd—11/1/2009. Est. Value—$9,000.00. Disposition—Archives Foreign.	His Excellency Lee Hsien Loong, Prime Minister of the Republic of Singapore.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: THE WHITE HOUSE—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts Furnished by The White House]

Name and title of person accepting the gift on behalf of the U.S. Government.	Gift, date of acceptance on behalf of the U.S. Government., estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Barack Obama, President of the United States.	Three hardcover books. Two paperback books. Mara Fine Silver silver-plated tea caddie. 64 oz. fluted silver-plated pitcher. 9″ Cricklewood crystal oval vase. 24″ diameter tin plated copper tray. 4.5″ bronze Sona vessel with gold finish and a blackened-aluminum resting ring. Knit purple blanket with orange and green fabric. 16″ × 24″ black tray Rec'd—12/28/2009 Est. Value—$1,758.00. Disposition—Archives Foreign.	His Majesty Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah ibni Al-Marhum Sultan Haji Omar 'Ali Saifuddien Sa'adul Khairi Waddien, Sultan and Yang Di-Pertuan of Brunei Darussalam.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	8″ × 10″ Christolfe silver picture frame with a photograph of President Obama at a table with officials of the Kingdom of Bahrain. Rec'd—1/3/2010. Est. Value—$430.00. Disposition—Archives Foreign.	Her Excellency Houda Nonoo, Ambassador of the Kingdom of Bahrain to the United States.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	6.25″ × 6.25″ silver plate engraved with royal signature, in blue presentation box. Rec'd—2/17/2010. Est. Value—$660.00. Disposition—Archives Foreign.	His Majesty the King Juan Carlos and Her Majesty Queen Sophia, King and Queen of Spain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	30″ × 54″ multicolored Tibetan scroll depicting a Buddhist deity on a gold-colored inlay. 26″ × 124″ white-patterned Tibetan shawl. 5.75″ × 7.5″ silver and cream-colored cardstock with written inscription. Rec'd—2/18/2010. Est. Value—$1,410.00. Disposition—Archives Foreign.	His Holiness the Dalai Lama	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	Four piece metal sculpture of Don Quixote and Sancho Panza on horses, by Alfredo Melara Farfan. Rec'd—3/8/2010. Est. Value—$1,000.00. Disposition—Archives Foreign.	His Excellency Mauricio Funes and Mrs. Vanda Pignato, President and Spouse of the Republic of El Salvador.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	Two first edition volumes of William Yates books, published in 1906 and 1907. Rec'd—3/16/2010. Est. Value—$357.00. Disposition—Archives Foreign.	His Excellency Brian Cowen, Taoiseach of Ireland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	Anthology of Irish poetry, signed by six Irish poets. Rec'd—3/17/2010. Est. Value—$1,545.00. Disposition—Archives Foreign.	The Arts Council of Ireland ...	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	312″ × 117″ burgundy and red carpet with intricate patterns and cream-colored fringe. Rec'd—3/28/2010. Est. Value—$2,000.00. Disposition—Archives Foreign.	His Excellency Hamid Karzai, President of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	Three bottles of 1961 Chateau Bages wine. Two 9″ × 13″ leather folders with facsimile letters of credece presented by Benjamin Franklin to Louis XVI, King of France, in 1778 and facsimile letters from Benjamin Franklin to Charles Gravier De Vergennes, dated 1781. Rec'd—3/30/2010. Est. Value—$2,150.00. Disposition—Archives Foreign; Perishable Items Handled Pursuant to U.S. Secret Service Policy.	His Excellency Nicolas Sarkozy and Mrs. Carla Bruni-Sarkozy, President and First Lady of the French Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	Two 4″ Imperial porcelain painted eggs with porcelain bases, presented in yellow presentation boxes. Book, title: "An Attempt at a Pictorial Account of a Trip Across North America". Rec'd—4/8/2010. Est. Value—$2,080.00. Disposition—Archives Foreign.	His Excellency Dmitry Medvedev, President of the Russian Federation.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	14″ hand-blown Moser glass plate with 24-carat gold border. Rec'd—4/8/2010. Est. Value—$1,100.00. Disposition—Archives Foreign.	His Excellency Vaclav Klaus, President of the Czech Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	Chris Aire gold cufflinks with centered citrine gemstone bordered by band of diamonds. Rec'd—4/11/2010. Est. Value—$8,315.00. Disposition—Archives Foreign.	His Excellency Goodluck Ebele Azikiwe Jonathan, Vice President of the Federal Republic of Nigeria.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: THE WHITE HOUSE—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts Furnished by The White House]

Name and title of person accepting the gift on behalf of the U.S. Government.	Gift, date of acceptance on behalf of the U.S. Government., estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Barack Obama, President of the United States.	Creative Aurvana Live! black headphones. Creative pocket video camera. Creative noise cancelling earbud headphones. Rec'd—4/12/2010. Est. Value—$380.00. Disposition—Archives Foreign.	His Excellency Lee Hsien Loong, Prime Minister of the Republic of Singapore.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	Longines silver-colored watch with brown band, presented in brown presentation box. Red leather dog collar and leash with silver-colored fastenings Rec'd—4/14/2010. Est. Value—$2,604.00. Disposition—Archives Foreign.	Her Excellency Doris Leuthard, President of the Swiss Confederation.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	12.5″ Jun purple and gray porcelain vase with a round wooden base, in a wooden presentation box. Rec'd—4/14/2010. Est. Value—$400.00. Disposition—Archives Foreign.	His Excellency Hu Jintao, President of the People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	9.5″ bowl made of silver, jasper, kahalong, and fianit, in a green and tan presentation box. Rec'd—4/14/2010. Est. Value—$3,200.00. Disposition—Archives Foreign.	His Excellency Nursultan Nazarbayev, President of the Republic of Kazakhstan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	Three 13″ glass vases with gold-colored stripes and wooden toppers, in black presentation boxes. Rec'd—4/22/2010. Est. Value—$2,670.00. Disposition—Archives Foreign.	His Majesty King Abdullah II ibn Al Hussein, King of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	8″ × 5″ sterling silver bowl, presented in a green presentation box Rec'd—4/23/2010. Est. Value—$440.00. Disposition—Archives Foreign.	His Excellency Yousef Raza Gilani, Prime Minister of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	Gena black three-piece suit Rec'd—4/26/2010. Est. Value—$510.00. Disposition—Archives Foreign.	The Honorable Ivan Knez, Mayor of Biograd of Croatia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	37″ × 29″ copper fire screen of an eagle, made by Gastone craftsmen Rec'd—4/28/2010. Est. Value—$484.00. Disposition—Archives Foreign.	Her Excellency Inonge Mbikusita-Lewanika, Ambassador of the Republic of Zambia to the United States.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	9.5″ blue glass bird, hand-blown by Iittala craftsmen. Rec'd—5/4/2010. Est. Value—$445.00. Disposition—Archives Foreign.	Her Excellency Tarja Halonen, President of the Republic of Finland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	16″ × 16″ walnut chessboard with walnut and sterling silver chess pieces, presented in a wooden presentation box. Book, title: ''He Flies Through the Air with the Greatest of Ease.'' 9.5″ dark green bust of author William Saroyan on brown stone base with inscription, presented in a wooden presentation box. Bottle of 100 year old Ararat brandy, presented in wooden presentation box. Rec'd—5/4/2010. Est. Value—$2,985.00. Disposition—Archives Foreign; Perishable items handled pursuant to U.S. Secret Service policy.	His Excellency Serzh Sargsian, President of the Republic of Armenia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	80″ × 148″ brown and blue patterned rug. Rec'd—5/12/2010. Est. Value—$2,000.00. Disposition—Archives Foreign.	His Excellency Hamid Karzai, President of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	32.25″ × 24.5″ watercolor of Arabic calligraphy by artist Samir Sayegh. Book, title: ''Memoirs of Letters''. Rec'd—5/24/2010. Est. Value—$4,520.00. Disposition—Archives Foreign.	His Excellency Saad Hariri, Prime Minister of the Republic of Lebanon.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	54″ × 12″ Kuna vicuna-brown scarf, presented in wooden presentation case with a silver label. Rec'd—6/1/2010. Est. Value—$584.00. Disposition—Archives Foreign.	His Excellency Alan Perez, President of the Republic of Peru.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	17″ sugar maple-wood bowl signed by Don Thur. 24″ × 16″ handcrafted glass tree in a green frame. Rec'd—6/25/2010. Est. Value—$1,000.00. Disposition—Archives Foreign.	The Right Honorable Stephen Harper, P.C., M.P., Prime Minister of Canada.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: THE WHITE HOUSE—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts Furnished by The White House]

Name and title of person accepting the gift on behalf of the U.S. Government.	Gift, date of acceptance on behalf of the U.S. Government., estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Barack Obama, President of the United States.	20.75″ × 32″ framed silver-colored metal panel with an etching depicting a city in Laos. Rec'd—6/28/2010. Est. Value—$350.00. Disposition—Archives Foreign.	His Excellency Mrs. Seng Soukhathivong and Mrs. Somdy Soukhathivong, Ambassador of the Lao People's Democratic Republic to the United Statea and Spouse.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	18.5″ clock with a gold-colored horse and two palm trees on a green and silver-colored marble base, in a green presentation box. Rec'd—6/28/2010. Est. Value—$500.00. Disposition—Archives Foreign.	King Abdullah bin Abd al-Aziz Al Saud, Custodian of the Two Holy Mosques, King of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	Three Bijan silk tie sets with matching handkerchiefs in silk presentation boxes. Five Brioni silk tie sets with matching handkerchiefs in red presentation boxes. Black Brioni silk tie in a red presentation box. Stefano Ricci silk tie in a red and black presentation box. Blue and pink Stefano Ricci silk tie with matching handkerchief in a red and black presentation box. Five silk ties with matching handkerchiefs in white presentation boxes. Two striped Eddia silk ties in pink presentation boxes. Blue Francesco Smalto silk tie in a pink presentation box. Blue Lanvin silk tie with matching handkerchief in a blue presentation box. 20″ × 14″ × 8″ gray briefcase. Rec'd—6/29/2010. Est. Value—$5,255.00. Disposition—Archives Foreign.	King Abdullah bin Abd al-Aziz Al Saud, Custodian of the Two Holy Mosques, King of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	11″ × 9″ "Expo 2010 Shanghai China" blue vase with a floral pattern and image of the Shanghai skyline, in a presentation box. 10″ × 8.5″ framed "Expo 2010 Shanghai China, Colorful China Pavilion Pin Set" Rec'd—7/4/2010. Est. Value—$629.00. Disposition—Archives Foreign.	The Government of the People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	16″ × 10.5″ deluxe edition of hardcover book, title: "Great is Peace" Rec'd—9/1/2010. Est. Value—$780.00. Disposition—Archives Foreign.	His Excellency Binyamin Netanyahu, Prime Minister of the State of Israel.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	11″ × 6.5″ silver jewelry box with red and black mosaic on top. Book, title: "The Mosaics of Jordan" Rec'd—9/1/2010. Est. Value—$400.00. Disposition—Archives Foreign.	His Majesty King Abdullah II ibn Al Hussein, King of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	26″ × 32.5″ framed portrait of President Barack Obama Rec'd—9/3/2010. Est. Value—$1,200.00. Disposition—Archives Foreign.	His Excellency Asif Ali Zardari, President of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	4.5″ × 3.5″ Bible in Arabic with metallic cross on cover. Book, title: "Our Common Christian-Islamic Heritage." 16″ × 16″ white tote bag. Rec'd—9/18/2010. Est. Value—$356.00. Disposition—Archives Foreign.	Dr. Laila Takla, Chair of the International Affairs Committee at the Egyptian Council of Human Rights.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	9.5″ sterling silver Tombac Ottoman Collection portable writing set with pen and ink case. 11″ × 5″ 24-carat gold plated Tombac Ottoman Collection bowl. Rec'd—9/22/2010. Est. Value—$1,360.00. Disposition—Archives Foreign.	His Excellency Abdullah Gül, President of the Republic of Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	Creative ZEN X-Fi 2 64GB MP3 player and earphones. OSIM uGoGo electronic pulse massager Rec'd—9/24/2010. Est. Value—$550.00. Disposition—Archives Foreign.	His Excellency Lee Hsien Loong and Madam Ho Ching, Prime Minister of the Republic of Singapore and Spouse.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	White "Flying Pigeon" electric bicycle. Rec'd—9/27/2010. Est. Value—$1,400.00. Disposition—Archives Foreign.	His Excellency Wan Gang, Minister of Science and Technology of the People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: THE WHITE HOUSE—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts Furnished by The White House]

Name and title of person accepting the gift on behalf of the U.S. Government.	Gift, date of acceptance on behalf of the U.S. Government., estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Barack Obama, President of the United States.	Set of two brass and crystal tea cups, presented in a blue velvet display case. 72″ × 49″ Garabagh Magical Knots Azerbaijani rug made by AZER–ILME Co. Ltd., presented in a matching red carrying case with inscription. Book, title: ''Azar-ilma''. Rec'd—9/28/2010. Est. Value—$940.00. Disposition—Archives Foreign.	His Excellency Dr. Ilham Aliyev, President of the Republic of Azerbaijan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	18″ × 62″ embroidered beige tapestry with red floral motif, presented in a maroon cylinder with a gold and red embroidered crest. Rec'd—10/10/2010. Est. Value—$360.00. Disposition—Archives Foreign.	His Excellency Viktor Yanukovych, President of Ukraine.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	White blouse with beaded floral design, in a maroon velvet presentation box. Rec'd—10/14/2010. Est. Value—$360.00. Disposition—Archives Foreign.	His Excellency Viktor Yanukovych, President of Ukraine.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	12″ silver-colored tray with dragon-shaped handle, presented in a blue presentation box. Rec'd—10/20/2010. Est. Value—$590.00. Disposition—Archives Foreign.	His Excellency Abhisit Vejjajiva, Prime Minister of the Kingdom of Thailand.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	12″ × 8″ brown accessory box with four silver-plated bulls on bottom. Rec'd—10/29/2010. Est. Value—$650.00. Disposition—Archives Foreign.	His Excellency Benigno S. Aquino III, President of the Republic of the Philippines.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	10 Blu-Ray disc set with leather cases, presented in a 32″ × 17″ wooden display box Rec'd—11/1/2010. Est. Value—$500.00. Disposition—Archives Foreign.	His Excellency Dmitry Medvedev, President of the Russian Federation.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	Book, title: ''The Life of Mahatma Gandhi,'' by Louis Fisher. 28″ × 15″ bronze-colored bust of Mahatma Gandhi. Brown and gold-colored photo album. 13″ × 15″ gold-colored ''Diviniti'' wooden frame and plaque of Rashtrapti Bhawan New Delhi India. 41″ × 57″ portrait of President Obama. Rec'd—11/8/2010. Est. Value—$7,404.00. Disposition—Archives Foreign.	Her Excellency Pratibha Patil, President of the Republic of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	30″ × 42″ painting of bodhisattva on black and gold-colored scroll, presented in a 36″ blue presentation box. Red and gold-colored silk three piece Sari. 6″ × 9″ red and gold-colored beaded Sari handbag. 11″ × 13″ beige and gold-colored photo album. 13″ × 9″ blue booklet with floral pattern and gold plated image of Parliament. Rec'd—11/8/2010. Est. Value—$1,015.00. Disposition—Archives Foreign.	Ms. Meira Kumar, Speaker of Lok Sabha of the Republic of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	8″ × 4″ Verizon Samsung Galaxy Tab SCH–1800. Black Samsung headphones. Black Samsung Galaxy Tab stereo video cable. Black Samsung Galaxy Tab USB charging data cable. 5″ × 9″ brown leather case. 5″ × 9″ black leather snap-on case. Black Samsung Galaxy Tab charger. 28″ × 28″ red and blue tapestry with decorative design. Rec'd—11/10/2010. Est. Value—$988.00. Disposition—Archives Foreign.	His Excellency Lee Myung-bak, President of the Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	4″ × 7″ silver-plated box with floral design and gold-colored flower with red stone, presented in a blue velvet presentation box. Book, title: ''Najib: Beginning of a Legacy Commemorating One Year as Prime Minister of Malaysia'' Rec'd—11/12/2010. Est. Value—$1,564.00. Disposition—Archives Foreign.	His Excellency YAB Dato' Sri Haji Mohd Najib bin Tun Haji Abdul Razak, Prime Minister of Malaysia.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: THE WHITE HOUSE—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts Furnished by The White House]

Name and title of person accepting the gift on behalf of the U.S. Government.	Gift, date of acceptance on behalf of the U.S. Government., estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Barack Obama, President of the United States.	Two wooden ''Asta Kriya'' shadow puppets. Two 19″ × 16″ framed photographs commemorating the First Family's visit to Indonesia. Three-piece red and gold colored medals, presented in a wooden presentation case with an honorary diploma. Three shirts. Rec'd—11/13/2010. Est. Value—$1,403.00. Disposition—Archives Foreign.	His Excellency Dr. H. Susilo Bambang Yudhoyono, President of the Republic of Indonesia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	5″ titanium ''SUSGallery'' cup. 4″ titanium ''SUSGallery'' cup. 3.5″ titanium ''SUSGallery'' cup. 2.5″ titanium ''SUSGallery'' cup, presented in a wooden presentation box. 32″ × 27″ framed facsimile of letter written by President Abraham Lincoln to His Majesty the Tycoon of Japan in 1861. Rec'd—11/14/2010. Est. Value—$1.325.00. Disposition—Archives Foreign; Facsimile Retained for Offical Display.	His Excellency Naoto Kan, Prime Minister of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	W&J Graham's Port 1961 Single Harvest Tawny Port set, containing wine in red leather bottle holder and an informational booklet, presented in a rectangular wooden box that has ''Graham's Single Harvest 1961'' carved into top and sides. Set of four Atlantis crystal wine glasses and one crystal decanter presented in 11″ × 23″ × 10″ wooden box. Two bottles of Quinta de Noval 2008 Vintage Porto wine. Bronze water-dog statue on wooden base Rec'd—11/19/2010. Est. Value—$1,140.78 Disposition—Archives Foreign; Box is in White House Gift Office; Perishable Goods Handled Pursuant to U.S. Secret Service Policy.	His Excellency Professor Aníbal Cavaco Silva, President of the Portuguese Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	Antique gold-colored Museu de Marinha Portugal astrolabe with inscribed wooden stand, in a wooden presentation box Rec'd—11/19/2010. Est. Value—$425.00. Disposition—Archives Foreign.	His Excellency José Socrates, Prime Minister of Portugal.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	''Lustre'' necklace with 1″ × 1″ inscribed ''Globe Crest'' pendant. 5 DVD box set, title: ''The Day the Universe Changed.'' 21″ × 12″ black, unbranded, rubber container with rubber handles. 1.5 quart ''Heath'' brown teapot with copper handle and two matching mugs. 19″ × 13″ × 10″ wooden trunk with metal decoration on top. Somma grey blanket with darker grey floral pattern, presented in a brown cloth display box. Book on the Earth's ecosystems. One Fanciful ''Bountiful Buffet'' gift basket. 11″ × 5.5″ Tozai brown glass vase with leaf designs. 12″ × 8″ ceramic jar with 13 ounces of ''Di Camillo'' biscotti. ''Bonifanti'' Panettone bread. Luci de Stelle 1000g, in blue hexagonal box. Harney & Sons whole leaf tea, in silk satchels. Five 2.5 ounce Modern Alchemy votive candles, in black presentation box. Black display box containing scented D.L. & Company ''Gingembre'' candle in glass container. Island Heritage tin of chocolate covered macadamia nut shortbread cookies. Rec'd—12/1/2010. Est. Value—$1,932.00. Disposition—Archives Foreign; Perishable Items Handled Persuant to U.S. Secret Service Policy.	His Majesty Sultan Haji Hassanal Bolkiah Mu'izzadin Waddaulah ibni Al-Marhum Sultan Haji Omar 'Ali Saifuddien Sa'adul Khairi Waddien, Sultan and Yang Di-Pertuan of Brunei Darussalam.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: THE WHITE HOUSE—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts Furnished by The White House]

Name and title of person accepting the gift on behalf of the U.S. Government.	Gift, date of acceptance on behalf of the U.S. Government., estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Barack Obama, President of the United States.	12″ round silver-colored tree statue with scented black decorations, in a red presentation box. Rec'd—12/1/2010. Est. Value—$585.00. Disposition—Archives Foreign.	The Honorable Mohammed Salah Tekaya, Ambassador of the Republic of Tunisia to the United States.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	4.5″ × 6″ black and white ceramic Cmielow dog figurine, presented in a wooden presentation box. Book, title: ''Fryderyk Chopin.'' 2.5″ × 3″ circular miniature portrait of Chopin in a Burl Veneer frame. Two holiday ornaments. Rec'd—12/8/2010. Est. Value—$594.00. Disposition—Archives Foreign; Ceramic Dog Retained by President Obama.	His Excellency Bronislaw Komorowski, President of the Republic of Poland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	5.5″ × 5″ × 1″ lacquered wooden box with ''OSCE Kazakhstan 2010'' label, containing a 2.5″ diameter medallion of 199.37 gram gold alloy. Rec'd—12/15/2010. Est. Value—$1,200.00. Disposition—Archives Foreign.	His Excellency Nursultan Nazarbayev, President of the Republic of Kazakhstan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	One titanium cup presented in wooden box with ''APEC 2010, Naoto Kan, Prime Minster of Japan'' imprinted on top of cover. Black Fujifilm FinePix Real 3D W3 digital camera in a blue and black cardboard box. Black Fujifilm FinePix Real 3D V1 Digital Viewer, presented in black and blue cardboard box. Rec'd—12/15/2010. Est. Value—$1896.81 Disposition—Archives Foreign.	His Excellency Naoto Kan, Prime Minister of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	Two 10″ × 12″ miniature paintings depicting a small indoor gathering, presented in blue velvet presentation boxes. Three gold-colored cloth ornaments. Rec'd—12/17/2010. Est. Value—$710.00. Disposition—Archives Foreign.	Her Excellency Meera Shankar, Ambassador of the Republic of India to the United States.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	31″ × 26″ black and tan leather artwork of birds, trees, and other objects in a gold frame. Rec'd—12/25/2010. Est. Value—$485.00. Disposition—Archives Foreign.	Mr. Rakhman Adanov, First Secretary of the Embassy of the Kyrgyz Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States.	20″ × 16.5″ high purple and yellow leather and wooden ottoman with brown wooden circular legs containing 16″ × 6″ and 14″ × 4″ purple and yellow wooden containers. Six bottles of Vieux Magon wine. Eight bottles of Tunisian Olive Oil. Box of dates. Rec'd—12/30/2010. Est. Value—$910.00. Disposition—Archives Foreign; Perishable Items Handled Pursuant to U.S. Secret Service Policy.	His Excellency Zine El-Abidine Ben Ali, President of the Republic of Tunisia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States, and First Lady Michelle Obama.	4.5″ × 5.5″ gold-colored religious relic with a stand, in a brown wooden presentation case. Rec'd—7/1/2009 Est. Value—$680.00. Disposition—Archives Foreign.	Unknown Government Official, Russian Federation.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States, and First Lady Michelle Obama.	9.5″ × 12″ wood-framed photograph of Her Majesty and His Royal Highness. Set of two books on Danish history. Rec'd—11/10/2009. Est. Value—$340.00. Disposition—Archives Foreign.	Her Majesty Queen Margrethe II, Queen of Denmark and His Royal Highness Prince Henrik of Denmark.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States, and First Lady Michelle Obama.	Two 11.5″ R & Y Augousti stingray and gold-colored candlesticks, presented in a stingray and mother of pearl presentation box. Two 4.5″ × 4.5″ stingray and mother of pearl jewelry boxes, in a stingray and mother of pearl presentation box. Rec'd—1/1/2010. Est. Value—$1,150.00. Disposition—Archives Foreign.	His Majesty King Abdullah II ibn Al Hussein and Her Majesty Queen Rania Al Abdullah, King and Queen of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States, and First Lady Michelle Obama.	32″ × 34″ traditional hand-woven portrait of President Obama. 32″ × 34″ traditional hand-woven portrait of First Lady Michelle Obama. Rec'd—4/12/2010. Est. Value—$450.00. Disposition—Archives Foreign.	His Excellency YAB Dato' Sri Haji Mohd bin Tun Haji Abdul Razak, Prime Minister of Malaysia.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: THE WHITE HOUSE—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts Furnished by The White House]

Name and title of person accepting the gift on behalf of the U.S. Government.	Gift, date of acceptance on behalf of the U.S. Government., estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Barack Obama, President of the United States, and First Lady Michelle Obama.	Book, title: ''Exquisite Indonesia: The Finest Crafts of the Archipelago.'' 80″ × 152″ red, blue, and tan batik cloth, presented in a brown presentation box. 80″ × 152″ red, teal, and tan batik cloth with large bird design, in a brown presentation box. Rec'd—4/19/2010. Est. Value—$390.00. Disposition—Archives Foreign.	His Excellency Dr. Boediono, Vice President of the Republic of Indonesia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States, and First Lady Michelle Obama.	40″ × 70″ black wool shawl with colorful stripes. 16″ black handbag with colorful stripes. 64″ × 28″ black lace shawl with white trim. Senegalese white shirt with black trim. Senegalese white linen robe with black accents. Pair of Senegalese white linen drawstring pants. Rec'd—6/1/2010. Est. Value—$345.00. Disposition—Archives Foreign.	Her Excellency Fatou Danielle Diagne, Ambassador of the Republic of Senegal to the United States.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States, and First Lady Michelle Obama.	83″ × 43″ framed oil painting of a carnival winter scene by K.V. Kiselev. Rec'd—6/24/2010. Est. Value—$4,000.00. Disposition—Archives Foreign.	His Excellency Dmitry Medvedev, President of the Russian Federation.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States, and First Lady Michelle Obama.	39″ × 31″ canvas of graffiti letters spray-painted on black gloss, title: ''Twenty First Century City,'' by Ben Eine. Rec'd—7/22/2010. Est. Value—$4,000.00. Disposition—Archives Foreign.	The Right Honorable David Cameron, MP, and Mrs. Samantha Cameron, Prime Minister of the United Kingdom of Great Britain and Northern Ireland and Spouse.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States, and First Lady Michelle Obama.	20″ × 20″ painting of First Family in a wooden frame with semi-precious stones and a presentation plaque Rec'd—9/24/2010. Est. Value—$950.00. Disposition—Archives Foreign.	His Excellency Mahinda Rajapaksa and Madame Shiranthi, President and First Lady of the Democratic Socialist Republic of Sri Lanka.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States, and First Lady Michelle Obama.	Two gold-colored Milla Guirst Joyeros cufflinks with Mayan designs, presented in a yellow presentation box. 10.5″ snakeskin purse with silver-colored plate and Mayan design Rec'd—10/18/2010. Est. Value—$560.00. Disposition—Archives Foreign.	His Excellency Porfirio Lobo and Mrs. Elena Rosa De Lobo, President and First Lady of the Republic of Honduras.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Barack Obama, President of the United States, and First Lady Michelle Obama.	10″ × 8″ Christofle silver photo frame, in a brown presentation box. 2″ Nieman Marcus picture frame. Rec'd—12/25/2010. Est. Value—$385.00. Disposition—Archives Foreign.	His Excellency Sheikh Salem Al-Sabah, Ambassador of the State of Kuwait to the United States.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady Michelle Obama	144″ × 40″ Da Viva multicolored cloth. 144″ × 48″ Akosombo Textilis Limited green and yellow cloth, 143″ × 47″ Prestige V.I.P orange, green, blue and gold cotton cloth. 144″ × 40″ Prestige V.I.P multicolored cloth Rec'd—7/21/2009. Est. Value—$350.00. Disposition—Archives Foreign.	Mrs. Ernestina Naadu Mills, First Lady of the Republic of Ghana.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady Michelle Obama	26″ × 32.5″ framed portrait of First Lady Michelle Obama Rec'd—9/30/2009. Est. Value—$1,200.00. Disposition—Archives Foreign.	His Excellency Asif Ali Zardari, President of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady Michelle Obama	Necklace of opaque and freshwater pearls. Rec'd—10/15/2009. Est. Value—$375.00. Disposition—Archives Foreign.	The Honorable Gina de Venecia, Member of the Philippine House of Representatives.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady Michelle Obama	Cartier 18-carat white gold pearl earrings with diamonds. Rec'd—2/1/2010. Est. Value—$6,125.00. Disposition—Archives Foreign.	His Excellency Yousef Al Otaiba, Ambassador of the United Arab Emirates.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady Michelle Obama	72″ × 144″ Thomas Fergusons Irish Linen white tablecloth, double damask with scroll design. Rec'd—3/17/2010. Est. Value—$512.00. Disposition—Archives Foreign.	Mrs. Mary Molloy, Spouse of the Taoiseach of Ireland.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: THE WHITE HOUSE—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts Furnished by The White House]

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First Lady Michelle Obama	14″ × 9″ × 4″ Le Darmanco coral and navy blue handbag with checkered design. 70″ × 32″ Le Darmanco coral and navy blue shawl with checkered design. Marie Lolita green traditional Senegalese gown with gold-colored design. 40″ × 29″ Marie Lolita green traditional Senegalese shawl. Book, title: ''Gorée Inflamed Memories.'' Orange and black necklace, handmade by Ambassador Diagne. Rec'd—3/26/2010. Est. Value—$375.00. Disposition—Archives Foreign.	Her Excellency Fatou Danielle Diagne, Ambassador of the Republic of Senegal to the United States.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady Michelle Obama	13.67″ Daum France crystal ultraviolet vase. Daum France red dragonfly crystal brooch, in a silver Daum presentation box. Rec'd—3/30/2010. Est. Value—$4,580.00. Disposition—Archives Foreign.	His Excellency. Nicolas Sarkozy and Mrs. Carla Bruni-Sarkozy, President and First Lady of the French Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady Michelle Obama	27″ × 78″ Kashmir Loom blue cashmere stole with orange design, in a blue presentation box. Rec'd—4/11/2010. Est. Value—$512.00. Disposition—Archives Foreign.	His Excellency Manmohan Singh, and Mrs. Gursharan Kaur, Prime Minister of the Republic of India, and Spouse.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady Michelle Obama	6″ gold-colored apple statue on green stone base, in a green presentation box. Rec'd—4/12/2010. Est. Value—$550.00. Disposition—Archives Foreign.	His Excellency Nursultan Nazarbayev, President of the Republic of Kazakhstan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady Michelle Obama	VeVe Collections teal handbag with sequins. Book, title: ''The Idea of Modernity in Haitian Contemporary Art.'' 22″ × 28″ acrylic painting on canvas, title: ''Guest for Life II,'' by Philippe Dodard. 18.5″ × 24″ framed painting of Haitian landscape. Rec'd—4/13/2010. Est. Value—$2,094.00. Disposition—Archives Foreign.	His Excellency René Préval and Mrs. Elisabeth Delator Préval, President and First Lady of the Republic of Haiti.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady Michelle Obama	Soledad Garcia silver necklace, in a red presentation box. Rec'd—5/19/2010. Est. Value—$475.00. Disposition—Archives Foreign.	Mrs. Margarita Zavala Gomez del Campo, First Lady of the United Mexican States.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady Michelle Obama	32″ × 70″ Dries Van Noten patterned green silk shawl. Rec'd—6/4/2010. Est. Value—$625.00. Disposition—Archives Foreign.	Her Imperial and Royal Highness Princess Astrid of Belgium, Princess of the Belgians and Archduchess of Austria-Este.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady Michelle Obama	20″ gold Pina & Grau necklace with 1″ Mallorcan cross pendant Rec'd—8/8/2010. Est. Value—$3,600.00. Disposition—Archives Foreign.	His Majesty King Juan Carlos and Her Majesty Queen Sophia, the King and Queen of Spain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady Michelle Obama	42″ × 30″ framed orange and beige etching of tree rings. Rec'd—8/9/2010. Est. Value—$600.00. Disposition—Archives Foreign.	Mrs. María Ángeles Muñoz Uriol, Mayor of Marbella, Spain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady Michelle Obama	26″ × 32.5″ framed portrait of First Lady Michelle Obama. Rec'd—9/3/2010. Est. Value—$1,200.00. Disposition—Archives Foreign.	His Excellency Asif Ali Zardari, President of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady Michelle Obama	24″ orange and black beaded silver-colored necklace with Arabic inscription. Rec'd—9/18/2010. Est. Value—$380.00. Disposition—Archives Foreign.	Dr. Laila Takla, Chair of the International Affairs Committee at the Egyptian Council of Human Rights.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady Michelle Obama	20″ multicolored necklace with ruby gemstones. Earrings with ruby, emerald, sapphire, peridot, and citrine gemstones. 20″ × 72″ burgundy and beige beaded cloth. 4″ × 20″ burgundy pillow. Box of Pelit chocolates. Rec'd—9/20/2010. Est. Value—$965.00. Disposition—Archives Foreign; Perishable Items Handled Pursuant to U.S. Secret Service Policy.	Mrs. Hayrunnisa Gül, First Lady of the Republic of Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: THE WHITE HOUSE—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts Furnished by The White House]

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First Lady Michelle Obama	3″ tall × 5″ diameter silver and lavender-colored vessel, presented in 7″ × 7″ × 4″ pink container. Rec'd—9/22/2010. Est. Value—$460.00. Disposition—Archives Foreign.	Mrs. Ban Soon-taek, Spouse of Ban Ki-Moon, Secretary-General of the United Nations.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady Michelle Obama	16″ × 14″ pink and gold-colored vest with detachable sleeves and decorative beading. Rec'd—9/22/2010. Est. Value—$440.00. Disposition—Archives Foreign.	Mrs. Nezafete Sejdiu, First Lady of the Republic of Kosovo.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady Michelle Obama	33″ × 39″ multicolored abstract painting, title: ''Married Women in Swazi Culture Attending a Cultural Event''. Rec'd—9/24/2010. Est. Value—$475.00. Disposition—Archives Foreign.	Her Majesty, The Indlovukatzi, Queen Mother of the Kingdom of Swaziland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady Michelle Obama	8″ × 14″ Helena Caballero blue purse. Rec'd—9/24/2010. Est. Value—$525.00. Disposition—Archives Foreign.	Mrs. María Clemencia Rodríguez de Santos, First Lady of the Republic of Colombia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady Michelle Obama	Agnes Santomenno pearl and gold-colored pendant and earrings. Rec'd—9/24/2010. Est. Value—$485.00. Disposition—Archives Foreign.	Mrs. Marta Linares de Martinelli, First Lady of the Republic of Panama.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady Michelle Obama	White gold diamond with blue sapphire earrings and pendant, in 4.5″ × 5″ × 1.5″ presentation box. Rec'd—9/24/2010. Est. Value—$1,080.00. Disposition—Archives Foreign.	Mrs. Shiranthi Rajapaksa, First Lady of the Democratic Socialist Republic of Sri Lanka.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady Michelle Obama	20″ × 16.5″ painting of Haitian women dressed in white with eight fruit baskets in gold-colored frame. Rec'd—9/29/2010. Est. Value—$425.00. Disposition—Archives Foreign.	Mrs. Elisabeth Delator Préval, First Lady of the Republic of Haiti.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady Michelle Obama	114″ × 35″ yellow shawl with purple and silver-colored stitching, in a decorative wooden presentation box Rec'd—10/18/2010. Est. Value—$415.00. Disposition—Archives Foreign.	Datin Paduka Seri Bin Mansor, Spouse of the Prime Minister of Malaysia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady Michelle Obama	Two 13″ × 17″ black and red scarves. 34″ gold-colored pearl necklace. 31″ × 19″ hinged double framed portraits of President Barack Obama and First Lady. Rec'd—11/8/2010. Est. Value—$2,110.00. Disposition—Archives Foreign.	Her Excellency Pratibha Patil, President of the Republic of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady Michelle Obama	7″ long silver-colored jewelry box with bird designs, in a black presentation box. Rec'd—11/8/2010. Est. Value—$460.00. Disposition—Archives Foreign.	His Excellency Manmohan Singh and Mrs. Gursharan Kaur, Prime Minister of the Republic of India, and Spouse.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady Michelle Obama	Red, white, and gold-colored apron. Red and gold-colored silk hat with floral pattern. Six copies of book, title: ''Hansik: Stories of Korean Food,'' by Kim Yoon-ok. Bottle of Sulwhasoo First Care Serum. Bottle of Sulwhasoo Balancing Water. Bottle of Sulwhasoo Balancing Emulsion. Container of Sulwhasoo Concentrated Ginseng Cream. Herbal Sulwhasoo soap, presented in colored lacquer black wooden box with mirror. 32″ × 32″ cloth, brown on one side and mint-colored on the other. 43″ × 43″ silk bojagi in blue and cream with light blue flowers embroidered in corners. 1.5″ × 38.5″ red ribbon with floral pattern. Rec'd—11/11/2010. Est. Value—$1,278.00. Disposition—Archives Foreign; Perishable items handled pursuant to U.S. Secret Service policy.	Mrs. Kim Yoon-ok, First Lady of the Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: THE WHITE HOUSE—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts Furnished by The White House]

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First Lady Michelle Obama	Two books. 36″ × 42″ blue Lenan Pearl of Silk scarf with floral design. 9″ × 14″ black box with red and gold abstract design on top and gold-colored plate inside. 42″ × 100″ black and orange scarf with floral design. Pair of orange and black custom "Air Force 1" shoes. Rec'd—11/13/2010. Est. Value—$1,658.00. Disposition—Archives Foreign.	Mrs. Hj. Ani Bambang Yudhoyono, First Lady of the Republic of Indonesia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady Michelle Obama	12″ tall blue glass and silver-colored metal container with silver-colored cords. Rec'd—12/1/2010. Est. Value—$425.00. Disposition—Archives Foreign.	Mrs. Kinza Abbou Ben Smida, Spouse of Ambassador of the Republic of Tunisia to the United States.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	7.5″ × 1.5″ sterling silver chain bracelet, in a navy presentation box. Variety of Korres liquid facial products. Rec'd—3/15/2010. Est. Value—$834.00. Disposition—Archives Foreign; Perishable items handled pursuant to U.S. Secret Service policy.	Mrs. Ada Papandreou, Spouse of the Prime Minister of the Hellenic Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	Nine paperback books and eleven hardcover books about Indonesian history and culture. Two Periplus travel maps of Indonesia. 74″ × 43″ orange and black silk tapestry. 76″ × 46″ orange and black silk tapestry. Rec'd—11/8/2010. Est. Value—$639.00. Disposition—Archives Foreign.	His Excellency Dr. H. Susilo Bambang Yudhoyono, President of the Republic of Indonesia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	Two purple Samsung compact digital cameras. Two pieces of pink decorative brocade silk fabric. Rec'd—11/19/2009. Est. Value—$740.00. Disposition—Archives Foreign.	His Excellency Lee Myung-bak, President of the Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family Children	4″ × 3″ Black Russian "MOCKBA KPEMJIb" keepsake box, presented in a red presentation box. 3″ × 2.25″ black Russian "MOCKBA KPEMJIb" keepsake box, in a red presentation box. Rec'd—7/1/2009. Est. Value—$720.00. Location—Archives Foreign.	His Excellency Dmitry Medvedev, President of the Russian Federation.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family Children	Hermes PM Skipper bracelet, light blue silk cord with silver Chaine d'Ancre. Hermes bracelet in silver and evercalf leather. 7 CDs of European music. 34 hardcover books from the "Asterix" French comic book series. DVD, title: "Mozart: L'Opera Rock" Rec'd—3/30/2010. Est. Value—$1,419.00. Location—Archives Foreign.	His Excellency Nicolas Sarkozy and Mrs. Carla Bruni-Sarkozy, President and First Lady of the French Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family Children	Two 18″ × 12″ Roots brown leather backpacks printed with "Muskoka 2010 G8 Canada.". Two messenger bags. Two frisbees. Twelve CDs. Book, title: "Me to We," two copies. Rec'd—8/3/2010. Est. Value—$718.00. Location—Archives Foreign.	The Right Honorable Stephen Harper, P.C., M.P., Prime Minister of Canada.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family Children	Two 8″ gold Pina & Grau bracelets with 0.5″ Mallorcan cross pendants. Rec'd—8/8/2010. Est. Value—$510.00. Location—Archives Foreign.	His Majesty King Juan Carlos and Her Majesty Queen Sophia, King and Queen of Spain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family Children	Four pairs of Nike shoes with Batik design. Set of Indonesian flashcards. Rec'd—11/8/2010. Est. Value—$380.00. Location—Archives Foreign.	His Excellency Dr. H. Susilo Bambang Yudhoyono, President of the Republic of Indonesia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family Children	Two books on tigers by Valmik Thapar. 46″ × 33″ brown and black painting of a tiger. Rec'd—11/9/2010. Est. Value—$1,495.00. Location—Archives Foreign.	Her Excellency Pratibha Patil, President of the Republic of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
White House Staff Member Brennan, John.	4.5″ inscribed black and gray Swiss pocket army knife. Inscribed Swiss bell with a leather strap. Rec'd—5/17/2010. Est. Value—$350.00. Location—Pending Transfer to the General Services Administration.	Dr. Markus Seiler, Director of the Swiss Federal Intelligence Service.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: THE WHITE HOUSE—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts Furnished by The White House]

Name and title of person accepting the gift on behalf of the U.S. Government.	Gift, date of acceptance on behalf of the U.S. Government., estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
White House Staff Member Brennan, John.	13''Osmanli Furug limited edition green glass and gold plate, presented in a wooden presentation box. Rec'd—9/23/2010. Est. Value—$820.00. Location—Pending Transfer to the General Services Administration.	Under Secretary Hakan Fidan, Director of the Turkish National Intelligence Organization.	Non-acceptance would cause embarrassment to donor and U.S. Government.
White House Staff Member Brennan, John.	4.5″ marble bowl with blue lapis and powa shell inlay, presented in a blue velvet presentation box. 3.5″ round paper mache container with gold-colored inlay and floral design on lid, presented in a blue velvet presentation box. Rec'd—10/14/2010. Est. Value—$555.00. Location—Pending Transfer to the General Services Administration.	The Honorable Alok Prasad, Deputy National Security Adviser & Secretary, National Security Council Secretariat of the Republic of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
White House Staff Member Donilon, Tom.	40″ × 56″ rug with black floral pattern. Rec'd—3/28/2010. Est. Value—$350.00. Location—Pending Transfer to the General Services Administration.	His Excellency Hamid Karzai, President of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
White House Staff Member Donilon, Tom.	Two 12″ × 5″ white marble vases with hand-painted gilt rosettas and applied faux gemstones, presented in a blue velvet presentation box. Rec'd—11/8/2010. Est. Value—$930.00. Location—Pending Transfer to the General Services Administration.	Her Excellency Pratibha Patil, President of the Republic of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
White House Staff Member Emanuel, Rahm.	3″ × 16″ champagne-colored candleholder with a marble cylinder and coppertone flowers on top. Rec'd—1/4/2010. Est. Value—$425.00. Location—Pending Transfer to the General Services Administration.	His Majesty King Abdullah II ibn Al Hussein and Her Majesty Rania Al Abdullah, King and Queen of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
White House Staff Member Emanuel, Rahm.	34″ × 53″ hand-woven wool rug with five borders and cream-colored center. Rec'd—3/28/2010. Est. Value—$350.00. Location—Pending Transfer to the General Services Administration.	His Excellency Hamid Karzai, President of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
White House Staff Member Froman, Michael.	Riveri wristwatch with mother of pearl face. Pair of silver-colored cufflinks. Red silk tie. Silver-colored weave basket. Rec'd—7/21/2010. Est. Value—$540.00. Location—Pending Transfer to the General Services Administration.	Unknown Government Official, Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
White House Staff Member Holdren, John.	Montegrappa Kazan Limited Edition sterling silver fountain pen, presented in a wood presentation box with a silver plaque. Rec'd—11/1/2009. Est. Value—$1,400.00. Location—Pending Transfer to the General Services Administration.	The Honorable Andrey Fursenko, Minister of Education and Science Russian Federation.	Non-acceptance would cause embarrassment to donor and U.S. Government.
White House Staff Member Jones, James.	Custom pen set, presented in a black leather presentation box. Book, title: ''Palazzo Chigi''. Rec'd—4/13/2009. Est. Value—$726.00. Location—Pending Transfer to the General Services Administration.	Ambassador Bruno Archi, Diplomatic Counselor to the Italian Prime Minister.	Non-acceptance would cause embarrassment to donor and U.S. Government.
White House Staff Member Jones, James.	Wooden folding chess/checkers set with carved details, presented in a black nylon carrying back. Iraqi rug with fringe, presented in a travel bag. Rec'd—10/6/2009. Est. Value—$855.00. Location—Pending Transfer to the General Services Administration.	His Excellency Jalal Talabani, President of the Republic of Iraq.	Non-acceptance would cause embarrassment to donor and U.S. Government.
White House Staff Member Jones, James.	6.5″ sterling silver figurine of an ibex on a brass base with the seal of the State of Qatar, presented in a red presentation box. Rec'd—1/5/2010. Est. Value—$500.00. Location—Pending Transfer to the General Services Administration.	His Excellency Sheikh Hamad Bin Khalifa Al-Thani, Prime Minister and Minister of Foreign Affairs of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
White House Staff Member Jones, James.	36″ × 48″ framed pencil portrait of James Jones. Rec'd—2/18/2010. Est. Value—$750.00. Location—Pending Transfer to the General Services Administration.	His Excellency Asif Ali Zardari, President of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: THE WHITE HOUSE—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts Furnished by The White House]

Name and title of person accepting the gift on behalf of the U.S. Government.	Gift, date of acceptance on behalf of the U.S. Government., estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
White House Staff Member Jones, James.	60″ × 38″ multicolor rug with checkered and lined patterns and cream-colored fringe. Rec'd—3/28/2010. Est. Value—$400.00. Location—Pending Transfer to the General Services Administration.	His Excellency Hamid Karzai, President of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
White House Staff Member Jones, James.	8″ × 6″ white marble box with lid and inlaid floral pattern, presented in a blue velvet presentation box. Rec'd—6/23/2010. Est. Value—$490.00. Location—Pending Transfer to the General Services Administration.	His Excellency SomanahalliMallaiah Krishna, Minister of External Affairs of the Republic of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
White House Staff Member Jones, James.	17.75″ tall clock with a desert scene of two camels and palm trees on a green and gold-colored marble base, presented in a green presentation box. Rec'd—7/15/2010. Est. Value—$450.00. Location—Pending Transfer to the General Services Administration.	King Abdullah bin Abd al-Aziz Al Saud, Custodian of the Two Holy Mosques, King of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
White House Staff Member Pressman, David.	Mountblanc Boheme Marron Ballpoint pen, presented in a presentation box. Rec'd—11/23/2010. Est. Value—$390.00. Location—Pending Transfer to the General Services Administration.	Miodrag Rakic, Chief of Staff, Office of the President of the Republic of Serbia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
White House Staff Member Sher, Susan.	4″ decorative octagonal box with hand-painted lid depicting Moscow churches and eight hand-painted churches on each side, presented in a red presentation box. Rec'd—6/24/2010. Est. Value—$425.00. Location—Pending Transfer to the General Services Administration.	His Excellency Sergey Kislyak, Ambassador of the Russian Federation to the United States.	Non-acceptance would cause embarrassment to donor and U.S. Government.
White House Staff Member Summers, Larry.	Bottle of Louis Roederer Cristal Rose champagne, presented in an orange presentation box. Rec'd—10/19/2010. Est. Value—$500.00. Location—Perishable Items Handled Pursuant to U.S. Secret Service Policy.	Mr. Igor Shuvalov, First Deputy Prime Minister of the Russian Federation.	Non-acceptance would cause embarrassment to donor and U.S. Government.
White House Staff Member	16″ × 12″ Pineider green leather briefcase embossed with 2009 G8 Summit seal. Rec'd—7/1/2009. Est. Value—$1,568.00. Location—Pending Transfer to the General Services Administration.	His Excellency Silvio Berlusconi, Prime Minister of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: THE WHITE HOUSE—OFFICE OF THE VICE PRESIDENT

[Report of Tangible Gifts Furnished by The White House—Office of the Vice President]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Joseph R. Biden, Jr., Vice President of the United States.	50″ x 74″ carpet with medallion in beige and grey with five borders, presented in green bag. Rec'd—11/13/2009. Est. Value—$400.00. Disposition—Official Use on First Floor of the Vice President's Residence.	His Excellency Asif Ali Zardari, President of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden, Jr., Vice President of the United States.	Replica of Hammurabi's Code in silver and glass display case. Rec'd—1/10/2010. Est. Value—$475.00. Location—National Archives and Records Administration.	His Excellency Dr. Adil Abdul-Mahdi, Vice President of the Republic of Iraq.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden, Jr., Vice President of the United States.	Pair of brass and stingray skin candlestick holders, presented in a stingray skin and mother of pearl box. Rec'd—1/15/2010. Est. Value—$950.00. Location—National Archives and Records Administration.	His Majesty King Abdullah II ibn Al Hussein and Her Majesty Queen Rania Al Abdullah of the Hashemite Kingdom of.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: THE WHITE HOUSE—OFFICE OF THE VICE PRESIDENT—Continued

[Report of Tangible Gifts Furnished by The White House—Office of the Vice President]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Joseph R. Biden, Jr., Vice President of the United States.	14″ tall x 6″ diameter Minh Long I multicolor hand-made vase with wooden stand inscribed "With Compliments from H.E. Mr. Nguyen Tan Dung, Prime Minister of the Socialist Republic of Vietnam," presented in red and gold-colored box. Rec'd—4/13/2010. Est. Value—$1,200.00. Disposition—National Archives and Records Administration.	His Excellency Nguyen Tan Dung, Prime Minister of the Socialist Republic of Vietnam.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden, Jr., Vice President of the United States.	118″ x 98″ traditional hand-woven wool Afghan rug in red with three borders. Rec'd—5/12/2010. Est. Value—$1,200.00. Location—National Archives and Records Administration.	His Excellency Hamid Karzai, President of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden, Jr., Vice President of the United States.	Sculpture of four elephants on a wooden base. Rec'd—6/9/2010. Est. Value—$390.00. Disposition—National Archives and Records Administration.	His Excellency Mwai Kibaki, President of the Republic of Kenya.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden, Jr., Vice President of the United States.	20″ wooden sculpture of a robed male with a shield and a spear. Rec'd—6/12/2010. Est. Value—$425.00. Location—Official Use on First Floor of the Vice President's Residence.	The Honorable Kenneth Marende, Speaker of the National Assembly of Kenya.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden, Jr., Vice President of the United States.	White marble box with a colorful floral pattern, presented in a blue suede box. Rec'd—7/13/2010. Est. Value—$570.00. Location—National Archives and Records Administration.	His Excellency Somanahalli Mallaiah Krishna, Minister of External Affairs of the Republic of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden, Jr., Vice President of the United States.	Navy blue box with gold trim and clear top with silver lion and gold details inside. Painting of a man on a canoe holding an oar with trees in the background in wooden frame trimmed with gold. Rec'd—8/31/2010. Est. Value—$795.00. Disposition—Pending Transfer to National Archives and Records Administration.	His Excellency Jalal Talabani, President of the Republic of Iraq.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden, Jr., Vice President of the United States.	28″ x 33″ framed rug depicting an eagle with wings spread on a green backdrop. Rec'd—9/1/2010. Est. Value—$650.00. Location—Official Use in West Wing, Office of the Vice President.	His Excellency Masoud Barzani, President of the Kurdistan Region of the Republic of Iraq.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Dr. Jill Biden, Second Lady of the United States.	Oval silver decorative box with lid and reticulated floral design. Rec'd—4/11/2010. Est. Value—$365.00. Location—National Archives and Records Administration.	Her Excellency Michelle Bachelet, President of the Republic of Chile.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Herro Mustafa, Special Advisor for the Middle East, Afghanistan and Pakistan.	Pierre Balmain wristwatch with white shagreen strap, round white face, white gold detail, and bezel of faux diamonds. Silver-plated box in the shape of a camel with a saddle that opens on a hinge. Rec'd—5/25/2010. Est. Value—$1,661.00. Location—Pending Transfer to National Archives and Records Administration.	His Royal Highness Prince Salman bin Hamad bin Al Khalifa, Crown Prince of the Kingdom of Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF STATE

[Report of Tangible Gifts Furnished by the Department of State]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Hillary Clinton, Secretary of State of the United States.	Embroidered art with purple flowers in large frame. Rec'd—1/5/2010. Est. Value—$460.00. Location—Pending Transfer to General Services Administration.	His Excellency Yang Jiechi, Minister of Foreign Affairs of the People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF STATE—Continued

[Report of Tangible Gifts Furnished by the Department of State]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Hillary Clinton, Secretary of State of the United States.	Large scene of camel and palm tree made of gold and silver in red box. Rec'd—1/5/2010. Est. Value—$950.00. Location—Retain for Official Use Only.	His Excelleny Sheikh Hamad bin Jassim bin Jabr Al-Thani, Prime Minister and Minister of Foreign Affairs of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Gold coin with gold plaque and certificate in presentation box. Rec'd—1/21/2010. Est. Value—$1,100.00. Location—Pending Transfer to General Services Administration.	His Excellency Milo Djukanovic, Prime Minister of Montenegro.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Saint Louis Crystal Vase. Rec'd—1/29/2010. Est. Value—$385.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Nicolas Sarkozy, President of the French Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Crystal torch sculpture on base with inscription (clear-cut crystal). Rec'd—2/3/2010. Est. Value—$450.00. Disposition—Pending Transfer to General Services Administration.	His Exellency Khalid bin Ahmed Al-Khalifa, Minister of Foreign Affairs of the Kingdom of Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Emerald and diamond bracelet, necklace, earrings, and ring. Rec'd—2/15/2010. Est. Value—$400,000.00. Disposition—Pending Transfer to General Services Administration.	His Royal Highness King Abdullah bin Abd al-Aziz Al Saud, Custodian of the Two Holy Mosques, Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Set of white gold watch with leather band and earrings, all encrusted in diamonds. Two perfume bottles. Rec'd—2/16/2010. Est. Value—$5,300.00. Disposition—Pending Transfer to General Services Administration.	His Royal Highness Prince Khaled Al-Faisal, Mekkah Region Governor of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Two books, titles: "Ethics for the New Millennium" and "The Universe in a Single Atom" by His Holiness. Wooden Skaher basket with sterling silver bowl. White Shawl blessed by His Holiness. Rec'd—2/18/2010. Est. Value—$470.00. Disposition—Pending Transfer to General Services Administration.	His Holiness the Dalai Lama	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Oryx desk clock. Rec'd—2/18/2010. Est. Value—$390.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Sheikh Hamad bin Jassim bin Jabr Al Thani, Prime Minister and Minister of Foreign Affairs of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Orxy desk clock. Rec'd—2/18/2010. Est. Value—$490.00. Disposition—Pending Transfer to General Services Administration.	His Highness Sheikh Hamad bin Khalifa Al Thani, Amir of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Leather travel bag. Rec'd—3/1/2010. Est. Value—$475.00. Disposition—Pending Transfer to General Services Administration.	Her Excellency Cristina Fernandez de Kirchner, President of the Argentine Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Framed photography of Itamaraty. Rec'd—3/5/2010. Est. Value—$500.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Celso Amorim, Foreign Minister of Brazil.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	22″ × 18″ painting of indigenous male. Rec'd—3/8/2010. Est. Value—$490.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Álvaro Colom, President of the Republic of Guatamala.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Large black and white painting of nude female. Rec'd—3/19/2010. Est. Value—$680.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Oscar Arias, President of the Republic of Costa Rica.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Blue lightweight Kanuk jacket. Rec'd—3/29/2010. Est. Value—$570.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Lawrence Cannon, Foreign Minister of Canada.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Sterling silver bowl with round feet in green box. Rec'd—4/10/2010. Est. Value—$360.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Makhdoom Shah Mehmood Qureshi, Foreign Minister of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF STATE—Continued

[Report of Tangible Gifts Furnished by the Department of State]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Hillary Clinton, Secretary of State of the United States.	Tabriz Mahabad ruby wool carpet. Rec'd—4/10/2010. Est. Value—$1,200.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Serzh Sargsian, President of Armenia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Boat-shaped silver purse. Rec'd—4/12/2010. Est. Value—$345.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Manmohan Singh, Prime Minister of the Republic of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Decanter and glass set. Rec'd—4/12/2010. Est. Value—$480.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Nursultan Nazarbayev, President of the Republic of Kazakhstan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Large circular glass piece with turquoise, green, and blue accents. Rec'd—4/14/2010. Est. Value—$950.00. Disposition—Pending Transfer to General Services Administration.	Her Excellency Maite Nkoana-Mashabane, Minister of International Relations and Co-Operation of South Africa.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Perfume dispenser and censor in red case. Rec'd—4/28/2010. Est. Value—$450.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Kamel Morjane, Foreign Minister of the Republic of Tunisia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Woven portrait of President William J. Clinton. Rec'd—5/7/2010. Est. Value—$840.00. Disposition—Pending Transfer to General Services Administration.	His Excellency YAB Dato' Sri Haji Mohd Najib bin Tun Haji Abdul Razak, Prime Minister of Malaysia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Embroidered top, long camisole, pants, shawl, and matching clutch. Rec'd—5/10/2010. Est. Value—$585.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Makhdoom Shah Mehmood Qureshi, Foreign Minister of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Large Afghan rug in brown slipcase. Rec'd—5/2010. Est. Value—$900.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Hamid Karzai, President of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Sterling silver footed bowl featuring traditional design. Rec'd—6/3/2010. Est. Value—$460.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Somanahalli Mallaiah Krishna, Minister of External Relations of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Two Heyder Aliyev Foundation books. Heyder Aliyev Foundation Space of Mugam CDs. Querabag Xan Ondior books and CDs. Pair of glass and tin tea glasses. Book, title: "Painting of Azerbaijan." Postcards of Azerbaijan. Booklet of cuisine of Azerbaijan. Sakit booklet. Beed Araqsin hat. 13′11″ x 10′4″ Silk carpet. Azerbaijan CD. Five 110g Containers of Caspain Fish of the Sea Caviar. Rec'd—7/4/2010. Est. Value—$6,640.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Dr. Ilham Aliyev, President of the Republic of Azerbaijan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Glass and sterling silver coffee set. Book and CD of Armenian ornamental art. Rec'd—7/4/2010. Est. Value—$600.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Serzh Sargsian, President of Armenia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Large abstract painting on canvas. Rec'd—7/8/2010. Est. Value—$1,200.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Asunção dos Anjos, Foreign Minister of Angola.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Silver jewelry box. Rec'd—7/19/2010. Est. Value—$490.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Yousuf Raza Gilani, Prime Minister of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Large artwork and framed photo. Rec'd—7/19/2010. Est. Value—$970.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Asif Ali Zardari, President of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF STATE—Continued

[Report of Tangible Gifts Furnished by the Department of State]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Hillary Clinton, Secretary of State of the United States.	Painting of Secretary Clinton and Chelsea Clinton wearing conical hats. Color sand portrait of Secretary Clinton. Black and white sand portrait of Secretary Clinton. Rec'd—7/22/2010. Est. Value—$3,410.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Pham Gia Khiem, Deputy Prime Minister of the Socialist Republic of Vietnam.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	12′ × 15′ Tianjin carpet. Book about Nanjing silk and embroidery. Framed red paper cut-out of two women. Rec'd—7/2010. Est. Value—$4,865.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Dai Bingguo, State Councilor of the People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Guqin instrument in cloth bag. Rec'd—7/2010. Est. Value—$1,100.00. Disposition—Pending Transfer to General Services Administration.	Her Excellency Liu Yandong, State Councilor of the People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	4′ x 6′ cream-colored carpet. Rec'd—8/20/2010. Est. Value—$575.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Sameh Shoukry, Ambassador of the Arab Republic of Egypt to the United States.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Small black laquer box with painted design. Rec'd—8/2010. Est. Value—$920.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Sergey Kislyak, Ambassador of the Russian Federation.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Blue woven Versace shawl. Versace scarf, black with floral design. Rec'd—8/2010. Est. Value—$400.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Elias Murr, Minister of Defense of the Republic of Lebanon.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Necklace and bracelet in a wooden box. Rec'd—9/24/2010. Est. Value—$3,600.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Somananhalli Mallaiah Krishna, Minister of External Affairs of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Place setting for ten including soup tureen, bowls, spoons, and service dishes. Rec'd—9/2010. Est. Value—$650.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Ho Nghia Dung, Minister of Transportation of Socialist Republic of Vietnam.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Book, title: "The Wall," in presentation box with piece of the Berlin Wall on the lid. Rec'd—10/3/2010. Est. Value—$850.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Dr. Guido Westerville, Federal Minister of Foreign Affairs of the Federative Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	4′ × 2′ framed copy of the Declaration of Independence of the Republic of Kosovo. Rec'd—10/12/2010. Est. Value—$390.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Jakup Krasniqi, Acting President of the Republic of Kosovo and His Excellency Hashim Thaci, Prime Minister of the Republic of Kosovo.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	2′ × 3′ wood-framed portrait of Secretary Clinton. Rec'd—10/15/2010. Est. Value—$480.00 Disposition—Pending Transfer to General Services Administration.	His Excellency Hajredin Kuci, Deputy Prime Minister of the Republic of Kosovo.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Belleek silver bracelet and necklace with crystal accents. Rec'd—10/19/2010. Est. Value—$400.00. Disposition—Pending Transfer to General Services Administration.	The Right Honorable Peter D. Robinson, MLA and Mr. Martin McGuiness, deputy First Minister of Northern Ireland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Black and brown rug in green case. Rec'd—10/20/2010. Est. Value—$350.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Makhdoom Shah Mehmood Qureshi, Minister of Foreign Affairs of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Secretary Clinton's name in Arabic calligraphy, presented in a frame. Rec'd—10/28/2010.Est. Value—$425.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Abdallah Baali, Ambassador of the People's Democratic Republic of Algeria.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF STATE—Continued

[Report of Tangible Gifts Furnished by the Department of State]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Hillary Clinton, Secretary of State of the United States.	Oil painting of Lahore Fort. Rec'd—10/29/2010. Est. Value—$680.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Parkash Singh Badal, Chief Minister of Punjab, Republic of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Large black and gold ceramic vase. Rec'd—10/30/2010. Est. Value—$425.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Pham Gia Khiem, Deputy Prime Minister of the Socialist Republic of Vietnam.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Ceramic bowl on a stand in blue, white, and gold. Hand-made silver plate. Portrait made of coffee beans. Coffee in leather box. Rec'd—10/30/2010. Est. Value—$1,410.00. Location—Pending Transfer to General Services Administration.	His Excellency Nguyen Tan Dung, Prime Minister of the Socialist Republic of Vietnam.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Diamond and pearl necklace, earrings, and brooch. Rec'd—10/2010. Est. Value—$2,800.00. Location—Pending Transfer to General Services Administration.	His Excellency Dai Bingguo, State Councilor of the People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Traditional silver water bowl with lid. Rec'd—11/1/2010. Est. Value—$960.00. Disposition—Permission to Retain for Official Use Only.	His Royal Highness Norodom Sihamoni, King of Cambodia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Silver water pot. Rec'd—11/1/2010. Est. Value—$400.00. Location—Pending Transfer to General Services Administration.	His Excellency Hor Namhong, Deputy Prime Minister and Minister of Foreign Affairs and International Cooperation of Cambodia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Gold mask with blue, yellow, and green sapphire stones. Brass topographic map of Papua New Guinea in a frame. Rec'd—11/4/2010. Est. Value—$5,234.00. Location—Pending Transfer to General Services Administration.	His Excellency Michael Somare, Prime Minister of Papua New Guinea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Silverframed picture of a sailboat. Rec'd—11/4/2010. Est. Value—$350.00. Disposition—Pending Transfer to General Services Administration.	Dame Carol Kidu, Department of Community Development of Papua New Guinea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Framed print of the Maori Moko. Rec'd—11/4/2010. Est. Value—$400.00. Disposition—Pending Transfer to General Services Administration.	His Worship Bob Parker, Mayor of Christchurch, New Zealand.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Afghan rug. Rec'd—11/19/2010. Est. Value—$700.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Hamid Karzai, President of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Round sterling silver bowl with leaf design. Rec'd—11/29/2010. Est. Value—$940.00. Location—Pending Transfer to General Services Administration.	His Excellency Ahmet Davutoghu, Minister of Foreign Affairs of the Republic of Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Tea set. Rec'd—12/2/2010. Est. Value—$395.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Islam Karimov, President of the Republic of Uzbekistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Gold coin. Framed, signed photograph of Secretary Clinton and His Majesty. Rec'd—12/3/2010. Est. Value—$2,090.00. Disposition—Pending Transfer to General Services Administration.	His Majesty King Hamad bin Isa Al Khalifa, King of the Kingdom of Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Tunic and ornate silver plate. Rec'd—12/4/2010. Est. Value—$1,160.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Jaliya Wickramasuriya, Ambassador of Democratic Socialist Republic of Sri Lanka.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Small shell-shaped Mikimoto travel clock with pearl. Rec'd—12/6/2010. Est. Value—$385.00. Location—Pending Transfer to General Services Administration.	His Excellency Seiji Maehara, Minister of Foreign Affairs of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF STATE—Continued

[Report of Tangible Gifts Furnished by the Department of State]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Hillary Clinton, Secretary of State of the United States.	Religious painting. Rec'd—12/9/2010. Est. Value—$600.00. Location—Pending Transfer to General Services Administration.	His Excellency Edmond Hax Hinasto, Minister of Foreign Affairs of the Republic of Albania.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Pearl and green stone brooch. Rec'd—12/10/2010. Est. Value—$525.00. Location—Pending Transfer to General Services Administration.	Her Excellency Roza Otunbayeva, President of the Kyrgyz Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Gold and silver horse figure. Rec'd—12/2010. Est. Value—$940.00. Location—Pending Transfer to General Services Administration.	His Excellency Adel Al-Jubeir, Ambassador of the Kingdom of Saudi Arabia to the United States.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Two scarves by E. Marinella in blue box. Rec'd—Unknown. Est. Value—$600.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Silvio Berlusconi, Prime Minister of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Gold and silver desert scene on stone and marble base. Rec'd—Unknown. Est. Value—$3,200.00. Disposition—Pending Transfer to General Services Administration.	King Abdullah bin Abd al-Aziz Al Saud, Custodian of the Two Holy Mosques, King of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Hillary Clinton, Secretary of State of the United States.	Large wooden statue. Small wood statue. Rec'd—Unknown. Est. Value—$1,080.00. Disposition—Pending Transfer to General Services Administration.	His Majesty King Abduallah II ibn Al Hussein and Her Majesty Queen Rania Al Abdullah of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Former President William Clinton.	Patek Philippe 18-karat yellow gold cross cufflinks. Rec'd—10/2009. Est. Value—$4,455.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Mian Muhammad Nawaz Sharif, Former Prime Minister of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Former President William Clinton.	Jasper and silver desk set consisting of a calendar leaf stand, letter opener, ashtray, pen holder, and letter holder. Rec'd—4/12/2010. Est. Value—$1,900.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Nursultan Nazarbayev, President of the Republic of Kazakhstan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Former President William Jefferson Clinton.	Large leather case with photo prints. Rec'd—11/23/2010. Est. Value—$1,100.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Nursultan Nazarbayev, President of the Republic of Kazakhstan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Chelsea Clinton	Tea set in a wooden box. Rec'd—7/2010. Est. Value—$650.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Dai Bingguo, State Councilor of the People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Chelsea Clinton	24″ × 24″ oil painting. Rec'd—10/13/2010. Est. Value—$350.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Dr. Haris Silajdzic, Chairman of the Presidency of Bosnia and Herzegovina.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Chelsea Clinton and Marc Mezvinsky.	Limited edition crystal vase. Rec'd—7/21/2010. Est. Value—$940.00. Disposition—Pending Transfer to General Services Administration.	Ministry of Foreign Affairs of the Republic of Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable James B. Steinberg, Deputy Secretary of State.	Wooden statue. Rec'd—12/30/2010. Est. Value—$425.00. Disposition—Pending Transfer to General Services Administration.	His Majesty King Abdullah II ibn Al Hussein and Her Majesty Queen Rania Al Abdullah of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Kurt Campbell, Assistant Secretary for East Asia and Pacific Affairs.	Depiction of a project for a Chinese garden in the National Arboretum. Rec'd—Unknown. Est. Value—$490.00. Disposition—Pending Transfer to General Services Administration.	Madame Jiang Zehui, Director of the Chinese Academy of Forestry.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Johnnie Carson, Assistant Secretary for African Affairs.	Tan and green round leather floor mat with three matching seat cushions. Rec'd—5/5/2010. Est. Value—$550.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Goodluck Ebele Azikiwe Jonathan, Vice President of Nigeria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Jeffrey D. Feltman, Assistant Secretary for Near Eastern Affairs.	Qom rug. Rec'd—9/17/2010. Est. Value—$950.00. Disposition—Pending Transfer to General Services Administration.	Ali Bin Mohsen Bin Fatais Al-Marri, Attorney General of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF STATE—Continued

[Report of Tangible Gifts Furnished by the Department of State]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Janet Sanderson, Deputy Assistant Secretary.	Amouage Jubilation 25 bar soap. 300ml Amouage Jubilation 25 hand cream. Amouage Jubilation 25 body lotion. Amouage Jubilation 25 eau de parfum. Rec'd—10/01/2010. Est. Value—$600.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Sayyid Badr bin Hamad bin Hamud Al Busaidi, Secretary General of the Ministry of Foreign Affairs of Oman.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Capricia Penavic Marshall, Chief of Protocol.	Women's Rolex Yacht Master gold tone chapter ring watch (M329251). Men's Rolex deep sea watch. Rec'd—5/20/2010. Est. Value—$20,000.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Sheikh Hamad bin Jassim bin Jabr Al-Thani, Prime Minister and Minister of Foreign Affairs of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Capricia Penavic Marshall, Chief of Protocol.	Bulgari watch with silver face and black leather strap. Rec'd—7/26/2010. Est. Value—$10,500.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Mohammed Al-Tobaishi, Chief of Royal Protocol of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Capricia Penavic Marshall, Chief of Protocol.	Black Montblanc calligraphy pens. Black Montblanc ballpoint pen. Rec'd—9/1/2010. Est. Value—$420.00. Disposition—Pending Transfer to General Services Administration.	His Majesty King Abdullah II ibn Al Hussein, King of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Capricia Penavic Marshall, Chief of Protocol.	Large tea set. Rec'd—12/2010. Est. Value—$485.00. Disposition—Pending Transfer to General Services Administration.	Dr. Zhang Kunsheng, Director-General of the Protocol Department and Assistant Minister of the Foreign Affairs Ministry of the People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Capricia Penavic Marshall, Chief of Protocol.	Standing elephant in gold-trimmed transparent box. Rec'd—Unknown. Est. Value—$385.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Don Pramudwinai, Ambassador of the Kingdom of Thailand to the United States.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Dennis Cheng, Deputy Chief of Protocol.	Black leather briefcase with brass detail. Rec'd—4/16/2010. Est. Value—$3,500.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Yousuf Raza Gilani, Prime Minister of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Dennis Cheng, Deputy Chief of Protocol.	Raymon Weil silver men's watch. Rec'd—9/3/2010. Est. Value—$950.00. Disposition—Pending Transfer to General Services Administration.	His Majesty King Abdullah II ibn Al Hussein, King of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Adam Ereli, U.S. Ambassador to Kingdom Bahrain.	Pair of Tufenkjian yellow gold cufflinks with white stone. Rec'd—6/2/2010. Est. Value—$771.00. Disposition—Pending Transfer to General Services Administration.	Prince Khalifa Bin Salman Al Khalifa, Prime Minister of the Kingdom of Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Janet E. Garvey, U.S. Ambassador to the Republic of Cameroon.	Case of Chateau Lynch-Bages wine. Case of Mouton-Cadet Bordeaux Rouge wine. Case of Moet and Chandon Brut Vintage wine. Rec'd—4/29/2010. Est. Value—$1,344.96. Disposition—Official Use at U.S. Embassy.	Mrs. Chantal Biya, First Lady of the Republic of Cameroon.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Jon Huntsman, U.S. Ambassador to the People's Republic of China.	Pearl necklace. Rec'd—12/2/2009. Est. Value—$460.00. Disposition—Pending Transfer to General Services Administration.	Liang Baohua, Party Secretary of the Jiangsu Province of the People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Jon Huntsman, U.S. Ambassador to the People's Republic of China.	Ye Hai pearl necklace. Rec'd—10/30/2010. Est. Value—$350.00. Disposition—Pending Transfer to General Services Administration.	Wu Shicun, Director General of the Hainan Foreign and Overseas Chinese Affairs Office of the People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable James Jeffrey, U.S. Ambassador to the Republic of Turkey.	Silk carpet. Rec'd—07/2009. Est. Value—$1,500.00. Disposition—Pending Transfer to General Services Administration.	Mevlut Bilinci, Governor of Kayseri of the Republic of Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph Lebaron, U.S. Ambassador to the State of Qatar.	Haurex Caimano watch. Viscose shawl. Glass hurricane with candles. Rec'd—6/17/2010. Est. Value—$630.00. Disposition—Pending Transfer to General Services Administration; Glass Hurricane Retained for Official Use.	Brigadier General Rashid bin Abdullah Al Nuaimi of the Qatar Armed Forces.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF STATE—Continued

[Report of Tangible Gifts Furnished by the Department of State]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Richard Olson, U.S. Ambassador to the United Arab Emirates.	Montblanc Starwalker black resin ballpoint pen. Business card holder. Meisterstuck 6CC leather wallet. Day planner. Rec'd—01/10/2010. Est. Value—$656.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Hanif Hassan Ali Al Qassim, Minister of Health of the United Arab Emirates.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Richard Olson, U.S. Ambassador to the United Arab Emirates.	Burberry extra-large stainless steel watch. Rec'd—1/24/2010. Est. Value—$600.00. Disposition—Pending Transfer to General Services Administration.	Joint Command and Staff College of the United Arab Emirates.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Clark Randt, U.S. Ambassador to the People's Republic of China.	Multicolor glass phoenix. Rec'd—8/18/2006. Est. Value—$575.00. Disposition—Pending Transfer to General Services Administration.	Government of the People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Clark Randt, U.S. Ambassador to the People's Republic of China.	Bronze and glass replica of Ancient Hua Gu with base. Rec'd—5/17/2007. Est. Value—$485.00. Disposition—Pending Transfer to General Services Administration.	Unknown Foreign Government Official Donor.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Clark Randt, U.S. Ambassador to the People's Republic of China.	Large art of blossoming trees in white marble vase with wooden stand. Rec'd—Unknown. Est. Value—$465.00. Disposition—Pending Transfer to General Services Administration.	Unknown Foreign Government Official Donor.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Clark Randt, U.S. Ambassador to the People's Republic of China.	Silver tea set. Rec'd—Unknown. Est. Value—$475.00. Disposition—Pending Transfer to General Services Administration.	Unknown Foreign Government Official Donor.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Clark Randt, U.S. Ambassador to the People's Republic of China.	Five scarves of different colors. Rec'd—Unknown. Est. Value—$800.00. Disposition—Pending Transfer to General Services Administration.	Unknown Foreign Government Official Donor.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Clark Randt, U.S. Ambassador to the People's Republic of China.	White and blue porcelain vase. Rec'd—Unknown. Est. Value—$495.00. Location—Pending Transfer to General Services Administration.	Government of the People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Daniel Speckhard, U.S. Ambassador to the Hellenic Republic.	Book, title: "Great Moments in Greek Archaeology." Silver boat decoration, title: "Evangelistria". Rec'd—9/10/2010. Est. Value—$364.62. Disposition—Pending Transfer to General Services Administration.	Yannis Sgouros, Prefect of the Athens Prefecture of the Hellenic Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable William E. Todd, U.S. Ambassador to Brunei Darussalam.	18-karat white gold watch. Rec'd—6/3/2010. Est. Value—$585.00. Disposition—Pending Transfer to General Services Administration.	His Majesty Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah ibni Al-Marhum Sultan haji Omar 'Ali Saifuddien Sa'adul Khairi Waddien, Sultan and Yang Di-Pertuan of Brunei Darussalam.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable William E. Todd, U.S. Ambassador to Brunei Darussalam.	Montblanc rollerball pen. Rec'd—6/3/2010. Est. Value—$385.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Al Muhtaogg Billad, Senior Minister of Brunei Darussalam.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable William E. Todd, U.S. Ambassador to Brunei Darussalam.	Picture frame. Rec'd—6/3/2010. Est. Value—$900.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Mohamed Bolkiah ibni Al-Marhum Sultan Haji Omar 'Ali Saifuddien Sa'adul Khairi Waddien, Foreign Minister of Brunei Darussalam.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Daniel Goodspeed, U.S. Consul General.	Frederique Constant watch. Rec'd—6/7/2010. Est. Value—$533.00. Disposition—Pending Transfer to General Services Administration.	Faisal Al-Sudairy, Deputy Consul General of the Saudi Consulate in Los Angeles.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Andrew Smkin, U.S. Consul General.	Tissot men's watch. Rec'd—9/13/2010. Est. Value—$450.00. Disposition—Pending Transfer to General Services Administration.	Anna Centenary Library, Government of the Tamil Nadu, Republic of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Laurie M. Major, Deputy Consul General.	Gio Monaco Eclisse diamond wristwatch. Rec'd—11/29/2010. Est. Value—$8,500.00. Disposition—Pending Transfer to General Services Administration.	Daham Al-Daham, Deputy Undersecretary for Protocol of the Minister of Foreign Affairs of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF STATE—Continued

[Report of Tangible Gifts Furnished by the Department of State]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Bruce Swartley, Assistant Attache, DHS–ICE and Training Staff.	Six Longines dive watches. Rec'd—8/7/2010. Est. Value—$10,200.00. Disposition—Pending Transfer to General Services Administration.	Brigadier General Jasim Al Marzouki, Ministry of the Interior of the United Arab Emirates.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Lance Bailey, Regional Security Officer.	Ebel men's watch (model number 9251K51). Ebel women's watch (model number 9957K21). Rec'd—8/8/2010. Est. Value—$3,150.00. Disposition—Pending Transfer to General Services Administration.	Lieutenant General Sheikh Rashed bin Abdulla Al-Khalifa, Minister of Interior of the Kingdom of Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Alexander Laskaris, Team Leader, RRT Erbil Iraqi Kurdistan Region.	Longines Conquistador watch. Rec'd—10/22/2010. Est. Value—$840.00. Disposition—Pending Transfer to General Services Administration.	Mr. Kosrat Rasul, Vice President of the Kurdistan Regional Government of the Patriotic Union of Kurdistan, The Republic of Iraq.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Alys Spensley, Consulate Expo Liaison Officer.	Collection of Chinese traditional flower paintings. Rec'd—11/9/2010. Est. Value—$338.00. Disposition—Pending Transfer to General Services Administration.	Shanghai Expo Bureau Protocol Officer, People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

[Report of Tangible Gifts Furnished by the Administrative Office of the U.S. Courts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable John G. Roberts, Jr., Chief Justice.	Soapstone bookends. Rec'd—3/28/2010. Est. Value—$414.00. Disposition—United States Supreme Court.	The Right Honorable Beverly McLachlin, Supreme Court of Canada.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable John G. Roberts, Jr., Chief Justice.	Leather document box. Rec'd—5/26/2010. Est. Value—$400.00. Disposition—United States Supreme Court.	His Excellency Giorgio Napolitano, President of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable James F. Holderman United States Chief Judge, Northern District of Illinois.	12'' Tai-Hwa Pottery painted porcelain platter, title: ''Happy Family''. Rec'd—10/19/2010. Est. Value—More than Minimal Value. Disposition—United States District Court for the Northern District of Illinois.	High Court of Taiwan	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable James F. Holderman United States Chief Judge, Northern District of Illinois.	Hsiao Fang Pottery white porcelain tea set. Rec'd—10/20/2010. Est. Value—More than Minimal Value. Disposition—United States District Court for the Northern District of Illinois.	Intellectual Property Court of Taiwan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable James F. Holderman United States Chief Judge, Northern District of Illinois.	Tai-Hwa Pottery porcelain vessel and wooden base. Rec'd—10/21/2010. Est. Value—More than Minimal Value. Disposition—United States District Court for the Northern District of Illinois.	Taichung Branch of the High Court of Taiwan.	Non-acceptance would cause embarrassment to donor and U.S.
The Honorable James F. Holderman United States Chief Judge, Northern District of Illinois.	Cochin ceramic plaque with personalized dedication. Rec'd—10/22/2010. Est. Value—More than Minimal Value. Disposition—United States District Court for the Northern District of Illinois.	Tainan Branch of the High Court of Taiwan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable James F. Holderman United States Chief Judge, Northern District of Illinois.	Chu Ken engraved glass and Lazurite swan figure sculpture. Taiwan Post Co., Ltd. Taoyuan Lantern Festival stamp book. Year of Tiger figurine. Rec'd—10/24/2010. Est. Value—More than Minimal Value. Disposition—United States District Court for the Northern District of Illinois.	The Honorable Su Jia-Ming, Mayor of Taoyuan City of Taiwan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—CENTRAL INTELLIGENCE AGENCY

[Report of Tangible Gifts Furnished by the Central Intelligence Agency]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Leon E. Panetta, Director of the Central Intelligence Agency.	Short sword with a single edge curved blade in a steel scabbard with a tiger head pommel. Rec'd—09/29/2009. Est. Value—$1,500.00. Disposition—On official display at the Agency.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Leon E. Panetta, Director of the Central Intelligence Agency.	Antique revolver. Rec'd—11/23/2009. Est. Value—$1,500.00. Disposition—On official display at the Agency.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Leon E. Panetta, Director of the Central Intelligence Agency.	Yellow gold mounted glass model of a chariot on a mirrored wooden base. Rec'd—01/28/2010. Est. Value—$2,500.00. Disposition—On official display at the Agency.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Leon E. Panetta, Director of the Central Intelligence Agency.	Firenze Viscante fountain pen in a red leather case. Rec'd—2/23/2010. Est. Value—$500.00. Disposition—Pending Transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Leon E. Panetta, Director of the Central Intelligence Agency.	Oblong mother of pearl picture of the Nativity Church of Bethlehem. Rec'd—04/22/2010. Est. Value—$800.00. Disposition—Pending Transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Leon E. Panetta, Director of the Central Intelligence Agency.	Double-edged dagger with a metal scabbard and a simulated ivory hilt. Rec'd—04/22/2010. Est. Value—$500.00. Disposition—On official display at the Agency.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Leon E. Panetta, Director of the Central Intelligence Agency.	Religious framed icon. Rec'd—05/25/2010. Est. Value—$1,000.00. Disposition—Pending Transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Leon E. Panetta, Director of the Central Intelligence Agency.	Mont Blanc fountain pen. Rec'd—07/22/2010. Est. Value—$500.00. Disposition—Pending Transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Leon E. Panetta, Director of the Central Intelligence Agency.	Yellow gold and green jade replica of the Chonma-Chong crown. Rec'd—10/02/2010. Est. Value—$15,000.00. Disposition—On official display at the Agency.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Leon E. Panetta, Director of the Central Intelligence Agency.	Double edged dagger in a silver and jeweled scabbard with a white resin handle. Rec'd—12/06/2010. Est. Value—$1,000.00. Disposition—On official display at the Agency.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. Michael J. Morell, Deputy Director.	Silver model of an elephant. Rec'd—07/14/2010. Est. Value—$500.00. Disposition—On official display at the Agency.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. Michael J. Morell, Deputy Director.	Silver model of an elephant. Rec'd—07/14/2010. Est. Value—$500.00. Disposition—On official display at the Agency.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. Michael J. Morell, Deputy Director.	Single-edge curved sword within a gold and silver inlaid steel scabbard. Rec'd—08/02/2010. Est. Value—$1,500.00. Disposition—On official display at the Agency.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. Michael J. Morell, Deputy Director.	Bronze figure of an infantryman. Rec'd—11/03/2010. Est. Value—$2,500.00. Disposition—On official display at the Agency.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. Michael J. Morell, Deputy Director.	Silver footed bowl. Rec'd—12/13/2010. Est. Value—$1,500.00. Disposition—On official display at the Agency.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Silver-plated ivory necklace, bracelet, earrings, and ring. Rec'd—10/01/2003. Est. Value—$800.00. Disposition—Pending Transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	3′4″ x 2′6″ silk carpet. Rec'd—06/20/2005. Est. Value—$800.00. Disposition—Pending Transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	3′11″ x 2′8″ silk carpet. Rec'd—06/20/2005. Est. Value—$2,500.00. Disposition—Pending Transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Ebel sports watch. Rec'd—12/04/2007. Est. Value—$1,000.00. Disposition—Pending Transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—CENTRAL INTELLIGENCE AGENCY—Continued

[Report of Tangible Gifts Furnished by the Central Intelligence Agency]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
An Agency Employee	Mont Blanc ballpoint pen. Rec'd—12/17/2007. Est. Value—$400.00. Disposition—Pending Transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Baume & Mercier stainless steel wristwatch. Rec'd—12/17/2007. Est. Value—$2,000.00. Disposition—Pending Transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	5′ x 3′ silk carpet. Rec'd—12/24/2007. Est. Value—$1,500.00. Disposition—Pending Transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Longines wristwatch. Rec'd—05/02/2009. Est. Value—$500.00. Disposition—Pending Transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Fred Paris women's stainless steel wristwatch with black leather band. Rec'd—6/22/2009. Est. Value—$3,500.00. Disposition—Pending Transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Fred Paris women's stainless steel wristwatch with black leather band. Rec'd—6/22/2009. Est. Value—$3,500.00. Disposition—Pending Transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Two stainless steel wristwatches, leather wallets, and ballpoint pen sets. Rec'd—08/19/2009. Est. Value—$4,000.00. Disposition—Pending Transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Baume & Mercier stainless steel wristwatch. Rec'd—12/24/2009. Est. Value—$1,800.00. Disposition—Pending Transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Baume & Mercier stainless steel wristwatch and a twisted five-strand pearl necklace. Rec'd—12/24/2009. Est. Value—$3,000.00. Disposition—Pending Transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Silk carpet. Rec'd—1/6/2010. Est. Value—$1,100.00. Disposition—Retained for display in emplyee's office.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Longines wristwatch. Rec'd—01/19/2010. Est. Value—$1,500.00. Disposition—Pending Transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	9′9″ x 6′9″ carpet. Rec'd—04/08/2010. Est. Value—$4,500.00. Disposition—Pending Transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Stainless steel Longines women's wristwatch. Rec'd—4/22/2010. Est. Value—$450.00. Disposition—Pending Transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Stainless steel Longines wristwatch. Rec'd—4/22/2010. Est. Value—$750.00. Disposition—Pending Transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Frederique Constant stainless steel wristwatch with a brown leather band. Rec'd—05/07/2010. Est. Value—$1,400.00. Disposition—Pending Transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Gold necklace, earrings, and bracelet. Rec'd—5/11/2010. Est. Value—$3,000.00. Disposition—Pending Transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Breitling Black enamel and stainless steel watch with a blue rubber band. Rec'd—05/12/2010. Est. Value—$2,800.00. Disposition—Pending Transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—CENTRAL INTELLIGENCE AGENCY—Continued

[Report of Tangible Gifts Furnished by the Central Intelligence Agency]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
An Agency Employee	Cartier fountain and ballpoint pen set. Rec'd—05/27/2010. Est. Value—$1,000.00. Disposition—Pending Transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Corum stainless steel watch. Rec'd—05/30/2010. Est. Value—$500.00. Disposition—Pending Transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Javial men's wristwatch. Javial pen. Javial wallet. Rec'd—6/15/2010. Est. Value—$450.00. Disposition—Pending Transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Men's Ebel watch. Women's Ebel watch. Two Apple iPads with docking stations. Rec'd—6/15/2010. Est. Value—$4,700.00. Disposition—Pending Transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Mont Blanc pen. Set of cufflinks. Rec'd—6/20/2010. Est. Value—$775.00. Disposition—Pending Transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Raymond Well Collection Tango wristwatch. Rec'd—6/20/2010. Est. Value—$850.00. Disposition—Pending Transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	White gold necklace with diamonds in the pendant. Rec'd—6/26/2010. Est. Value—$2,500.00. Disposition—Pending Transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Louis Vuitton silk shawl. Rec'd—7/23/2010. Est. Value—$450.00. Disposition—Pending Transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	N.O.A. Driver's wristwatch. Rec'd—07/26/2010. Est. Value—$4,800.00. Disposition—Pending Transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	N.O.A. automatic chronograph limited edition wristwatch. Rec'd—7/26/2010. Est. Value—$4,000.00. Disposition—Pending Transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	N.O.A. automatic chronograph limited edition wristwatch. Rec'd—7/26/2010. Est. Value—$4,000.00. Disposition—Pending Transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Mont Blanc ballpoint pen. Black wallet. Cologne. Rec'd—08/02/2010. Est. Value—$700.00 . Disposition—Pending Transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Collection of spa products. Plaque with a metal design. Two Hugo Boss ties. Bottle of Chanel Chance perfume. Silver sword with a filigree design encased in a wooden box. Rec'd—8/2/2010. Est. Value—$1,250.00. Disposition—Pending Transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Mont Blanc belt. Mont Blanc cufflinks. Terr D'Hermes Cologne. Plaque with a metal design. Rec'd—8/2/2010. Est. Value—$805.00. Disposition—Pending Transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Black Navigator commander Titan wristwatch. Rec'd—8/5/2010. Est. Value—$400.00. Disposition—Pending Transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	His and hers Omega stainless steel watches. Rec'd—11/01/2010. Est. Value—$3,500.00. Disposition—Pending Transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—CENTRAL INTELLIGENCE AGENCY—Continued

[Report of Tangible Gifts Furnished by the Central Intelligence Agency]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
An Agency Employee	Baume and Mercier Classimo Executive wristwatch with brown leather band. Rec'd—12/6/2010. Est. Value—$3,500.00. Disposition—Pending Transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Baume and Mercier Classimo Executive wristwatch with a black leather band. Rec'd—12/6/2010. Est. Value—$4,000.00. Disposition—Pending Transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Baume and Mercier wristwatch with a silver face and black leather band. Rec'd—12/6/2010. Est. Value—$3,500.00. Disposition—Pending Transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Baume & Mercier stainless steel wristwatch with a brown leather band. Rec'd—12/10/2010. Est. Value—$5,000.00. Disposition—Pending Transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Rado Chronograph wristwatch. Rec'd—12/29/2010. Est. Value—$700.00. Disposition—Pending Transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF AGRICULTURE

[Report of Tangible Gifts Furnished by the Department of Agriculture]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Thomas Vilsack, Secretary of Agriculture of the United States.	5′ x 7′ hand-knotted rug. Rec'd—1/11/2010. Est. Value—$2,000.00. Disposition—Retained in the FFAS Under Secretary's office as an official gift.	His Excellency Hamid Karzai, President of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Thomas Vilsack, Secretary of Agriculture of the United States.	Kutani porcelain flower vase. 9″ by 10″ framed paper art by Issei Yamauchi. Rec'd—04/08/2010. Est. Value—$975.00. Disposition—Retained in the Secretary's office as an official gift; Art retained in FAS Administrator's office as an official gift.	Hirotaka Akamatsu, Minister of Agriculture of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Thomas Vilsack, Secretary of Agriculture of the United States.	Lapis stones gathered into a bunch of grapes. Rec'd—09/30/2010. Est. Value—$367.00. Disposition—Retained in the Deputy Secretary's office as an official gift.	His Excellency Arturo Fermandois, Ambassador of Chile to the United States.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF COMMERCE

[Report of Tangible Gifts and Travel Furnished by the Department of Commerce]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Gary F. Locke, Secretary of Commerce of the United States.	10′ x 13′ Afghan hand-knotted Soumak rug. Rec'd—08/11/2010. Est. Value—$1,165.99. Disposition—Official Use in Herbert C. Hoover Building (room 6521).	Minister Wahidullah Shahsani, Minister of Commerce and Industries of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Gwen Lyle, Commercial Officer.	TRAVEL: To attend the 3rd tourism working group meeting. Rec'd—1/12/2010. Est. Value—$440.00.	China National Tourism Administration.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF COMMERCE—Continued

[Report of Tangible Gifts and Travel Furnished by the Department of Commerce]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Claudia Salgado, Commercial Assistant.	TRAVEL: Show organizers are interested with U.S. Trade Exports. Rec'd—1/14/2010. Est. Value—$811.48.	The California Gift Show and LA Mart (Mexico City, Mexico).	Non-acceptance would cause embarrassment to donor and U.S. Government.
Martha Sanchez, Commercial Assistant.	TRAVEL: To attend franchise trade-show, FEES. Rec'd—1/14/2010. Est. Value—$796.00.	Feher & Feher Consultoria en Gegocios y Franquicias (Mexico City, Mexico).	Non-acceptance would cause embarrassment to donor and U.S. Government.
Peng Aiqun, Commercial Specialist.	TRAVEL: To attend Chongqing Foreign Government Loan Promotional Seminar. Rec'd—1/23/2010. Est. Value—$635.00.	Chongqing Bureau of Finance, People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Deborah Cooney, Commercial Specialist.	TRAVEL: To attend 2010 Sino/US leadership summit. Rec'd—1/28–30/2010. Est. Value—$388.00.	China National Tourism Administration.	Non-acceptance would cause embarrassment to donor and U.S. Government.
David Gossack, Principal Commercial Officer.	TRAVEL: To attend 2010 Sino/US leadership summit. Rec'd—1/28–30/2010. Est. Value—$388.00.	China National Tourism Administration.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Andrew Billard, Commercial Officer.	TRAVEL: To attend the Invest in America Seminar. Rec'd—1/28–30/2010. Est. Value—$388.00.	Her Excellency Chen Xin, Secretary Chief of International Relations Dept. CCPIT, People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Michelle He, Executive Assistant.	TRAVEL: To attend 2010 Sino/US leadership summit. Rec'd—1/28–30/2010. Est. Value—$388.00.	China National Tourism Administration.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Silvia Cardenas, Commercial Specialist.	TRAVEL: Health Care information Technology Orientation Visit. Rec'd—02/28/2010. Est. Value—$2,336.00.	AERO Expo Organizer Committee (Mexico City, Mexico).	Non-acceptance would cause embarrassment to donor and U.S. Government.
Juan Carlos Prieto, Commercial Specialist.	TRAVEL: Health Care information Technology Orientation Visit. Rec'd—02/28/2010. Est. Value—$2,336.00.	ProMexico of the United Mexican States.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Fred Elliott, International Trade Specialist.	TRAVEL: Travel costs (round trip air fare, lodging, meals, local transportation). Rec'd—03/1–4/2010. Est. Value—$2,725.00.	Puglia Region, the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Geoffrey Bogart, Principal Commercial Officer.	TRAVEL: To participate as main speaker during the 1st Student Colloqium ''Espiritu Lince'' that will take place on UVM Campus in San Luis Potos, SLP. Rec'd—5/24/2010. Est. Value—$360.00.	Universidad del Valle de Mexico-Maestra, Eugenia Santos de Alba, Director of Professional Studies (Monterrey, Mexico).	Non-acceptance would cause embarrassment to donor and U.S. Government.
Juan Herrera, Commercial Specialist.	TRAVEL: To attend the Expo Pack event. Rec'd—6/21/2010. Est. Value—$427.50.	Expo Pack—Enrique Guzman—Marketing Director for Latin America (Guadalajara, Mexico).	Non-acceptance would cause embarrassment to donor and U.S. Government.
Yazmin Rojas, Commercial Specialist.	TRAVEL: To attend Cosmoprof North America Las Vegas. Rec'd—7/18/2010. Est. Value—$422.07.	Cosmoprof North America 10 (Monterrey, Mexico).	Non-acceptance would cause embarrassment to donor and U.S. Government.
Gwen Lyle, Commercial Officer.	TRAVEL: To attend 2010 Sino/US travel leadership summit. Rec'd—10/09/2010. Est. Value—$393.00.	China National Tourism Administration.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. Richard R. Craig, Commercial Officer.	TRAVEL: Lodgings, local transportation and some meals for Peace Corps Reunion week. Rec'd—10/10–16/2010. Est. Value—$900.00.	The Korea Foundation, Seoul, Korea (82–2) 2046–8527. Ms. Y.K. Lee, www.kf.or.kr.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Ellen Lenny-Pessagno, Senior Commercial Officer.	TRAVEL: To be one of the key speakers and participate in the IV Meeting of Galician Enterpreneurs Abroad in Santiago de Compostela from Octover 26–27, 2010 for Galician Companies organized by IGAPE (Galician Institute for Economic Promotion). Transporation and lodging. Rec'd—10/26–27/2010. Est. Value—$1,000.00.	IGAPE, Instituto Gallego de Promocion Economica (Investment Support Services for Regional and International Development), Xunta de Galicia Complexo Administrativo San Lazaro 15703 Santiago de Compostela. IGAPE, Instituto Gallego de Promocion Economica Complexo Administrativo San Lazaro 15703 Santiago de Compostela. (Madrid, Spain).	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF COMMERCE—Continued

[Report of Tangible Gifts and Travel Furnished by the Department of Commerce]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Angela Turrin, Trade Specialist.	TRAVEL: CS Spain showcased 5 NTM U.S. companies catalogs at CS's nooth as a result from the partnership with several multipliers. Rec'd—11/4–8/2010. Est. Value—$670.00.	FIRA DE BARCELONA—Hostelco Avda/Reina Ma Cristina, s/n—08004. Barcelona, Spain. TEL 00 34 902 2300 200. Note: FIRA de Barcelona is publicly owned with autonomous company management.	
Cao Shujuan, Commercial Specialist.	TRAVEL: To support China Urban Development Committee. Rec'd—11/16/2010. Est. Value—$2,969.00.	Urban Development Committee of the China Council for the Promotion of International Trade.	

AGENCY: DEPARTMENT OF JUSTICE

[Report of Tangible Gifts Furnished by the Department of Justice]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Eric H. Holder, Attorney General of the United States.	iPad. Rec'd—5/28/2010. Est. Value—$500.00. Disposition—Attorney General's Office for Official Use.	Dr. Attilio Fontana, Mayor of Varese, Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Eric H. Holder, Attorney General of the United States.	Cartier watch. Persian rug. Rec'd—9/16/2010. Est. Value—$5,275.00. Disposition—Transferred to General Services Administration; Rug on Display in Attorney General's Office for Official Use.	Ali Bin Mohsen Bin Fetais, Attorney General of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF DEFENSE

[Report of Tangible Gifts Furnished by the Department of Defense]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Robert M. Gates, Secretary of Defense.	16″ x 18″ hand-woven wool Afghan rug pile. Rec'd—12/8/2009. Est. Value—$980.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Hamid Karzai, President of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Robert M. Gates, Secretary of Defense.	Black leather brief case. Silver and gold-finish Parker pen set. Book, title: ''Kultur Baskenti Instanbul: The Capital of Cultures.'' Umbrella. Writing Tablet. Rec'd—2/2/2010. Est. Value—$480.00. Disposition—Pending Transfer to General Services Administration.	His Excellency M. Vecdi Gonul, Minister of National Defense of the Republic of Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Robert M. Gates, Secretary of Defense.	Silver vase. Filigree necklace set. Rec'd—2/4/2010. Est. Value—$485.00. Disposition—Pending Transfer to General Services Administration.	His Excellency M. Vecdi Gonul, Minister of National Defense of the Republic of Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Robert M. Gates, Secretary of Defense.	Silver replica of a fountain located on the grounds of the Prime Minister's residence. Rec'd—2/4/20. Est. Value—$5,160.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Robert M. Gates, Secretary of Defense.	4′ x 7′ rug. Turbin from Afghanistan. Rec'd—3/9/2010. Est. Value—$530.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Hamid Karzai, President of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Robert M. Gates, Secretary of Defense of the United States.	Decorative candlestick holders. Rec'd—4/1/2010. Est. Value—$950.00. Disposition—Pending Transfer to General Services Administration.	His Majesty Abdullah II ibn Al Hussein, King of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF DEFENSE—Continued

[Report of Tangible Gifts Furnished by the Department of Defense]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Robert M. Gates, Secretary of Defense.	Plaque. Silver palm tree table lamp. Rec'd—5/13/2010. Est. Value—$495.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Ridha Grira, Minister of Defense of the Republic of Tunisia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Robert M. Gates, Secretary of Defense of the United States.	Silver serving tray set. Rec'd—5/20/2010. Est. Value—$430.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Saad Hariri, Prime Minister of the Republic of Lebanon.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Robert M. Gates, Secretary of Defense of the United States.	32 piece hand-made porcelain chess set. Book, title: ''Prague Art and History.'' Decorative plate with country emblem. Rec'd—6/4/2010. Est. Value—$1,530.00. Disposition—Pending Transfer to General Services Administration.	Colonel General Safar Abiyev, Minister of Defense of Azerbaijan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Robert M. Gates, Secretary of Defense of the United States.	Artwork of gold oasis scene. Rec'd—7/9/2010. Est. Value—$1,400.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Abdullah bin Abd al-Aziz Al Saud, Custodian of the Two Holy Mosques, King of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Robert M. Gates, Secretary of Defense.	Statue of an oryx. Rec'd—10/5/2010. Est. Value—$360.00. Location—Gift on Display at Pentagon for Official Use.	His Excellency Sheikh Hamad bin Jassim bin Jabr Al Thani, Prime Minister and Minister of Foreign Affairs of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Becky Gates, Spouse of Robert M. Gates, Secretary of Defense.	5′ x 7′ Baku rug with certificate of authenticity for handmade rug. 5′ x 5′ purple silk scarf. Rec'd—6/5/2010. Est. Value—$370.00. Disposition—Pending Transfer to General Services Administration.	Mrs. Almas Abiyeva, Spouse of the Minister of Defense of Azerbaijan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Admiral Michael G. Mullen, Chairman of the Joint Chiefs of Staff.	Large silver palm tree encased in shadow box. Rec'd—12/19/2009. Est. Value—$460.00. Disposition—Pending Transfer to General Services Administration.	Lieutenant General Abdul Qadir Mohammed Jassim, Minister of Defense of the Republic of Iraq.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Admiral Michael G. Mullen, Chairman of the Joint Chiefs of Staff.	Bottle of Dimple Scotch. Fourteen books. Rec'd—12/20/2009. Est. Value—$393.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Husain Haqqani, Ambassador of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Admiral Michael G. Mullen, Chairman of the Joint Chiefs of Staff.	Italian naval oil painting with certificate. Rec'd—1/10/2010. Est. Value—$755.00. Disposition—Pending Transfer to General Services Administration.	Mr. Allan O'Mill, Official Painter of the Italian Navy.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Admiral Michael G. Mullen USN, Chairman of the Joint Chiefs of Staff of the United States.	Gold cross on gold chain. Rec'd—2/9/2010. Est. Value—$545.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Lieutenant General Samy Enan, Chief of Staff of the Armed Forces of the Arab Republic of Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Admiral Michael G. Mullen USN, Chairman of the Joint Chiefs of Staff of the United States.	Gold-plated bird ornament on crystal stand. Rec'd—2/14/2010. Est. Value—$500.00. Disposition—Pending Transfer to General Services Administration.	General Gabi Ashkenazi, Chief of Defense of the State of Israel.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Admiral Michael G. Mullen USN, Chairman of the Joint Chiefs of Staff of the United States.	Medium silver bowl. Rec'd—2/14/2010. Est. Value—$370.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Lieutenant General Samy Enan, Chief of Staff of the Armed Forces of the Arab Republic of Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Admiral Michael G. Mullen, Chairman of the Joint Chiefs of Staff.	Silver gift box. Rec'd—2/16/2010. Est. Value—$980.00. Disposition—Pending Transfer to General Services Administration.	His Majesty King Abdullah II ibn Al Hussein, King of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Admiral Michael G. Mullen USN, Chairman of the Joint Chiefs of Staff of the United States.	Large sword. Rec'd—2/16/10. Est. Value—$425.00. Disposition—Pending Transfer to General Services Administration.	Samir Rifai, Chief of Defense of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF DEFENSE—Continued

[Report of Tangible Gifts Furnished by the Department of Defense]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Admiral Michael G. Mullen USN, Chairman of the Joint Chiefs of Staff of the United States.	Crystal tea service set on crystal tray. Rec'd—2/18/2010. Est. Value—$650.00. Location—Official Use at Pentagon.	Ms. Hamad Mohammed Thani Al Rumaithi, Wife of Armed Forces Chief of Staff of the United Arab Emirates.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Admiral Michael G. Mullen, Chairman of the Joint Chiefs of Staff.	Silver boom sailing ship in wooden box. Rec'd—4/1/2010. Est. Value—$485.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Nasser Mohammed Al Ahmed Al-Sabah, Prime Minister of the State of Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Admiral Michael G. Mullen, Chairman of the Joint Chiefs of Staff.	Encased gold sword on display stand. Rec'd—4/1/2010. Est. Value—$2,200.00. Disposition—Pending Transfer to General Services Administration.	Lieutenant General Sheikh Ahmad Al-KHaled Al-Hamad Al-Sabah, Chief of Staff of the Kuwaiti Army.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Admiral Michael G. Mullen, Chairman of the Joint Chiefs of Staff.	Saber with curved steel blade and intaglio foliate scrolls on both sides. Plaque. Rec'd—4/22/2010. Est. Value—$400.00. Disposition—Pending Transfer to General Services Administration.	His Excellency General of the Army Nikolai Makrov, Chief of General Staff of the Armed Forces of the Russian Federation.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Admiral Michael G. Mullen, Chairman of the Joint Chiefs of Staff.	Medium shield-shaped plaque. Pair of male and female bust portraits. Rec'd—5/10/2010. Est. Value—$405.00. Disposition—Pending Transfer to General Services Administration.	Air Chief Marshal P.V. Naik, Chief of the Air Staff, Indian Air Force, India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Admiral Michael G. Mullen, Chairman of the Joint Chiefs of Staff.	Medium marble candle holder. Rec'd—5/10/2010. Est. Value—$385.00. Location—Gift on Display at Pentagon for Official Use.	His Majesty King Abdullah II ibn Al Hussein and Her Majesty Queen Rania Al Abdullah, King and Queen of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Admiral Michael G. Mullen USN, Chairman of the Joint Chiefs of Staff of the United States.	Narrow rug. Rec'd—6/14/2010. Est. Value—$1,500.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Makhdoom Shah Mehmood Qureshi, Foreign Minister of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Admiral Michael G. Mullen USN, Chairman of the Joint Chiefs of Staff of the United States.	AK 47/Serial #NM 26 1684. Rec'd—6/30/2010. Est. Value—$780.00. Transferred to the Department of the Army.	General Freddy Padilla de Leon, Commander of the Military Forces of the Republic of Colombia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Admiral Michael G. Mullen, Chairman of the Joint Chiefs of Staff.	Saber with black curved steel blade. Rec'd—7/13/2010. Est. Value—$450.00. Disposition—Pending Transfer to General Services Administration.	Brigidier General Abdulla Saeed Al-Mansoori, Royal Bahrain Naval Forces Commander.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Admiral Michael G. Mullen, Chairman of the Joint Chiefs of Staff.	Envelope opener. Key ring. Business card case. Rec'd—7/21/2010. Est. Value—$385.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Kim Taeyoung, Minister of Defense of the Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Admiral Michael G. Mullen, Chairman of the Joint Chiefs of Staff.	Bohemia cyrstal vase. Praha crystal plate. Rec'd—7/29/2010. Est. Value—$494.00. Disposition—Pending Transfer to General Services Administration.	General Vlastimil Picek, Chief of the General Staff of the Armed Forces of the Czech Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Admiral Michael G. Mullen, Chairman of the Joint Chiefs of Staff.	Plaque in presentation box. Scarf. Jewelry box. Rec'd—10/6/2010. Est. Value—$395.00. Disposition—Pending Transfer to General Services Administration.	Major General Hazim Attallah, Chief of Palestinian Civil Police.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Admiral Michael G. Mullen, Chairman of the Joint Chiefs of Staff.	Vase with canted top and bottom. Green scarf with paisley pattern and metallic threads. Cuff bracelets of lapis lazuli panels set in silver. Two cleaning brushes. Rec'd—Unknown. Est. Value—$524.00. Disposition—Pending Transfer to General Services Administration.	Unknown Foreign Government Official of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Assistant Secretary of Defense, Alexander Vershbow, OSD Policy.	Kutahya Porselen vase. Vakko silk scarf. Rec'd—12/16/2009. Est. Value—$395.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Aslan Guner, Deputy Chief of Defense of the Republic of Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF DEFENSE—Continued

[Report of Tangible Gifts Furnished by the Department of Defense]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Deputy Assistant Secretary of Defense, Michael Schiffer, OSD Policy.	Amber-color crystal Chinese calligraphy writing set. Rec'd—12/17/2009. Est. Value—$980.00. Location—Gift on Display at Pentagon.	Major General Qian Lihua, Director of the Foreign Affairs Office of the Ministry of National Defense of the People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Assistant Secretary of Defense, Alexander Vershbow, OSD Policy.	Personalized engraved plaque. Ballpoint pen. Fountain pen with gold ring and cap. Rec'd—12/16/2009. Est. Value—$375.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Aslan Guner, Deputy Chief of Defense of the Republic of Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Gen. James E. Cartwright, Vice Chairman, Joint Chiefs of Staff.	Pen set with display box. Wooden plaque. Rec'd—12/16/2009. Est. Value—$375.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Aslan Guner, Deputy Chief of Defense of the Republic of Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Country Director for Bahrain, OSD Policy, Andre Sekowski.	Wallet and pen set. Rec'd—12/29/2009. Est. Value—$790.00. Disposition—Pending Transfer to General Services Administration.	Staff Brigadier General Abdulrahman Ibrahim Al-Hemaidi, Defense Military, Naval, and Air Attaché of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Assistant Secretary of Defense, Alexander Vershbow, OSD Policy.	Desk clock. Watch, wallet, pen, and cufflinks in accessory box. Rec'd—1/14/2010. Est. Value—$6,090. Disposition—Pending Transfer to General Services Administration.	Brigadier General Abdulla Juma'an, General Coordinator of the Qatar Armed Forces.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Principal Deputy Assistant Secretary of Defense for International Security Affairs, Joseph McMillan, OSD Policy.	Desk clock. Watch, wallet, pen, and cufflinks in accessory box. Rec'd—1/15/2010. Est. Value—$6,090. Disposition—Pending Transfer to General Services Administration.	Brigadier General Abdulla Juma'an, General Coordinator of the Qatar Armed Forces.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Event Planner, Martha Jordan, OSD Policy.	Carven stainless steel and coppertone wristwatch. Pierre Cardin black ink ballpoint pen. Rec'd—1/15/2010. Est. Value—$2,185.00. Disposition—Pending Transfer to General Services Administration.	Brigadier General Abdulla Juma'an, General Coordinator of the Qatar Armed Forces.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Country Director for Bahrain, OSD Policy, Andre Sekowski,.	Wallet, cufflinks, pen, and watch in presentation box. Rec'd—1/15/2010. Est. Value—$790.00. Disposition—Pending Transfer to General Services Administration.	Brigadier General Abdulla Juma'an, General Coordinator of the Qatar Armed Forces.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Principal Deputy Assistant Secretary of Defense, Joseph McMillan.	Artwork of silver ship displaying the flag of Kuwait, the capital building, and a gold oasis scene. Rec'd—1/26/2010. Est. Value—$980.00. Disposition—Pending Transfer to General Services Administration.	Major General Abdulrahman Al-Othman, Assistant Chief of Staff for Operations and Plans of the Kuwait Armed Forces, Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice Admiral Jeffrey A. Wieringa, Director, Defense Security Cooperation Agency.	Men's two-toned Eco-Drive Citizen watch; Women's gold bracelet with diamonds. Rec'd—4/9/2010. Est. Value—$1,160.00. Disposition—Pending Transfer to General Services Administration.	Major General and Mrs. Mohamed Elkeshky, Defense, Military, Naval & Air Attaché of the Arab Republic of Egypt and Spouse, and Vice Admiral and Mrs. Mohab Mameesh, Commander in Chief of the Egyptian Naval Forces.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mrs. Sandee Cartwright, Spouse of Vice Chairman Joint Chiefs of Staff James Cartwright.	Square tablecloth. Haddad Cutlery manicure set. Haddad Cutlery six-piece serving set. Rec'd—4/15/2010. Est. Value—$645.00. Disposition—Pending Transfer to General Services Administration.	Najwa Fakhr Al Din, Spouse of the Vice Chief of Defense of the Republic of Lebanon.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable William J. Lynn III, Deputy Secretary of Defense.	Decorative candle holder. Rec'd—4/21/10. Est. Value—$385.00. Disposition—Pending Transfer to General Services Administration.	His Majesty King Abdullah II ibn Al Hussein, Her Majesty Queen Rania Al Abdullah, King and Queen of the Hashemite Kingdom of Jordan and Prince Zeid Raad Zied Al-Hussein, Ambassador of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF DEFENSE—Continued

[Report of Tangible Gifts Furnished by the Department of Defense]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Andre Sekowski, Country Director for Bahrain, OSD Policy.	Book, title: ''Mosaic: A Journey Through the Multi-faceted world of Bahrain's Arts and Crafts.'' Maurice-Lacroix men's wristwatch. Rec'd—5/20/2010. Est. Value—$1,167.00. Disposition—Pending Transfer to General Services Administration.	His Royal Highesn Salman bin Hamad, Crown Prince of the Kingdom of Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Under Secretary of Defense Michele Flournoy, OSD Policy.	Painting of a duck by Mohammad Mandi. Rec'd—6/29/2010. Est. Value—$970.00. Location—Gift on Display at Pentagon.	His Excellency Dr. Anwar Mohammad Gargash, Minister of State for Foreign Affairs of the United Arab Emirates.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Principal Deputy Under Secretary of Defense, James Miller, OSD Policy.	Two pens in black and gold. Rec'd—7/1/2010. Est. Value—$785.00. Location—Gift on Display at Pentagon.	His Excellency Lee Myung-bak, President of the Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Deputy Assistant Secretary of Defense, Celeste Wallander, OSD Policy.	Plaque. CD, title: ''Dedicated to the victims of the Armenia Genocide of 1915.'' Book, title: ''Jansem.'' Book, title: ''Western Media Coverage of the Nagorno-Karabekh Conflict in 1988–1990.'' Pamphlet, title: ''Remembering and Understanding the Armenian Genocide.'' Armed Forces of Armenia round gold coin. Rec'd—7/1/2010. Est. Value—$453.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Seyrah Ohanyan, Minister of Defense of the Republic of Armenia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Gen. James E. Cartwright, Vice Chairman, Joint Chiefs of Staff.	Miniature Pounamu Mere in a display box. Rec'd—7/19/2010. Est. Value—$585.00. Disposition—Pending Transfer to General Services Administration.	Rear Admiral Jack Steer, Chief of the Royal New Zealand Navy.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Asian and Pacific Security Affairs, Chip Gregson, OSD Policy.	Business card case. Envelope opener. Key ring. Rec'd—7/21/2010. Est. Value—$380.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Yu Myung-hwan, Minister of Foreign Affairs and Trade of the Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Senior Taiwan Director, Joseph Skinner, OSD Policy.	Glass paperweight featuring birds and grapes. Rec'd—8/5/2010. Est. Value—$385.00. Disposition—Pending Transfer to General Services Administration.	The Honorable Dr. Hu Wei-Jen, Secretary General of the Taiwan National Security Council.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Principal Deputy Assistant Secretary of Defense, Asian and Pacific Security Affairs Derek Mitchell, OSD Policy.	Single strand pearl necklace. Bed cover and two pillowcases with hand-embroidered designs. Rec'd—8/6/2010. Est. Value—$1,510.00. Disposition—Pending Transfer to General Services Administration.	General Md Abdul Mubeen, Chief of Army Staff of Bangladesh.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Senior Taiwan Director, Joseph Skinner, OSD Policy.	Glass paperweight featuring birds and grapes. Rec'd—8/5/2010. Est. Value—$385.00. Disposition—Pending Transfer to General Services Administration.	The Honorable Dr. Hu Wei-Jen, Secretary General of the Taiwan National Security Council.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Assistant Secretary of Defense, Alexander Vershbow, OSD Policy.	Bronze platter with small red rhinestones. Rec'd—9/23/2010. Est. Value—$820.00. Disposition—Pending Transfer to General Services Administration.	Under Secretary Hakan Fidan, Director of the Turkish National Intelligence Organization of the Republic of Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Major General William B. Garrett.	Framed map of the province of Vicenza, Italy. Rec'd—11/15/2010. Est. Value—$520.00. Disposition—Pending Transfer to General Services Administration.	Dr. Achille Variati, Major of Vicenza, Italian.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Assistant Secretary of Defense, Asian and Pacific Security Affairs, Chip Gregson, OSD Policy.	White porcelain vase. Rec'd—11/30/2010. Est. Value—$620.00. Disposition—Pending Transfer to General Services Administration.	General (Retired) Liu Dongdong Political Commissar of the Jinan Military Region of the People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF THE AIR FORCE

[Report of Tangible Gifts Furnished by the Department of the Air Force]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Michael Wynne, Secretary of the Air Force, Pentagon, Washington DC.	French Officer dagger. Rec'd—4/1/2008. Est. Value—$421.00. Disposition—Pending Transfer to General Services Administration.	General Stéphane Abrial, Chief of Staff of the French Air Force.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Michael B. Donley, Secretary of the Air Force, Pentagon, Washington DC.	4′ × 6′ Afghan wool rug. Rec'd—8/28/2009. Est. Value—$550.00. Disposition—Currently on display in the Pentagon, Washington DC, Rm 4E833.	His Excellency Abdul Rahim Wardak, Minister of Defenseof the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Michael B. Donley, Secretary of the Air Force, Pentagon, Washington DC.	4′ × 6′ Afghan wool rug. Rec'd—8/28/2009. Est. Value—$550.00. Disposition—Currently on display in the Pentagon, Washington DC, Rm 4E833.	Major General Mohammed Darwan of the Afghan National Army Air Corps Commander.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Michael B. Donley, Secretary of the Air Force, Pentagon, Washington DC.	6′ × 8′ Afghan wool rug. Rec'd—4/1/2008. Est. Value—$1,295.00. Disposition—Currently on display in the Pentagon, Washington DC, Rm 4E833.	Brigadier General Chris Tickell, Chief of Afghan National Air Corps Training.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Michael B. Donley, Secretary of the Air Force, Pentagon, Washington DC.	4′ × 6′ handmade wool rug. Rec'd—10/14/2009. Est. Value—$550.00. Disposition—Currently on display in the Pentagon, Washington DC, Rm 4E833.	His Excellency Rao Qamar Suleman, Chief of Pakistan Air Force of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
General Norton Schwartz, Chief of Staff of the Air Force, Pentagon, Washington DC.	Torgeon Swiss men's T01101 Chronograph watch. Jewelry case. Rec'd—12/2/2010. Est. Value—$410.00. Disposition—Pending Transfer to General Services Administration.	Major General Ahmed Boutaleb, Chief of Staff of the Moroccan Air Force of the Kingdom Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
General Norton Schwartz, Chief of Staff of the United States Air Force.	Hungarian dagger. Rec'd—12/2/2010. Est. Value—$1,500.00. Disposition—Pending Transfer to General Services Administration.	Major General Zoltán Pintér, Chief of Staff of the Hungarian Air Force.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Major General Floyd C Williams, Chief, Office of Military Cooperation, Cairo, Egypt.	18-karat gold men's tie clip. Rec'd—1/7/2009. Est. Value—$480.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Field Marshal Mohamed Hussein Tantawi, Minister of Defense of the Arab Republic of Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mrs. Rebecca Williams, wife of Major General Floyd C Williams, Chief, Office of Military Cooperation, Cairo, Egypt.	18-karat gold necklace. Rec'd—11/12/2009. Est. Value—$355.00. Disposition—Pending Transfer to General Services Administration.	Vice Admiral Mohab Mameesh, Commander in Chief of the Egyptian Navy.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Major General Frederick F. Roggero, Commander Headquarters Air Force Safety Center and Commander Headquarters Air Force Safety, Pentagon, Washington DC.	Tag Heuer Aquaracer automatic wristwatch. Rec'd—11/18/2009. Est. Value—$1,800.00. Disposition—Pending Transfer to General Services Administration.	Lieutenant General Hamad Mohammed Thani Al Rumaithi, Chief of Staff of the United Arab Emirates Armed Forces.	Non-acceptance would cause embarrassment to donor and U.S. Government.
John M. Polhemus, GS–12, Protocol Specialist, 89th Airlift Wing, Joint Base Andrews, MD.	Bvlgari Solotempo men's watch ST42SL. Rec'd—2/4/2010. Est. Value—$1,044.00. Disposition—Missing—Report of Survey (#2011–125) determined disappeared and remains to be found.	Mr. Ziad Soubra, Chief of Protocol of the Embassy of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Brigadier General Lyn D Sherlock, Director of Regional Affairs, International Affairs, Pentagon, Washington DC.	Silver earrings, necklace, and bracelet set. Rec'd—8/30/2010. Est. Value—$600.00. Disposition—Pending Transfer to General Services Administration.	Major General Ahmed Boutaleb, Chief of Staff of the Moroccan Air Force of the Kingdom of Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Colonel Angel Diaz, Director, Host Nation Coordination Cell, 379 Air Expeditionary Wing South West Asia.	Black watch. Black ballpoint pen. Pierre Cardin cufflinks. JBR cologne. Rec'd—9/7/2010. Est. Value—$647.00. Disposition—Pending Transfer to General Services Administration.	Major General Hamad bin Ali Al-Attiyah, Chief of Staff of the Qatar Armed Forced.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Brigadier General Randal A Kee, Commander, 379 Air Expeditionary Wing, South West Asia.	Gold watch. Gold ballpoint pen. Pierre Cardin cufflinks. JBR cologne. Rec'd—10/5/2010. Est. Value—$678.00. Disposition—Pending Transfer to General Services Administration.	Major General Hamad bin Ali Al-Attiyah, Chief of Staff of the Qatar Armed Forced.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Brigadier General Lyn D Sherlock, Director of Regional Affairs, International Affairs, Pentagon, Washington DC.	Silver earrings, necklace, and bracelet set. Rec'd—11/10/2010. Est. Value—$550.00. Disposition—Pending Transfer to General Services Administration.	Major General Ahmed Boutaleb, Chief of Staff of the Moroccan Air Force of the Kingdom of Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF THE AIR FORCE—Continued

[Report of Tangible Gifts Furnished by the Department of the Air Force]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Brigadier General Scott Hansen, 321nd Air Expeditionary Wing Commander and Director, Iraq Training and Advisory Mission—Air Force, Baghdad, Iraq.	Men's Baum and Mercier watch. Women's Baum and Mercier watch. Rec'd—12/21/2010. Est. Value—$4,000.00. Disposition—Pending Transfer to General Services Administration.	Major General Hamad bin Ali Al-Attiyah, Chief of Staff of the Qatar Armed Forced.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF THE ARMY

[Report of Tangible Gifts Furnished by the Department of the Army]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Colonel John P. Rooney, Commander, US Army Aberdeen Test Center.	Baume & Mercier watch. Givenchy brown leather wallet. Givenchy Very Irresistible eau de toilette spray (3.4 oz). Rec'd—1/8/2008. Est. Value—$3,377.00. Disposition—Pending Transfer to General Services Administration.	Major General Hamad bin Ali Al-Attiyah, Chief of Staff of the Qatar Armed Forces.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Brigadier General (Promotable) Robert B. Brown, O–7, Deputy Commanding General—Support, 25th Infantry Division, Multi-National Division-North, Iraq.	Gold and white gold Rado men's Swiss wristwatch. Rec'd—12/8/2008. Est. Value—$2,100.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Masoud Barzani, President of the Kurdistan Region of the Republic of Iraq.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Lieutenant General Charles H. Jacoby, Jr., O–9, Deputy Commanding General (Operations), US Forces-Iraq & commander, I Corps.	Longine's men's watch. Rec'd—4/2/2009. Est. Value—$645.00. Disposition—Purchased through General Services Administration in March 2010.	His Excellency Masoud Barzani, President of the Kurdistan Region of the Republic of Iraq.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Brigadier General (Promotable) Robert B. Brown, O–7, Deputy Commanding General—Support, 25th Infantry Division, Multi-National Division-North, Iraq.	Silver men's Victorinox Swiss Army men's wristwatch. Rec'd—4/12/2009. Est. Value—$800.00. Disposition—Pending Transfer to General Services Administration.	Brigadier General Jameel Ali Ibrahim, Liaison Officer for the Kurdistan Regional Government, Republic of Iraq.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Brigadier General (Promotable) Robert B. Brown, O–7, Deputy Commanding General—Support, 25th Infantry Division, Multi-National Division-North, Iraq.	22″ x 30″ rectangular shaped rug in red and gold. Rec'd—4/28/2009. Est. Value—$1,800.00. Disposition—Pending Transfer to General Services Administration.	Sheikh Abdullah Shamer, Sheikh of Western Ninewa Province, the Republic of Iraq.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Lieutenant Bryan P. Ewing, O–2.	Stainless steel men's sapphire crystal Longines wristwatch. Rec'd—9/1/2009. Est. Value—$1,825.00. Disposition—Pending Transfer to General Services Administration.	Mansour Ranza, ALMCO Multi-National Security Transition Command, Republic of Iraq.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Brigadier General (Promotable) Robert B. Brown, O–7, Deputy Commanding General—Support, 25th Infantry Division, Multi-National Division-North, Iraq.	30″ x 44″ rectangular shaped rug in gold and pink. Rec'd—9/9/2009. Est. Value—$1,800.00. Disposition—Pending Transfer to General Services Administration.	Major General Jabbar Yawar, Deputy Minister of Peshmerga of the Kurdistan Regional Government, Republic of Iraq.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Brigadier General Kevin W. Mangum, O–7, Director of the Iraqi National Counter-Terrorism Force Transition Team, Multi-National Security Transition Command-Iraq (For daughter Anela).	Women's 21-karat yellow gold snake ring with zirconia stones. Rec'd—9/13/2009. Est. Value—$375.00. Disposition—Purchased through the General Services Administration in April 2010.	Major General Fadil Jalil al-Barwari, Commander of the 1st Special Forces Brigade of the Republic of Iraq.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF THE ARMY—Continued

[Report of Tangible Gifts Furnished by the Department of the Army]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Brigadier General Kevin W. Mangum, O–7, Director of the Iraqi National Counter-Terrorism Force Transition Team, Multi-National Security Transition Command-Iraq (For wife Angel).	Women's 21-karat yellow gold fashion ring with zirconia stones. Rec'd—9/13/2009. Est. Value—$450.00. Disposition—Purchased through the General Services Administration in April 2010.	Major General Fadil Jalil al-Barwari, Commander of the 1st Special Forces Brigade of the Republic of Iraq.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Brigadier General (Promotable) Robert B. Brown, O–7, Deputy Commanding General—Support, 25th Infantry Division, Multi-National Division-North, Iraq.	22″ x 30″ rectangular shaped rug in blue and pink. Rec'd—9/23/2009. Est. Value—$1,800.00. Disposition—Pending Transfer to General Services Administration.	Major General Aziz Weyzi, Zervani, Commander of Peshmerga, the Republic of Iraq.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Brigadier General (Promotable) Robert B. Brown, O–7, Deputy Commanding General—Support, 25th Infantry Division, Multi-National Division-North, Iraq.	22″ x 30″ rectangular shaped rug in pink and tan. Rec'd—10/2/2009. Est. Value—$1,800.00. Disposition—Pending Transfer to General Services Administration.	Lieutenant General Sherwan Ali Abdulrahman, Deputy Minister of Peshmerga, the Republic of Iraq.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Brigadier General (Promotable) Robert B. Brown, O–7, Deputy Commanding General—Support, 25th Infantry Division, Multi-National Division-North, Iraq.	Gold and white gold women's Rimador Japan Quartz wristwatch. Rec'd—10/10/2009. Est. Value—$1,800.00. Disposition—Pending Transfer to General Services Administration.	Brigadier General Ali, Army Commander of the Republic of Iraq.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Brigadier General (Promotable) Robert B. Brown, O–7, Deputy Commanding General—Support, 25th Infantry Division, Multi-National Division-North, Iraq.	Onyx and silver earring and jewelry set. Rec'd—10/15/2009. Est. Value—$1,600.00. Disposition—Pending Transfer to General Services Administration.	Mr. Abdul Karim Sultan Sinjair, Minister of Interior of the Kurdistan Regional Government, Republic of Iraq.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Brigadier General (Promotable) Robert B. Brown, O–7, Deputy Commanding General—Support, 25th Infantry Division, Multi-National Division-North, Iraq.	30″ x 44″ rectangular shaped rug in blue and red. Rec'd—10/18/2009. Est. Value—$2,500.00. Disposition—Pending Transfer to General Services Administration.	General Sheikh Jaffer Ali Mustafa, Minister of Peshmerga Affairs, Republic of Iraq.	Non-acceptance would cause embarrassment to donor and U.S. Government.
General David Petraeus, Commander, US Central Command.	Chopard Swiss wristwatch. Rec'd—11/17/2009. Est. Value—$6,000.00. Disposition—Pending Transfer to General Services Administration.	Major General Hamad bin Ali Al-Attiyah, Chief of Staff of the Qatar Armed Forces.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Brigadier General Mangum, O–7, Deputy Commanding General—Center, US Division—Center, Camp Liberty.	Gold necklace and earrings. Rec'd—1/22/2010. Est. Value—$500.00. Disposition—Pending Transfer to General Services Administration.	Major General Fadil Jalil al-Barwari, Commander of the 1st Special Forces Brigade of the Republic of Iraq.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Lieutenant Colonel Troy D. Joslin, O–5, Director of Public Works, Task Force Cyclone.	Personalized medium gold-plated castle statue encased in wood and glass. Rec'd—2/3/2010. Est. Value—$550.00. Disposition—Retain for Official Display: Camp Phoenix, Afghanistan, APO AE 09320 on return to use displayed in the museum at Camp Atterbury Joint Maneruver Training center, Camp Atterbur, Indiana.	His Highness General Shiekh Mohamed bin Zayed Al Nahyan, Crown Prince of Abu Dhabi, Deputy Supreme Commander of the United Arab Emirates Armed Forces and Chairman of the Abu Dhabi Executive Council.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Brigadier General Joseph L . Culver, O–7, Commander, Task Force Cyclose.	Personalized large gold-plated castle statue encased in wood and glass. Rec'd—2/3/2010. Est. Value—$800.00. Disposition—Retain for Official Display: Conference Room of Joint Forces Headquarters, Kentucky National Guard, Frankfort, Kentucky.	His Highness General Shiekh Mohamed bin Zayed Al Nahyan, Crown Prince of Abu Dhabi, Deputy Supreme Commander of the United Arab Emirates Armed Forces and Chairman of the Abu Dhabi Executive Council.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF THE ARMY—Continued

[Report of Tangible Gifts Furnished by the Department of the Army]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Colonel Richard D. Shatto, O–6, Brigade Commander, Task Force Cyclone.	Personalized large gold-plated castle statue encased in wood and glass. Rec'd—2/3/2010. Est. Value—$800.00. Disposition—Retain for Official Display: Trophy case of the 38th Infantry Division Armory, 3912 Minnesota Street, Indianapolis, Indiana.	His Highness General Shiekh Mohamed bin Zayed Al Nahyan, Crown Prince of Abu Dhabi, Deputy Supreme Commander of the United Arab Emirates Armed Forces and Chairman of the Abu Dhabi Executive Council.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Colonel Timothy N. Thombleson, O–6, Deputy Commander, Task Force Cyclone.	Personalized large gold-plated castle statue encased in wood and glass. Rec'd—2/3/2010. Est. Value—$500.00. Disposition—Retain for Official Display: Trophy case of the Joint Forces Headquarters, Indiana National Guard, Indianapolis, Indiana.	His Highness General Shiekh Mohamed bin Zayed Al Nahyan, Crown Prince of Abu Dhabi, Deputy Supreme Commander of the United Arab Emirates Armed Forces and Chairman of the Abu Dhabi Executive Council.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Lieutenant General Steven Whitcomb, O–9, The Inspector General.	50ml Versace Versense cologne. 100ml Ferrari Uomo cologne. Techno Marine watch, serial number TMNC P07108287. Rec'd—2/7/2010. Est. Value—$3,068.90. Disposition—Pending Transfer to General Services Administration.	Major General Hamad bin Ali Al-Attiyah, Chief of Staff of the Qatar Armed Forces.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Major Edlyn Smith, Aide de Camp to The Inspector General.	JBR watch, serial number GL SSB 7863 D72 C. Silver pen, cufflinks, and leather wallet in solid oak gift box. Rec'd—2/7/2010. Est. Value—$1,300.00. Disposition—Pending Transfer to General Services Administration.	Major General Hamad bin Ali Al-Attiyah, Chief of Staff of the Qatar Armed Forces.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Sergeant Major Henry Jackson, Sergeant Major to The Inspector General.	Jaguar watch J636. Pierre Cardin cufflinks, black leather wallet, and roller point pen in mahogany and leather gift box. Rec'd—2/7/2010. Est. Value—$614.21. Disposition—Pending Transfer to General Services Administration.	Major General Hamad bin Ali Al-Attiyah, Chief of Staff of the Qatar Armed Forces.	Non-acceptance would cause embarrassment to donor and U.S. Government.
General David Petraeus, Commander, US Central Command.	Two Navitec men's wristwatches Rec'd—4/26/2010. Est. Value—$25,000.00. Disposition—Pending Transfer to General Services Administration.	Major General Hamad bin Ali Al-Attiyah, Chief of Staff of the Qatar Armed Forces.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Major General Anthony A. Cucolo III, O–8, Commander, 3rd Infantry Division and United States Division-North.	80cm x 123cm mauve and tan hand-made silk rug. Rec'd—7/18/2010. Est. Value—$450.00. Disposition—Retain for Official Display: 3rd Infantry Division.	Staff Major General Aziz, Zervani, Commander of Peshmerga, Republic of Iraq.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Colonel William F. Roy, O–6, Brigade Commander, Task Force Wolverine.	Presentation sword with the emblem of the United Arab Emirates and a leather case. Rec'd—7/22/2010. Est. Value—$456.00. Disposition—Retain for Official Display: Currently at HQ Task Force Wolverine, Bagram Airfield Afghanistan APO AE 09354. Will go on display at 86th IBCT (MTN) Headquarters, 7846 Williston road, Williston, Vermont.	Colonel Hassan, Commander of Task Force 110 of the Army of the United Arab Emirates.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Major General James E. Rogers, O–8, Commanding General, US Army Aviation and Missile Command.	Tissot "T-Touch" men's wristwatch, model number T33.7.498.51. Rec'd—11/2/2010. Est. Value—$589.00. Disposition—Pending Transfer to General Services Administration.	Major General Hussein M. Al Assaf, Commander of the Royal Saudi Arabian Land Forces Aviation Command.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF THE NAVY

[Report of Tangible Gifts and Travel Furnished by the Department of the Navy]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Admiral Gary Roughead, US Navy, Chief of Naval Operations.	Hand-crafted wooden chest. Rec'd—8/23/2009. Est. Value—$850.00. Disposition—Retained for Display by Recipient for Official Use.	Admiral Noman Bashir, Chief of Naval Staff of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Admiral Gary Roughead, US Navy, Chief of Naval Operations.	Giampaolo Nason glass vase. Rec'd—10/1/2009. Est. Value—$335.00. Disposition—Retained for Display by Recipient for Official Use.	Mrs. Adele La Rosa, spouse of Admiral Paolo La Rosa, Chief of Staff of the Italian Navy.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Admiral Gary Roughead, US Navy, Chief of Naval Operations.	Decorative woven vase. Rec'd—10/8/2009. Est. Value—$508.00. Disposition—Retained for Display by Recipient for Official Use.	Admiral Guillermo Enrique Barrera Hurtado, Commander of the Navy of the Republic of Colombia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Admiral Gary Roughead, US Navy, Chief of Naval Operations.	Decorative glass bowl. Rec'd—10/8/2009. Est. Value—$350.00. Disposition—Retained for Display by Recipient for Official Use.	Mrs. Hege Bruun-Hanssen, wife of Rear Admiral Haakon Bruun-Hanssen of Norway.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Admiral Gary Roughead, US Navy, Chief of Naval Operations.	Russian coin set containing six small and one large coin. Rec'd—10/8/2009. Est. Value—$480.00. Disposition—Transferred to the General Services Administration.	Admiral Vladimir Sergeevich Vysotsky, Commander in Chief of the Navy of the Russian Federation.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Admiral Gary Roughead, US Navy, Chief of Naval Operations.	Nigerian floor mat and four cushions in tan and blue with Nigerian Navy Symbol in center. Rec'd—10/8/2009. Est. Value—$850.00. Disposition—Transferred to the General Services Administration.	Vice Admiral Ishaya Iko Ibrahim, Chief of Naval Staff Nigerian Navy.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Admiral Gary Roughead, US Navy, Chief of Naval Operations.	CD box set, title: ''Buenos Aires: Dias y Noches De Tango.''. Rec'd—11/12/2009. Est. Value—$397.00. Disposition—Transferred to the General Services Administration.	Admiral Oscar Adolfo Arce, Commander of the Argentine Coast Guard.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Admiral Gary Roughead, US Navy, Chief of Naval Operations.	Necklace, bracelet and ring set in gold with white and brown diamonds. Rec'd—11/12/2009. Est. Value—$500.00. Disposition—Transferred to the General Services Administration.	Admiral Oscar Adolfo Arce, Commander of the Argentine Coast Guard.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Admiral Gary Roughead, US Navy, Chief of Naval Operations.	JB Robinson men's wristwatch round dual function, white face with black leather band, serial number 81.644. Pen set. Rec'd—3/29/2010. Est. Value—$1,070.00. Disposition—Transferred to the General Services Administration.	His Highness Sheikh Hamad Bin Khalifa Al-Thani, Amir of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Admiral Gary Roughead, US Navy, Chief of Naval Operations.	Longines men's stainless steel Classique watch with two-tone stainless steel band and gold-tone stainless steel case, white dial with sapphire crystal, serial number L4.766.2. Longines women's stainless steel classique watch, two-tone stainless steel band with gold-tone stainless steel case, white dial, with sapphire crystal, serial number L4.209.2. Rec'd—4/8/2010. Est. Value—$2,500.00. Disposition—Transferred to the General Services Administration.	Vice Admiral Mohab Mameesh, Commander in Chief of Naval the Egyptian Naval Forces.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Admiral Gary Roughead, US Navy, Chief of Naval Operations.	2′ x 1′ Vazhavilakku metal lamp. Rec'd—4/15/2010. Est. Value—$380.00. Disposition—Transferred to the General Services Administration.	Vice Admiral Krishnan Nair Sushil, Flag Officer Commanding in Chief of Southern Naval Command of the Republic of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Admiral Gary Roughead, US Navy, Chief of Naval Operations.	Dagger with curved double-edged 6″ blade and silver handle. 18-karat gold, diamond, and turquoise jewelry including a ring, earrings and pendant. Rec'd—7/14/2010. Est. Value—$410.00. Disposition—Transferred to the General Services Administration.	Brigadier General Abdulla Saeed Al-Mansoori, Royal Bahrain Naval Forces Commander.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Admiral Gary Roughead, US Navy, Chief of Naval Operations.	Set of three Malaysian coins issued to commemorate the 75th Anniversary of the Royal Malaysian Navy. Rec'd—8/4/2010. Est. Value—$425.00. Disposition—Transferred to GSA.	Admiral Tan Sri Abdul Aziz Jaafar, Chief of the Navy of Malaysia.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF THE NAVY—Continued

[Report of Tangible Gifts and Travel Furnished by the Department of the Navy]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Admiral Gary Roughead, US Navy, Chief of Naval Operations.	7″ 18-karat yellow gold bracelet featuring three dimensional hollow scarab bettle flanked by links of papyrus blossoms. Rec'd—11/19/2010. Est. Value—$700.00. Disposition—Transferred to GSA.	His Excellency Lieutenant General Samy Enan, Chief of Staff of the Amred Forces of the Arab Republic of Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Admiral Gary Roughead, US Navy, Chief of Naval Operations.	7″ 18-karat white gold bracelet featuring three dimensional hollow scarab bettle flanked by links of papyrus blossoms. Rec'd—11/19/2010. Est. Value—$700.00. Disposition—Transferred to GSA.	Vice Admiral Mohab Mameesh, Commander in Chief of the Egyptian Naval Forces.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mrs. Sherrie Gortney, spouse of Vice Admiral W.E. Gortney, US Navy, Commander US Naval Forces Central Command.	18-karat gold bracelet. Rec'd—1/21/2009. Est. Value—$818.67. Disposition—Purchased by Recipient.	Spouse of Vice Admiral Mohab Mameesh, Commander in Chief of the Egyptian Naval Forces.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice Admiral John Bird, US Navy, Commander Seventh Fleet.	36″ x 48″ framed oil painting of the USS BLUE RIDGE (LCC 19) on canvas. Rec'd—10/5/2009. Est. Value—$469.00. Disposition—Retained for Display by Recipient for Official Use.	Vice Admiral Park Jung Hwa, Commander of the Navy of the Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Commander Paul Hobbes, US Naval, Middle East Affairs Officer.	Stainless steel men's wristwatch with flex band and round mother of pearl face marked ''Brogeh/Sapphire/Japan Movt.'' Stainless steel women's wristwatch with flex band and round mother of pearl face marked ''Brogeh/Sapphire/Japan Movt.'' Rec'd—10/17/2009. Est. Value—$1,200.00. Disposition—Transferred to the General Services Administration.	Captain Nassir Al-Rakf, Royal Saudi Naval Forces of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Lieutenant General John Allen, US Marine Corps, Commander, US Central Command.	11.5″ 18-karat gold necklace with gold cross. Rec'd—10/29/2009. Est. Value—$1,500.00. Disposition—Transferred to the General Services Administration.	His Highness Sheikh Hamad Bin Khalifa Al-Thani, Amir of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mass Communications Specialist First Class Tiffani Vanderwyst, US Navy, Chief of Naval Operations Photographer.	Pierre Cardin Swiss-made silver water-resistant watch with rectangle homme dual black dial and silver and black link band, serial number PC10191S01. Rec'd—3/29/2010. Est. Value—$350.00. Disposition—Transferred to the General Services Administration.	His Highness Sheikh Hamad Bin Khalifa Al-Thani, Amir of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Chief Culinary Specialist Wesley Tavares, US Navy, Chief of Naval Operations personal Staff.	Pierre Cardin Swiss-made silver water-resistant watch with rectangle homme dual black dial with silver & black link band, serial number PC10191S01. Rec'd—3/29/2010. Est. Value—$350.00. Disposition—Transferred to the General Services Administration.	His Highness Sheikh Hamad Bin Khalifa Al-Thani, Amir of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. Steve McMains, Chief of Operations Personal Security Advisor.	Pierre Cardin stainless steel water-resistant watch with black face and rose tone link band. Rec'd—3/29/2010. Est. Value—$350.00. Disposition—Transferred to the General Services Administration.	His Highness Sheikh Hamad Bin Khalifa Al-Thani, Amir of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Captain Christopher Grady, US Navy, Chief of Naval Operations Executive Assistant.	Pierre Cardin stainless steel water-resistant watch with black face with rose tone link band, serial number PC101291S02. Rec'd—3/29/2010. Est. Value—$350.00. Disposition—Transferred to the General Services Administration.	His Highness Sheikh Hamad Bin Khalifa Al-Thani, Amir of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Commander Charlie Brown, US Navy, Chief of Naval Operations Public Affairs Officer.	Pierre Cardin stainless steel water-resistant watch with black face and rose tone link band, serial number PC101291S02. Rec'd—3/29/2010. Est. Value—$350.00. Disposition—Transferred to the General Services Administration.	His Highness Sheikh Hamad Bin Khalifa Al-Thani, Amir of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rear Admiral Stephen S. Voetsch, US Navy, Deputy Assistant Secretary of the navy (International Programs)/Director, Navy Internal Programs Office.	42mm diameter Men's stainless steel Tissot wristwatch with sapphire crystal, black dial, black leather strap, serial number T014427. Rec'd—4/8/2010. Est. Value—$825.00. Disposition—Transferred to the General Services Administration.	Vice Admiral Mohab Mameesh, Commander in Chief of the Egyptian Naval Forces.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF THE NAVY—Continued

[Report of Tangible Gifts and Travel Furnished by the Department of the Navy]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Rear Admiral Robert L. Thomas, US Navy, Commander, Submarine Group 7.	24-karat gold Korean Chunma Chong Crown of Silla replica. Rec'd—6/28/2010. Est. Value—$1,250.00. Disposition—Retained for Display by Recipient for Official Use.	Rear Admiral Ha Jin-Yong, Commander of the Submarine Flotilla NINE of the Royal Korean Navy.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice Admiral John Bird, US Navy, Commander Seventh Fleet.	Wooden block from the Mikasa, decorated with multiple command coins and designators. Rec'd—7/20/2010. Est. Value—$335.00. Disposition—Retained for Display by Recipient for Official Use.	Vice Admiral Masahiko Sugimoto, Commander in Chief of the Self-Defense Fleet of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rear Admiral Kevin Sweeney, US Navy, US Navy Executive Office to the Commander, U.S. Central Command.	JBR men's quartz watch with jewel, water-resistant, stainless steel bracelet with fold claps, serial GOR 3576L. JBR 1.7 cologne. Pierre Cardin sterling silver cufflinks with Pierre Cardin emblem. Black and silver pen. Rec'd—10/4/2010. Est. Value—$2,137.00. Disposition—Transferred to GSA.	His Highness Sheikh Hamad Bin Khalifa Al-Thani, Amir of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Captain James Malloy, US Navy, Commodore, destroyer Squadron FIFTY.	Rado men's watch, scratch resistant sapphire crystal with gold dial and day/date feature, polished with brushed gold tone steel bracelet, Model number R12391633. Rado women's watch, scratch resistant sapphire crystal with gold dial, polished with brushed gold-tone steel bracelet, model number R48728253. Rec'd—10/19/2010. Est. Value—$706.00. Disposition—CNO (DNS–35), Pending Transfer to General Services Administration.	Major Abdullah Al Shamri, Navy Liaison Officer of the Royal Saudi Naval Force.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Admiral James G. Stavridis, Commander, U.S. European Command.	Israeli Defense Forces rifle, model MTAR21, demilled. Rec'd—10/25/2010. Est. Value—$2,300.00. Disposition—National Defense University for Official Use.	Government of the State of Israel.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Admiral Mark Fitzgerald, US Navy, Commander US Naval Forces, Europe/Commander, US Naval Forces, Africa and three accompanying staff members.	TRAVEL: Expended for lodgings in Skopje, Macedonia. Rec'd—3/16–17/2010. Est. Value—$2,479.00.	Major Ivan Atanasoski, Chief of Protocol Section, General Staff of the Army of the Republic of Macedonia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Admiral Samuel Locklear, US Navy, Commander, US Naval Forces, Europe/Commander, US Naval Forces, Africa and one accompanying staff member.	TRAVEL: Expended for lodgings in Venice, Italy. Rec'd—10/19–22/2010. Est. Value—$3,378.00.	Admiral Bruno Branciforte, Chief of Staff of the Italian Navy.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice Admiral Harry Harris, Jr., US Navy, Commander, US Naval Forces, Europe/Commander US Naval Forces, Africa and one accompanying staff member.	TRAVEL: Expended for lodgings in Venice, Italy. Rec'd—10/19–22/2010. Est. Value—$3,378.00.	Admiral Bruno Branciforte, Chief of Staff of the Italian Navy.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Admiral Samuel Locklear, US Navy, Commander, US Naval Forces, Europe/Commander, US Naval Forces, Africa and one accompanying staff member.	TRAVEL: Expended for lodgings in Skopje, Macedonia. Rec'd—11/3–5/2010. Est. Value—$1,450.50.	His Excellency Zoran Konjanovski, Minister of Defense of the Republic of Macedonia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Lieutenant Commander Jennifer Jones, US Navy, Commander, US Naval Forces Europe/Commander US Naval Forces Africa and one accompanying staff member.	TRAVEL: Expended for lodgings in Rome Italy. Rec'd—11/29/2010–12/2/2010. Est. Value—$1,150.26.	Lieutenant Commander Michele Avino, Office of Navy Policy, Italian Navy General Staff.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF THE NAVY—Continued

[Report of Tangible Gifts and Travel Furnished by the Department of the Navy]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Rear Admiral Joseph Rixey, US Navy, Deputy Assistant Secretary of the Navy (International Programs)/Director, Navy International Programs Office.	TRAVEL: Expended for lodgings in Vina Del Mar, Chile. Rec'd—11/29/2010–12/3/2010. Est. Value—$1,299.25.	Admiral Edmundo González Robles, Commander in Chief of the Chilean Navy.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Lieutenant Drew Thomas, US Navy, Aide to Director, Navy International Programs Office.	TRAVEL: Expended for lodgings in Vina Del Mar, Chile. Rec'd—11/29/2010–12/3/2010. Est. Value—$1,299.25.	Admiral Edmundo González Robles, Commander in Chief of the Chilean Navy.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: UNITED STATES MARINE CORPS

[Report of Tangible Gifts and Travel Furnished by the United States Marine Corps]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Lieutenant General Joseph F. Dunford, Jr., Commander, U.S. Marine Corps Forces, U.S. Central Command (CENTCOM).	2m x 3m Afghan wool run in blue and green. Rec'd—4/5/2010. Est. Value—$ 1440. Disposition—Recipient purchased from General Services Administration.	Brigadier General Ghulam Mohayadin Ghori, Deputy Corps Commander of the 207th Corps of the Afghan National Army.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Lieutenant Colonel Christopher L. Naler USMC, then-Commanding Officer, 5th Battalion, 10th Marines (MARCENT AO).	TRAVEL: Formal invitation to join Royal Family in ceremony to welcome home Bahrain company (which was under his charge in AFG) on 14 Jun 2010. Gifts of travel include OCONUS air fare, lodging, and meals. Rec'd—6/22/2010. Est. Value—$11,500.	Government of the Kingdom of Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF HOMELAND SECURITY

[Report of Tangible Gifts Furnished by the Department of Homeland Security]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Michael Chertoff, Secretary of Homeland Security of the United States.	Granat gold cufflinks with garnets. Rec'd—10/27/2008. Est. Value—$480.00. Disposition—On display in Room 5103, Department of Homeland Security Headquarters.	Mr. Alexandr Vondra, Deputy Prime Minister for European Affairs of the Czech Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Michael Chertoff, Secretary of Homeland Security of the United States.	Set of six shot-style crystal glasses. Rec'd—10/27/2008. Est. Value—$510.00. Disposition—On display in Room 5103, Department of Homeland Security Headquarters.	His Excellency Karel Schwarzenberg, First Deputy Prime Minister and Minister of Foreign Affairs of the Czech Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Michael Chertoff, Secretary of Homeland Security of the United States.	Limited mint edition Slovak Crowns (various denominations) Rec'd—10/28/2008 Est. Value—$609.81. Disposition—On display in Room 5103, Department of Homeland Security Headquarters.	His Excellency Robert Kalinák, Deputy Prime Minister and Minister of Interior, Slovak Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Janet Napolitano, Secretary of Homeland Security of the United States.	Book, title: ''Tamaya: A Modern Icon Reinterpreted.'' Rec'd—12/2/2009. Est. Value—$377.76. Disposition—Secretary's office—For official use.	His Excellency Arturo Sarukhan, Ambassador of the United Mexican States.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Janet Napolitano, Secretary of Homeland Security of the United States.	Amati-Denak clarinet S.R.O., Model #ACL 612–C. Rec'd—12/14/2009. Est. Value—$1,128.03. Disposition—On display in Room 5103, Department of Homeland Security Headquarters.	His Excellency Robert Kalinák, Deputy Prime Minister and Minister of Interior, Slovak Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF HOMELAND SECURITY—Continued

[Report of Tangible Gifts Furnished by the Department of Homeland Security]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Janet Napolitano, Secretary of Homeland Security of the United States.	11.5″ Lladro porcelain ''Butterfly Treasures'' figurine. Rec'd—4/10/2010. Est. Value—$440.00. Disposition—Transferred to GSA.	His Excellency Felix Sanz Roldán, Director of the Center of National Intelligence of Spain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Janet Napolitano, Secretary of Homeland Security of the United States.	Diamond and ruby necklace, bracelet, earrings, and ring. Rec'd—5/30/2010. Est. Value—$294,140.00. Disposition—In storage, Room 43205, (locked safe), Department of Homeland Security Headquarters.	King Abdullah bin Abd al-Aziz Al Saud, Custodian of the Two Holy Mosques, King of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Janet Napolitano, Secretary of Homeland Security of the United States.	54″ x 75″ silk hand-knotted yellow, pink, green, brown, cream, and red rug with floral pattern. Rec'd—9/17/2010. Est. Value—$6,625.00. Disposition—In storage, Room 5–01–111–F, Department of Homeland Security Headquarters.	Ali Bin Mohsen Bin Fetais Al Marri, Attorney General of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Jane Holl Lute, Deputy Secretary of Homeland Security of the United States.	Delta fountain pen and ink set. Rec'd—5/30/2009. Est. Value—$380.25. Disposition—On display in Room 5103, Department of Homeland Security Headquarters.	His Excellency Roberto Maroni, Minister of Interior of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. Nick Ahloe, Immigration & Customs Enforcement Assistant Attaché in Amman, Jordan, Department of Homeland Security.	Cover watch of Switzerland (Co89.ST2M) inscribed with Jordan Customs seal. Rec'd—1/7/2010. Est. Value—$500.00. Disposition—U.S. Embassy in Amman, Jordan, Immigration & Customs Enforcement Attache's office (locked safe).	Major General Ghaleb Al Sarayreh, Director General of Jordan Customs of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. Akil Baldwin, Operation Manager, HIS International Affairs, Immigration & Customs Enforcement, (Washington, DC) Department of Homeland Security.	Cover Watch of Switzerland (Co89.ST2M) inscribed with JordanCustoms seal. Rec'd—1/7/2010. Est. Value—$500.00. Disposition—U.S. Embassy in Amman, Jordan, Immigration & Customs Enforcement Attache's office (locked safe).	Major General Ghaleb Al Sarayreh, Director General of Jordan Customs of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. Bruce Swartley, Immigration & Customs Enforcement Assistant Attaché in Abu Dhabi, United Arab Emirates, Department of Homeland Security.	Longines Master Collection chrome watch in Ministry of Interior box. Rec'd—8/10/2010. Est. Value—$1,700.00. Disposition—Transferred to Department of State Post Management officer, United Arab Emirates.	Brigadier General Jasim Al Marzouki, Ministry of Interior of the United Arab Emirates.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. Majdi Haddad, Immigration & Customs Enforcement Foreign Service National Investigator in Abu Dhabi, United Arab Emirates, Department of Homeland Security.	Longines Master Collection chrome watch in Ministry of Interior box. Rec'd—8/10/2010. Est. Value—$1,700.00. Disposition—Transferred to Department of State Post Management officer, United Arab Emirates.	Brigadier General Jasim Al Marzouki, Ministry of Interior of the United Arab Emirates.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Ms. Lynda Williams, Resident Agent in Charge, U.S. Secret Service, Department of Homeland Security.	Currency. Rec'd—9/24/2010. Est. Value—$350.00. Disposition—Returned to His Excellency Patrick Nandago, Namibian Ambassador to the United States on October 9, 2010.	His Excellency Hifikepunye Pohamba and Mrs. Penehupifo Pohamba, President of the Republic of Namibia and Spouse.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF TREASURY

[Report of Tangible Gifts Furnished by the Department of Treasury]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Timothy Geithner, Secretary of the Treasury.	Franz hibiscus vase in white and red. Rec'd—4/4/2010. Est. Value—$850.00. Disposition—Department of Treasury.	His Excellency Hu Jintao, President of the People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Lael Brainard, Under Secretary for International Affairs.	Heli-Artic parka and seal skin mitts. Rec'd—5/4/2010. Est. Value—$1,029.00. Disposition—Pending Transfer to the General Services Administration.	The Honorable James M. Flaherty, P.C., M.P., Minister of Finance of Canada.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF TREASURY—Continued

[Report of Tangible Gifts Furnished by the Department of Treasury]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
David Cohen, Assistant Secretary for Terrorist Financing.	Cartier Tank wristwatch and 100 Riyah gold coin. Rec'd—10/4/2010. Est. Value—$4,265.00. Disposition—Pending Transfer to General Service Administration.	Ali Bin Mohsen Bin Fathis Al-Marri, Attorney General of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: ENVIRONMENTAL PROTECTION AGENCY

[Report of Tangible Gifts Furnished by the Environmental Protection Agency]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Kenneth J Davis, Program Analyst, Office of International and Tribal Affairs.	TRAVEL: UNITAR will provide housing in Geneva, Switzerland to the employee on detail for the duration of the assignment. The traveler will perform approximately a 3-month detail assignment with UNITAR and UNEP Chemicals in Geneva, Switzerland. The traveler will be working with UNITAR and UNEP on global mercury issues that are very important to the US, EPA, and the Office of International and Tribal Affairs. In particular, he will be assisting with the effort, currently supported by EPA, to help the government of Kyrgyzstan address primary mercury mining. This is an important part of the international effort to reduce mercury use and emissions, which EPA strongly supports. Rec'd—5/15/2010—7/29/2010 Est. Value—$6,000.00.	United Nations Institute for Training and Research.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Weihsueh Chiu, Environmental Health Scientist.	TRAVEL: Per diem to cover hotel, meals, and incidentals ($1350.00). Numerous scientific advisory groups have urged the U.S. EPA to incorporate probabilistic methods for uncertainty and variability in quantitative dose-response analysis, including the recent National Research Council report ''Science and Decisions.'' Dr. Weihsueh Chiu has substantial expertise and interest in this area, and it is important that he provide input into the development of the WHO/IPCS guidance, quidance which influences others globally and which ultimately has a bearing on how EPA conducts its own analyses. Stakeholders may evaluate the practices of ORD in comparison to this IPCS guidance, thus being part of the IPCS process is informative for EPA and helps insure that the IPCS and EPA practice are harmonized to the extent practical. This guidance may also be useful in training ORD risk assessors in the application of probabilistic methods to characterize uncertainty and variability in chemical risk assessment. Rec'd—9/14/2010—9/18/2010 Est. Value—$1,350.00.	World Health Organization	Non-acceptance would cause embarrassment to donor and U.S. Government.
David Bussard, Director, Washington Division, NCEA, ORD, USEPA.	TRAVEL: $1,350 in traveler's checks to cover meals, lodging, local travel, and incidental expenses. Traveler provided advice to the World Health Organization at a meeting of experts. Traveler was also one of the authors of a discussion paper for the meeting. Rec'd—9/14/2010—9/18/2010 Est. Value—$1,350.00.	World Health Organization	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: ENVIRONMENTAL PROTECTION AGENCY—Continued

[Report of Tangible Gifts Furnished by the Environmental Protection Agency]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Jennifer Seed, Ph.D. Deputy Division Director, Risk Assessment Division, Office of Pollution Prevention and Toxics.	TRAVEL: Plane ticket—$1056.30; Hotel (2 nights)—$541.00; Meals and misc expenses (3 days)—$ 225.00 in London, United Kingdom. The World Health Organization convened an international meeting to develop a global ''umbrella plan'' for activities on Mode of Action of chemicals, including the establishment of a Mode of Action Database. This strategic planning meeting also responded to recommendations of an ECETOC/ILSI/HESI Workshop on Using Mode of Action Information to Improve Regulatory Decision Making on 2–3 November 2009, London. Issues discussed at the meeting include, 1) for the umbrella plan—key new activities, relationship with existing activities, implementing bodies, resources, and 2) for the database—the purpose of the database, general content and broad criteria for inclusion of data, the ''home'' of the database and its possible management arrangements, resources and relationship to any other relevant data holdings. Dr. Jennifer Seed was invited to attend as she has been involved in the use of mode of action information in human health risk assessment for over 12 years, and was a leader in the development of the WHO/IPCS Mode of Action Framework which is now being used worldwide in the hazard assessment of chemicals. She participated as a member of the planning group. Rec'd—10/12/2010—10/15/2010 Est. Value—$1822.30.	World Health Organization	Non-acceptance would cause embarrassment to donor and U.S. Government.
(Norma) Lynn Flowers, Acting Associate Director of Health, Immediate Office, NCEA, ORD, EPA.	TRAVEL: $140 × 3.5 days Per Diem = $490; $235 × 3 days Lodging = $705; $1,195 Total For London, UK from October 12, 2010 to October 16, 2010. Traveler was invited to attend the World Health Organization International Programme on Chemical Safety Harmonization of Approaches on Risk from Exposure to Chemicals Mode of Action Planning Meeting on behalf of USEPA as a result of her expertise in the field of risk assessment and cancer mode of action. Rec'd—10/12/2010—10/16/2010 Est. Value—$1,195.00.	World Health Organization	Non-acceptance would cause embarrassment to donor and U.S. Government.
Robert J Kavlock; Director, National Center for Computational Toxicology, Office of Research and Development, US EPA.	TRAVEL: Per diem expenses related to participation in the WHO Expert Working Group for the Risk Assessment of DDT including hotel, meals, and local transportation for travel from November 27 to December 2, 2010. The WHO per diem in Geneva is 383 Swiss Francs (approximately $387 USD). Due to weather delays (airport closed for +36 hours due to snow), WHO covered 5 instead of the original 4 days of per diem. Invited expert on DDT risk assessment. DDT use in Internal Residential Spraying for malarial control will be considered as an exemption from the Stockholm Convention banning the use of persistent organic pollutants this coming spring. Rec'd—11/27/2010–12/2/2010 Est. Value—$1,935.00.	World Health Organization	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: ENVIRONMENTAL PROTECTION AGENCY—Continued

[Report of Tangible Gifts Furnished by the Environmental Protection Agency]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Vicki Dellarco Senior Scientist Office of Pesticide Programs, Immediate Office.	TRAVEL: Hotel (11nights)—$2250.00; Meals, local transportation, and misc expenses (13 days)—$1746.00. Invitational travel—Travel dates: 9/19/2010 to 10/1/2010 for Rome, Italy. Dr. Dellarco attended the Joint Meeting on Pesticide Residues (JMPR) as an internationally recognized scientific expert in pesticide risk assessment. The JMPR is administered jointly by the Food and Agriculture Organization of the United Nations (FAO) and the World Health Organization (WHO). JMPR, which consists of the FAO Panel of Experts on Pesticide Residues in Food and the Environment and the WHO Core Assessment Group, is a long standing process under the United Nations. During the Meetings, the FAO and WHO Panel of Experts is responsible for reviewing the toxicology, metabolism, environmental fate, use patterns, residue and analytical aspects of the pesticides under consideration to determine if pesticide residue values will be at a safe dietary intake level for the various populations of the world. The JMPR dietary risk assessments are used to determine the proposed maximum residue limits (i.e., levels of pesticide residue that may be tolerated on food commodities in international trade). Thus, JMPR serves as a scientific advisory body to the Codex Alimentarius Commission. Advice to the Codex Alimentarius Commission on pesticides is provided through the Codex Committee on Pesticide Residues (CCPR). The JMPR provides for an exchange of information with colleagues from around the world. More importantly, it provides an avenue for the US to influence policy and to input into the technical reviews that ultimately result in international standards for food in trade. Dr. Vicki Dellarco was invited to be both a WHO reviewer and to serve as rapporteur of the meeting. Rec'd—9/19/2010–10/1/2010 Est. Value—$3,996.00.	World Health Organization	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: ENVIRONMENTAL PROTECTION AGENCY—Continued

[Report of Tangible Gifts Furnished by the Environmental Protection Agency]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Vicki Dellarco Senior Scientist Office of Pesticide Programs, Immediate Office.	TRAVEL: Plane ticket—$1056.30; Hotel (2 nights)—$541.00; Meals, local transportation, and misc expenses (3 days)—$225.00; for travel to London, UK from 10/12/10 to 10/15/10. The World Health Organization convened an international meeting to develop a global ''umbrella plan'' for activities on Mode of Action of chemicals, including development of case studies and the establishment of a Mode of Action Database and education program. This strategic planning meeting also responded to recommendations of an ECETOC/ILSI/HESI Workshop on Using Mode of Action Information to Improve Regulatory Decision Making on 2–3 November 2009, London. Issues discussed at the meeting include, 1) for the umbrella plan—key new activities, relationship with existing activities, implementing bodies, resources, and 2) for the database—the purpose of the database, general content and broad criteria for inclusion of data, the ''home'' of the database and its possible management arrangements, resources and relationship to any other relevant data holdings. Dr. Vicki Dellarco was invited to co-chair the planning group. She has been involved in the use of mode of action information in human health risk assessment for over 15 years within the EPA, and help lead the development of the WHO/IPCS Mode of Action Framework which is now being used worldwide in the hazard assessment of chemicals. Rec'd—10/12/2010–10/15/2010 Est. Value—$1,822.30.	World Health Organization	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: ENVIRONMENTAL PROTECTION AGENCY—Continued

[Report of Tangible Gifts Furnished by the Environmental Protection Agency]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Richard Judson, Research Chemist.	TRAVEL: Meals in kind lunch and dinner October 15 2010 (75 GBP); Meals out of pocket October 14–15 2010 (100 GBP); Hotel room (2 nights) with taxes October 14–15 2010 (169.20 GBP/night); Internet service at hotel (15 GBP); Local transportation in London—Train from airport to London October 14, 2010 (18 GBP)—Taxi from Meeting to Airport October 15, 2010 (15 GBP). Traveler is an expert on the ToxCast data, database, statistical approaches and results from the ToxCast program. The traveler is one of the project leaders for the EPA ToxCast program which is implementing the approaches to using mode of action (MOA) analysis. He has developed many of the methods the EPA is using to analyze the ToxCast data and to make use of that data for prioritization of thousands of environmental chemicals for testing. Furthermore, he has led the effort to develop the ACToR database (Aggregated Computational Toxicology Resource) which is the overall repository for related, public data being used in the EPA's screening and prioritization efforts. This data is directly used in current exploratory MOA analyses being carried out by EPA/ORD. He has been invited to this workshop to discuss how the ToxCast program can be used to improve MOA analysis. The traveller will learn about current expert opinion on performing MOA analysis being used by other governments as part of their chemical risk assessment activities, and will have a chance to contribute EPA views on this subject. Rec'd—10/12/2010–10/15/2010 Est. Value—$898.24.	World Health Organization	Non-acceptance would cause embarrassment to donor and U.S. Government.
Kimberly Nesci, Special Assistant.	TRAVEL: Travel expenses accepted included meals ($842.62) and lodging ($801.38) for travel to Geneva, Switzerland from 10/03/2010 to 10/12/2010. Traveler is the designated expert to the FAO/WHO Panel on Pesticide Management. The FAO Panel of Experts on Pesticide Management is the official statutory body that advises the Organization on matters pertaining to pesticide regulation and management, and alerts it to new developments, problems, or issues that otherwise merit attention. The Panel in particular counsels FAO on the further implementation of the revised version of the International Code of Conduct on the Distribution and Use of Pesticides. This advances EPA goals of international pesticide regulatory harmonization and imported food safety. Rec'd—10/3/2010—10/12/2010. Est. Value—$1,644.00.	Food and Agriculture Organization of the United Nations.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Stephen Funk	TRAVEL: Hotels, meals, local transportation, and incidentals while in Slovenia, $1800. Participation in FAO/WHO Joint Meeting on Pesticide Specifications Rec'd—5/31/2010—6/8/2010. Est. Value—$1,800.00.	Food and Agriculture Organization of the United Nations.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: ENVIRONMENTAL PROTECTION AGENCY—Continued

[Report of Tangible Gifts Furnished by the Environmental Protection Agency]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Dr. Edward V. Ohanian, Associate Director for Science, Office of Water, USEPA, Washington, DC.	TRAVEL: Dates of Travel to Tokyo, Japan: December 3–11, 2010. Common Carrier: $3,500 (in kind, directly billed to WHO) on 12/3. Meals: $700.00 (from cash to traveler)* on 12/4–10. Lodging $600.00 (in kind, directly billed to WHO) on 12/4–10. Local Transportation: Airport to Hotel; Hotel to Airport; Taxis to Ministry of Health and Environment: $200.00 (from cash to traveler)* on 12/4, 12/5/12/6 and 12/11. Parking at Dulles Airport; drove POV: $90.00 (from cash to traveler)* on 12/3–11. *WHO paid the traveler $950.00 in cash (travelers' check) on 12/6 to cover for above expenses (meals, local transportation and parking) Dr. Ohanian is national and international authority on human risk assessment who was invited as a Temporary Advisor to WHO to assist the Guidelines for Drinking-Water Quality Committee in reviewing of draft 4th Edition of WHO Guidelines and the draft fact sheet on PPCPs and developing the WHO Strategy for 2010–2015. Rec'd—12/3/2010—12/11/2010. Est. Value—$4,450.00.	World Health Organization	Non-acceptance would cause embarrassment to donor and U.S. Government.
Kathleen C. Raffaele, Ph.D., Senior Toxicologist, USEPA.	TRAVEL: Travel expenses to be directly reimbursed include lodging/hotel, meals and incidentals, and local travel. Total amount to be directly reimbursed is $668 (Canadian dollars) or approximately $651 (US dollars). The Existing Substances Risk Assessment Bureau, Safe Environments Directorate of Health Canada is holding a 2-day meeting focusing on the use of neurotoxicity and developmental neurotoxicity data in risk assessment. Increased consistency in evaluating and using neurotoxicity data in risk assessments for environmental chemicals will enhance US and EPA goals in effectively regulating environmental chemicals to protect the public health. In addition, the focus on developmental neurotoxicty data is consistent with EPA goals in protecting children and other susceptible populations. Participation in this meeting will enhance EPA/NCEA's knowledge about the ways these data are used in international risk assessment, and promote consistent data interpretation across international organizations. Dr. Raffaele was invited to present lectures to Health Canada staff, over a two day. Her lectures involved the interpretation and use of neurotoxicity and developmental neurotoxicity data in risk assessment of environmental chemicals. Rec'd—9/7/2010–9/10/2010. Est. Value—$651.00.	Existing Substances Risk Assessment Bureau of the Safe Environments Directorate, Health Canada.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: ENVIRONMENTAL PROTECTION AGENCY—Continued

[Report of Tangible Gifts Furnished by the Environmental Protection Agency]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Rhyne Woodrow Setzer, Jr., Mathmatical Statistician.	TRAVEL: Cash (traveler's checks) for $1,350.00, to cover lodging, local travel, and meals taking place in Utrecht, Netherlands from 09/14/2010–09/18/2010. Wood Setzer, Ph.D., a biostatistician who has been involved in dose-response analyses for Agency risk assessments. His work has also been addressing issues of applications of statistical methods to PBPK models. The traveler is recognized as an international expert in the area of uncertainty analysis in health effects hazard assessment, and has advised Agency Program Offices, WHO and European Food Safety Agency activities in this area. Dr. Setzer has been invited to serve as a WHO Temporary Advisor for the meeting ''Characterizing and Communicating Uncertainty and Variability in Hazard Assessment'', held at RIVM in Bilthoven, Netherlands. The traveler organized and chaired the first in a series of three workshops on the use of PBPK models in risk assessment, of which this is the third, and participated in the second workshop. Dr. Setzer will confer with other world experts in this area to evaluate proposed WHO/IPCS guidance in the use of PBPK models in risk assessment, and area of direct interest for the Agency. While in the Netherlands the traveler will present on the ToxCast progress and then meet with Dr. Slob (RIVM) to collaborate on a manuscript about model uncertainty in dose-response assessment. The Agency has an interest in maintaining communication with world partners in the area of hazard assessment. In this case, the Agency both influences decisions that will affect the ways hazard assessments are carried out and interpreted, and benefits from points of view coming from other contexts. Also, the Agency will benefit from having shared ideas with other experts in this area, and in having its input heard in the proposed guidance. Rec'd—9/14/2010—9/18/2010. Est. Value—$1,350.00.	International Program for Chemical Safety of the World Health Organization.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: ENVIRONMENTAL PROTECTION AGENCY—Continued

[Report of Tangible Gifts Furnished by the Environmental Protection Agency]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
P.V. Shah Chief, Inert Ingredient Assessment Branch, Registration Division Office of Pesticide Programs.	TRAVEL: Invitational travel to Rome, Italy—Travel dates: 9/19/2010 to 10/2/2010. Hotel (12 nights)—$2,291.00. Meals, local transportation, and misc expenses (C2514 days)—$2,042.00. Dr. Shah attended the Joint Meeting on Pesticide Residues (JMPR) as an internationally recognized scientific expert in pesticide risk assessment. The JMPR is administered jointly by the Food and Agriculture Organization of the United Nations (FAO) and the World Health Organization (WHO). JMPR, which consists of the FAO Panel of Experts on Pesticide Residues in Food and the Environment and the WHO Core Assessment Group, is a long standing process under the United Nations. During the Meetings, the FAO and WHO Panel of Experts is responsible for reviewing the toxicology, metabolism, environmental fate, use patterns, residue and analytical aspects of the pesticides under consideration to determine if pesticide residue values will be at a safe dietary intake level for the various populations of the world. The JMPR dietary risk assessments are used to determine the proposed maximum residue limits (i.e., levels of pesticide residue that may be tolerated on food commodities in international trade). Thus, JMPR serves as a scientific advisory body to the Codex Alimentarius Commission. Advice to the Codex Alimentarius Commission on pesticides is provided through the Codex Committee on Pesticide Residues (CCPR). The JMPR provides for an exchange of information with colleagues from around the world. More importantly, it provides an avenue for the US to influence policy and to input into the technical reviews that ultimately result in international standards for food in trade. Dr. P.V. Shah was invited to be a temporary advisor to the JMPR during the meeting. Dr. Shah prepared a toxicological monograph on Tebuconazole and Cyproconazole for presentation at the meeting. Based on Dr. Shah's assessments, committee established the acceptable daily intake for cyproconazole and tebuconazole. Rec'd—9/19/2010 to 10/2/2010. Est. Value—$4,333.00.	World Health Organization	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: ENVIRONMENTAL PROTECTION AGENCY—Continued

[Report of Tangible Gifts Furnished by the Environmental Protection Agency]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Bella Tonkonogy, Environmental Protection Specialist Statistician.	TRAVEL: On this 3-month detail to the OECD Climate Change, Biodiversity, and Development Division in Paris, France, the work was to systematically compare policy approaches to address competitiveness and leakage under climate change policy. Travel and living expenses in the amount of approximately $10,550 was paid by OECD. Bella Tonkonogy served on detail to the OECD Climate Change, Biodiversity, and Development Division in the Environment Directorate. The outcome was a report or policy brief for circulation at the UNFCCC meeting in Cancun in December 2010. EPA benefits from participation in this detail by interacting with experts from OECD and member countries in climate policy and competitiveness, advancing dialogue on these topics, and affirming and improving EPA's expertise in this arena. Coordinated international efforts, particularly on emission leakage, led to greater environmental benefits at lower cost. Rec'd—9/18/2010—1/2/2011. Est. Value—$10,550.00.	Organization for Economic Cooperation and Development.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Lesley Vazquez-Coriano, DrPH, Microbiologist.	TRAVEL: Air Travel: $1,296.38; Meals: $700.00; Lodging: $600.00; Local Transportation: $200.00. Travel dates for Tokyo, Japan: December 3rd to December 10th, 2010. Dr. Vazquez-Coriano has national/international authority on Microbial Risk Assessment and provided advice in the revision of the final draft version of the Guidelines for Drinking Water Quality 4th Edition, and in the development of the WHO Water Quality Strategy for 2011–2016s. EPA/OW will benefit from these efforts by developing risk analysis efforts for rulemaking and other risk management actions and also by creating partnerships with international scientific and regulatory organizations. Rec'd—12/3/2010—12/10/2010. Est. Value—$2,796.38.	World Health Organization	Non-acceptance would cause embarrassment to donor and U.S. Government
Steve Knizer, Associate Director, HED.	TRAVEL: Hotel $531.00 in Guadalajara, Mexico. Keynote speaker for 1st International Congress on Environmental Health. Title of talk is "Effects to Human Health and Risk Evaluation by Exposure to Agricultural Pesticides. Rec'd—10/18/2010—10/21/2010. Est. Value—$531.00 Location -.	The Secretariat of Environment and Natural Resources of the United Mexican States.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXPORT IMPORT BANK

[Report of Tangible Gifts Furnished by the Export Import Bank]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Mr. Bijan Kian, Board of Directors, Export-Import Bank of the U.S.	Rug. Rec'd—12/14/2010. Est. Value—$500.00	Mr. Noor Delawari, Head of the Afghanistan Investment Support Agency.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: FEDERAL COMMUNICATIONS COMMISSION

[Report of Travel Furnished by the Federal Communications Commission]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Eric Bash, Associate Bureau Chief, Enforcement Bureau.	TRAVEL: Travel expenses originating and terminating entirely outside of the U.S. for 6th Korea Communications Conference in Seoul, Republic of Korea, including 3 nights lodging, 3 meals and round trip airfare from Canada to Seoul, Republic of Korea; Acceptance due to budget constraints and FCC interest in employee's participation. Rec'd—11/1/2010. Est. Value—$1,750.00.	Government of the Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Jonathan Levy, Deputy Chief Economist, Office of Strategic Planning & Policy Analysis.	TRAVEL: Travel expenses originating and terminating entirely outside of the U.S. for 6th Korea Communications Conference in Seoul, Republic of Korea, including hotel, airport transfers, 4 meals and round trip airfare from Toronto, Canada, to Seoul, Republic of Korea; Acceptance due to budget constraints and FCC interest in employee's participation. Rec'd—11/7/2010. Est. Value—$4,402.61.	Korea Communications Commission.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Irene Wu, Acting Chief Data Officer, International Bureau.	TRAVEL: Travel expenses originating and terminating entirely outside of the U.S. for ICTNET workshop in Italy; Acceptance due to budget constraints and FCC interest in employee's participation. Rec'd—12/15/2010. Est. Value—$1,045.00.	European Parliament	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: FEDERAL COMMUNICATIONS COMMISSION

[Report of Travel Furnished by the Federal Communications Commission]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Doug Bausch, Sr Physical Scientist.	TRAVEL: Earthquake Symposium in Beijing and Mianyang, China. Rec'd—10/17–23/2010. Est. Value—$4402.61.	Architectural Society of China of the Chinese Chamber of Commerce.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Dominick Pillot, International Affairs Specialist.	TRAVEL: Risk Reduction and Emergency Management Seminar in Santiago, Chile. Rec'd—11/14–18/2010. Est. Value—$1,641.00.	National Office of Emergency of the Ministry of Interior of the Republic of Chile.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: FEDERAL RESERVE BOARD

[Report of Tangible Gifts Furnished by the Federal Reserve Board]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Ben S. Bernanke, Chairman of the Federal Reserve Board.	Heli-Artic parka (Model 8502M). Rec'd—2/5/2010. Est. Value—$639.00. Disposition—Office of the Secretary for Official Use.	Mr. Antoine Brunelle-Côté, Acting Chief, Department of Finance of Canada.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Thomas A. Conners, Deputy Director, Division of International Finance, Federal Reserve Board.	Heli-Artic parka (Model 8502M). Rec'd—2/5/2010. Est. Value—$639.00. Disposition—Office of the Secretary for Official Use.	Mr. Antoine Brunelle-Côté, Acting Chief, Department of Finance of Canada.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: HOLOCAUST MEMORIAL MUSEUM

[Report of Tangible Gifts Furnished by the Holocaust Memorial Museum]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Sara J. Bloomfield, Director of the United States Holocaust Memorial Museum.	White leather portfolio containing nine unused postage stamps and one postmarked stamp and envelope to commemorate the International Day of Holocaust Remembrance on January 27. Rec'd—2/2/2010. Est. Value—$400.00. Disposition—United States Holocaust Memorial Museum Records Manager/Archives.	Yuli-Yoel Edelstein, Minister of Public Diplomacy and the Diaspora of the State of Israel.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Sara J. Bloomfield, Director of the United States Holocaust Memorial Museum.	2.5″ tall figurine of a Jewish Klezmer musician playing a violin. 1.25″ medallion from the Mint of Poland (Mennica Panswowa) bearing a Star of David on one side and a Menorah on the other side. Two 1.5'' medallions mounted on a ceramic plaque with one showing a child in front of the Lodz Ghetto bridge and the other engraved with Oskar Schindler on one side and the Star of David on the other side. Rec'd—12/8/2010. Est. Value—$750.00. Disposition—United States Holocaust Memorial Museum Records Manager/Archives.	His Excellency Bronislaw Komorowski, President of the Republic of Poland.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Report of Tangible Gifts Furnished by NASA]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Charles Bolden, NASA Administrator.	FIYTA space watch. Rec'd—10/30/2010. Est. Value—$12,888.00. Location—NASA Headquarters For Permanent Display.	Niu Hongguang, Deputy Chief Commander of the China Manned Space Engineering of the People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: OFFICE OF DIRECTOR OF NATIONAL INTELLIGENCE

[Report of Tangible Gifts Furnished by the Office of Director of National Intelligence]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
5 U.S.C. § 7342(f)(4), as amended.	Hermes scarf. Rec'd—1/21/2010. Est. Value—$375.00. Disposition—Recipient Reimbursed U.S. Government for Fair Market Value.	5 U.S.C. § 7342(f)(4), as amended.	Non-acceptance would cause embarrassment to donor and U.S. Government.
5 U.S.C. § 7342(f)(4), as amended.	17″ tall porcelain vase with celadon glaze decorated with inlaid white clouds and flying crane roundels. Rec'd—4/1/2010. Est. Value—$400.00. Disposition—For Official Use.	5 U.S.C. § 7342(f)(4), as amended.	Non-acceptance would cause embarrassment to donor and U.S. Government.
5 U.S.C. § 7342(f)(4), as amended.	15.5″ tall Gusset AG cow bell and black leather strap. Swiss Army Knife ''One Hand Master-On the Road'' with rubberized grip and seven tools, 20th/21st century. Rec'd—5/20/2010. Est. Value—$445.00. Disposition—For Official Use.	5 U.S.C. § 7342(f)(4), as amended.	Non-acceptance would cause embarrassment to donor and U.S. Government.
5 U.S.C. § 7342(f)(4), as amended.	13.25″ diameter Pashabahce gilded glass charger with applied imitation rubies and blue sapphires #1768/2000. Rec'd—9/22/2010. Est. Value—$375.00. Disposition—For Official Use.	5 U.S.C. 7342(f)(4), as amended.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: OFFICE OF SCIENCE AND TECHNOLOGY POLICY

[Report of Tangible Gifts Furnished by the Office of Science and Technology Policy]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Dr. John P. Holdren, Assistant to the President for Science and Technology Policy.	Metal model ship on wooden base with plaque. Rec'd—1/22/2010. Est. Value—In appraisal process. Location—White House Gifts Office.	Jesús Vázquez, Mayor of Baiona, Spain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Dr. John P. Holdren, Assistant to the President for Science and Technology Policy.	Mother of pearl lacquered box. Rec'd—6/13/2010. Est. Value—$370.00. Location—White House Gifts Office.	His Excellency Ahn Byong Man, Minister of Education, Science and Technology of the Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Dr. John P. Holdren, Assistant to the President for Science and Technology Policy.	Mother of pearl lacquered box. Rec'd—6/13/2010. Est. Value—$365.00. Location—White House Gifts Office.	Seoul University, Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Dr. John P. Holdren, Assistant to the President for Science and Technology Policy.	5″ blue glass elephant statute in blue presentation box. Rec'd—6/24/2010. Est. Value—$365.00. Location—White House Gifts Office.	His Excellency Prithviraj Chavan, Minister of State for Science, Technology, and Earth Science of the Republic of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: PEACE CORPS

[Report of Travel Furnished by Peace Corps]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Aaron Williams, Director of the Peace Corps.	TRAVEL: To attend the 2010 Special Olympics Global Congress. Rec'd—6/6–9/2010. Est. Value—$750.00.	Special Olympics and the Government of the Kingdom of Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. Jeff West, Special Assistant to the Director of the Peace Corps.	TRAVEL: To attend the 2010 Special Olympics Global Congress. Rec'd—6/6–9/2010. Est. Value—$750.00.	Special Olympics and the Government of the Kingdom of Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Ms. Elisa Montoya, White House Liaison and Senior Advisor to the Director of the Peace Corps.	TRAVEL: To attend the 2010 Special Olympics Global Congress. Rec'd—6/6–9/2010. Est. Value—$750.00.	Special Olympics and the Government of the Kingdom of Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: U.S. HOUSE OF REPRESENTATIVES

[Report of Tangible Gifts and Travel Furnished by the House of Representatives]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Nancy Pelosi, Speaker of the House.	6′ x 9′ hand-made Afghan wool rug in green and cream. Rec'd—5/8/2010. Est. Value—$500.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Hamid Karzai, President of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Nancy Pelosi, Speaker of the House.	8′ x 10′ hand-made Afghan wool rug in beige, blue, and red. Rec'd—5/13/2010. Est. Value—$600.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Hamid Karzai, President of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Nancy Pelosi, Speaker of the House.	Hand-knotted rug. Rec'd—9/16/2010. Est. Value—$985.00. Disposition—Pending Transfer to General Services Administration.	Ali Bin Mohsen Bin Fetais Al Marri, Attorney General of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Nancy Pelosi, Speaker of the House.	Strand of black pearls. Rec'd—10/2/2010. Est. Value—$600.00. Disposition—Pending Transfer to General Services Administration.	His Excellency Hermilando I. Mandanas, Member of Parliament of the Republic of the Philippines.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Brian Baird, Member of Congress.	TRAVEL: Transportation was provided to and from the airport and to all official meetings and events. Rec'd—8/2/2010–8/6/2010. Est. Value—Unknown.	The Ministry of Foreign Affairs of the Royal Government of Bhutan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: U.S. HOUSE OF REPRESENTATIVES—Continued

[Report of Tangible Gifts and Travel Furnished by the House of Representatives]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Ken Cummings, Senior Legislative Assistant.	TRAVEL: Lodging in Brussels and Strasbourg. Rec'd—9/4/2010–9/9/2010. Est. Value—Unknown.	Kristen Luddecke, Head of Financial Management and Ex-Ante Control of the Socialists and Democrats Party.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Alcee L. Hastings, Member of Congress.	TRAVEL: Lodging for 3 nights; 3 breakfasts; 3 lunches and 4 dinners. Rec'd—5/29/2010–5/31/2010. Est. Value—Unknown.	His Excellency Ali Fahad al-Shahwany al Hajri, Ambassador of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Christopher J. King, Professional Staff, Committee on Science and Technology.	TRAVEL: Transportation was provided to and from the airport and to all official meetings and events. Rec'd—8/2/2010–8/6/2010. Est. Value—Unknown.	The Ministry of Foreign Affairs of the Royal Government of Bhutan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: U.S. SENATE

[Report of Tangible Gifts and Travel Furnished by the Senate]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Edward Kaufman, United States Senator.	Aghan rug. Lapis vase. Rec'd—4/18/2009. Est. Value—$500.00. Disposition—Deposited with the Secretary of the Senate.	His Excellency Abdul Rahim Wardak, Minister of Defense of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable John McCain, United States Senator.	Two Afghan rugs. Rec'd—1/2010. Est. Value—$600.00. Disposition—Deposited with the Secretary of the Senate.	His Excellency Hamid Karzai, President of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Jack Reed, United States Senator.	Afghan rug. Rec'd—3/31/2010. Est. Value—$400.00. Disposition—Deposited with the Secretary of the Senate.	His Excellency Abdul Rahim Wardak, Minister of Defense of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government
The Honorable John Barrasso, United States Senator.	3′ x 5′ hand-woven Afghan rug. 4′ x 6′ hand-woven Afghan rug. Rec'd—4/20/2010. Est. Value—$600.00. Disposition—Deposited with the Secretary of the Senate.	His Excellency Hamid Karzai, President of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable John Thune, United States Senator.	3′ x 5′ hand-woven Afghan rug. 4′ x 6′ hand-woven Afghan rug. Rec'd—4/20/2010. Est. Value—$600.00. Disposition—Deposited with the Secretary of the Senate.	His Excellency Hamid Karzai, President of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Carl Levin, United States Senator.	3′ x 4′ red Afghan rug. 3′ x 6′ yellow Afghan rug. White Afghan linen table setting. Rec'd—9/1/2010. Est. Value—$1,100.00. Disposition—Deposited with the Secretary of the Senate.	His Excellency Abdul Rahim Wardak, Minister of Defense of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Bob Corker, United States Senator.	TRAVEL: Air Transportation within Pakistan via military aircraft. Rec'd—8/21/2009. Est. Value—Unknown.	Government of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable John F. Kerry, United States Senator.	TRAVEL: Air transportation within Israel via military aircraft. Rec'd—6/27/2010. Est. Value—Unknown.	Israel Defense Forces of the State of Israel.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Perry Cammack, Professional Staff Member of the Committee on Foreign Relations.	TRAVEL: Air transportation within Israel via military aircraft. Rec'd—6/27/2010. Est. Value—Unknown.	Israel Defense Forces of the State of Israel.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Frank Lowenstein, Professional Staff Member of the Committee on Foreign Relations.	TRAVEL: Air transportation within Israel via military aircraft. Rec'd—6/27/2010. Est. Value—Unknown.	Israel Defense Forces of the State of Israel.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable John F. Kerry, United States Senator.	TRAVEL: Air transportation within Pakistan via military aircraft. Rec'd—6/27/2010. Est. Value—Unknown.	Government of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Jonah Blank, Policy Director of the Committtee on Foreign Relations.	TRAVEL: Air transportation within Pakistan via military aircraft. Rec'd—6/27/2010. Est. Value—Unknown.	Government of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

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FEDERAL REGISTER

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Part V

Federal Communications Commission

47 CFR Part 79

Accessible Emergency Information; Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010; Rule and Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 79

[MB Docket Nos. 12–107, 11–43; FCC 13–45]

Accessible Emergency Information; Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010 (''CVAA''), the Commission adopts rules requiring video programming distributors and video programming providers (including program owners) to make televised emergency information accessible to individuals who are blind and visually impaired. The Commission also adopts rules requiring the manufacturers of devices that display video programming to ensure that certain apparatus are able to make available video description and accessible emergency information.

DATES: Effective June 24, 2013, except for §§ 79.105(a), 79.105(b)(3), and 79.105(b)(4), and revised § 79.2(c), which contain information collection requirements that are not effective until approved by the Office of Management and Budget. The FCC will publish a document in the **Federal Register** announcing the effective date for those sections.

FOR FURTHER INFORMATION CONTACT: Diana Sokolow, *Diana.Sokolow@fcc.gov,* or Maria Mullarkey, *Maria.Mullarkey@fcc.gov,* of the Policy Division, Media Bureau, (202) 418–2120. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams at (202) 418–2918 or send an email to *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* FCC 13–45, adopted on April 8, 2013 and released on April 9, 2013. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., Room CY–A257, Washington, DC 20554. This document will also be available via ECFS at *http://fjallfoss.fcc.gov/ecfs/.* Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. The complete text may be purchased from the Commission's copy contractor, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Paperwork Reduction Act of 1995 Analysis

This document contains new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in this *Report and Order* as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. We did not receive any comments specifically addressing this issue. In the present document, we have assessed the effects of the new requirements on small businesses, including those with fewer than 25 employees, in the Final Regulatory Flexibility Analysis (''FRFA'') below.

Summary of the Report and Order

I. Introduction

1. Pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010 (''CVAA''), this *Report and Order* adopts rules requiring that emergency information [1] provided in video programming be made accessible to individuals who are blind or visually impaired and that certain apparatus be capable of delivering video description and emergency information to those individuals. Section 202 of the CVAA directs the Commission to promulgate rules requiring video programming providers, video programming distributors, and program owners to convey emergency information in a manner accessible to individuals who are blind or visually impaired. The *Report and Order* implements this mandate by requiring the use of a secondary audio stream [2] to convey televised emergency information aurally, when such information is conveyed visually during programming other than newscasts, for example, in an on-screen crawl. This requirement, which has widespread industry support, will serve the public interest by ensuring that televised emergency information is accessible to individuals who are blind or visually impaired. Further, as directed by section 203 of the CVAA, the *Report and Order* requires certain apparatus that receive, play back, or record video programming to make available video description [3] services and accessible emergency information. Specifically, as explained in more detail below, the apparatus rules require that certain apparatus make available the secondary audio stream, which is currently used to provide video description and which will be used to provide aural emergency information. The apparatus requirements will benefit individuals who are blind or visually impaired by ensuring that apparatus on which consumers receive, play back, or record video programming are capable of accessing emergency information and video description services. We understand that most apparatus subject to the rules already comply with these requirements. As discussed in Section III below, we adopt emergency information requirements for video programming distributors, video

[1] The CVAA directed the Federal Communications Commission (''Commission'') to apply here the definition of ''emergency information'' found in the Commission's rules. 47 U.S.C. 613(g)(1). ''Emergency information'' is defined in the Commission's rules as ''[i]nformation, about a current emergency, that is intended to further the protection of life, health, safety, and property, *i.e.,* critical details regarding the emergency and how to respond to the emergency. Examples of the types of emergencies covered include tornadoes, hurricanes, floods, tidal waves, earthquakes, icing conditions, heavy snows, widespread fires, discharge of toxic gases, widespread power failures, industrial explosions, civil disorders, school closings and changes in school bus schedules resulting from such conditions, and warnings and watches of impending changes in weather.'' 47 CFR 79.2(a)(2). ''Critical details include, but are not limited to, specific details regarding the areas that will be affected by the emergency, evacuation orders, detailed descriptions of areas to be evacuated, specific evacuation routes, approved shelters or the way to take shelter in one's home, instructions on how to secure personal property, road closures, and how to obtain relief assistance.'' Note to 47 CFR 79.2(a)(2).

[2] A secondary audio stream is an audio channel, other than the main program audio channel, that is typically used for foreign language audio and video description.

[3] ''Video description'' is defined as ''[t]he insertion of audio narrated descriptions of a television program's key visual elements into natural pauses between the program's dialogue.'' 47 CFR 79.3(a)(3).

programming providers, and program owners pursuant to section 202(a) of the CVAA. Specifically, we adopt rules that will:

• Clarify that the new emergency information requirements apply to video programming provided by entities that are already covered by § 79.2 of the Commission's rules—*i.e.,* broadcasters, MVPDs, and any other distributor of video programming for residential reception that delivers such programming directly to the home and is subject to the jurisdiction of the Commission;

• Require that covered entities make an aural presentation of emergency information that is provided visually in non-newscast programming available on a secondary audio stream;

• Continue to require the use of an aural tone to precede emergency information on the main program audio, and now also require use of the aural tone to precede emergency information on the secondary audio stream;

• Permit, but do not require, the use of text-to-speech (''TTS'') technologies as a method for providing an aural rendition of emergency information, and impose qualitative requirements if TTS is used;

• Require that emergency information provided aurally on the secondary audio stream be conveyed at least twice in full;

• Require that emergency information supersede all other programming on the secondary audio stream;

• Decline to make any substantive revisions to the current definition of emergency information, but clarify that severe thunderstorms and other severe weather events are included within the current definition;

• Revise the emergency information rule, as required by the statute, to include video programming providers (which includes program owners) as parties responsible for making emergency information available to individuals who are blind or visually impaired, in addition to already covered video programming distributors, and to allocate responsibilities among covered entities;

• Adopt a compliance deadline of two years from the date of **Federal Register** publication for compliance with the emergency information rules adopted herein; and

• Grant waivers to The Weather Channel, LLC (''The Weather Channel'') and DIRECTV, LLC (''DIRECTV'') to provide them with additional time and flexibility to come into compliance with the rules adopted herein with regard to the provision of local weather alerts during The Weather Channel's programming via devices that are not currently capable of providing aural emergency information on a secondary audio stream.

2. As discussed in Section IV below, we adopt apparatus requirements for emergency information and video description pursuant to section 203 of the CVAA. Specifically, we adopt rules that will:

• Require apparatus designed to receive, play back, or record video programming transmitted simultaneously with sound to make secondary audio streams available, because such streams are the existing mechanism for providing video description and the new mechanism for making emergency information accessible;

• Decline at this time to adopt specific performance and display standards or policies addressing certain issues from the 2011 video description proceeding;

• Permit, but do not require, covered apparatus to contain TTS capability;

• Limit applicability of the apparatus requirements, at this time, to apparatus designed to receive, play back, or record video programming provided by entities subject to §§ 79.2 and 79.3 of our rules;

• Apply the apparatus requirements to removable media players, but not to professional and commercial equipment or display-only monitors;

• Find that the apparatus requirements adopted herein apply to mobile digital television (''mobile DTV'') apparatus because such apparatus make available mobile DTV services, which are provided by television broadcast stations subject to §§ 79.2 and 79.3 of our rules;

• Implement the statutory provision that permits alternate means of compliance;

• Adopt a compliance deadline of two years from the date of **Federal Register** publication for compliance with the apparatus rules adopted herein; and

• Adopt procedures for complaints alleging violations of the apparatus requirements adopted herein.

II. Background

3. Section 202 of the CVAA directs the Commission to ''identify methods to convey emergency information (as that term is defined in [§] 79.2 of title 47, Code of Federal Regulations) in a manner accessible to individuals who are blind or visually impaired.'' 47 U.S.C. 613(g)(1). Pursuant to this section, the Commission must also ''promulgate regulations that require video programming providers and video programming distributors (as those terms are defined in [§] 79.1 of title 47, Code of Federal Regulations) and program owners to convey such emergency information in a manner accessible to individuals who are blind or visually impaired.'' 47 U.S.C. 613(g)(2). In addition, section 203 of the CVAA directs the Commission to prescribe rules requiring certain apparatus on which consumers receive or play back video programming to have the capability to decode and make available emergency information and video description services in a manner accessible to individuals who are blind or visually impaired, and requiring certain apparatus designed to record video programming to enable the rendering or pass through of video description signals and emergency information. 47 U.S.C. 303(u)(1), (z)(1).

4. The CVAA directed the Chairman of the Commission to establish an advisory committee known as the Video Programming Accessibility Advisory Committee (''VPAAC''), which was directed to develop a report that identifies performance objectives and recommends technical standards and other necessary regulations for the provision of emergency information and video description. The VPAAC's members include representatives from the industry and from consumer groups, and its recommendations thus reflect, in many cases, a consensus among regulated entities and consumers. The VPAAC submitted its statutorily mandated report addressing video description and emergency information to the Commission on April 9, 2012.[4] The Commission released the *NPRM* in this proceeding in November 2012.[5] In

[4] *See* Second Report of the Video Programming Accessibility Advisory Committee on the Twenty-First Century Communications and Video Accessibility Act of 2010, *available at http://vpaac.wikispaces.com* (''VPAAC Second Report''). The portion of the report that addresses video description is available at *http://vpaac.wikispaces.com/file/view/120409+VPAAC+Video+Description+REPORT+AS+SUBMITTED+4-9-2012.pdf* (''VPAAC Second Report: Video Description''). The portion of the report that addresses access to emergency information is available at *http://vpaac.wikispaces.com/file/view/120409+VPAAC+Access+to+Emergency+Information+REPORT+AS+SUBMITTED+4-9-2012.pdf* (''VPAAC Second Report: Access to Emergency Information'').

[5] *See Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010,* Notice of Proposed Rulemaking, 77 FR 70970 (2012) (''*NPRM*''). In April 2012, the Media Bureau and the Consumer and Governmental Affairs Bureau issued a Public Notice seeking comment on the portions of the VPAAC Second Report that address emergency information and video description, and the comments and reply comments received in

Continued

the *NPRM,* the Commission provided detailed background information regarding the applicable provisions of the CVAA, the VPAAC Second Report, and the current rules applicable to televised emergency information and video description, which we need not repeat here. The CVAA requires the Commission to complete its emergency information proceeding within one year of the submission of the VPAAC Second Report and to prescribe the apparatus requirements for video description and emergency information within 18 months of the submission of the VPAAC Second Report.[6]

5. To fulfill these statutory mandates, we adopt the rules discussed below. These rules impose new requirements with regard to the accessibility of televised emergency information for consumers who are blind or visually impaired, as well as new video description and emergency information requirements with regard to the apparatus consumers use to receive, play back, and record video programming. By ensuring the accessibility of emergency information and the availability of accessible emergency information and video description services, the regulations adopted here further the purpose of the CVAA to ''update the communications laws to help ensure that individuals with disabilities are able to fully utilize communications services and equipment and better access video programming.'' [7]

III. Section 202 of the CVAA

A. Scope of the Emergency Information Rules

6. At the outset, we determine that the emergency information requirements adopted in this proceeding will apply to video programming [8] subject to § 79.2 of the Commission's rules that is provided by a covered entity, *i.e.,* video programming provided by television broadcast stations licensed by the Commission,[9] MVPDs, and ''any other distributor of video programming for residential reception that delivers such programming directly to the home and is subject to the jurisdiction of the Commission.'' [10] This interpretation is supported by Congress's reference to television-based definitions of video programming distributors and providers in section 202 of the CVAA. Specifically, in section 202 of the CVAA, Congress amended section 713 of the Communications Act of 1934, as amended (the ''Communications Act''), to require ''video programming providers and video programming distributors (*as those terms are defined in [§] 79.1 of title 47, Code of Federal Regulations*) and program owners to convey such emergency information in a manner accessible to individuals who are blind or visually impaired.'' We believe that our interpretation is a reasonable reading of the statute because reference to definitions in the television closed captioning rule evidences Congress's intent to apply the emergency information requirements in section 613(g) of the Communications Act to video programming provided by covered entities.[11]

7. Although consumer groups urge the Commission to find that the rules extend more broadly to all Internet protocol (''IP'')-delivered video programming, other commenters argue that there is nothing in the statute or legislative history indicating that Congress intended to expand the scope of the emergency information rules in this manner. In addition, NAB observes that legal, practical, and technological limitations currently preclude a uniform or consistent methodology for Internet-delivered emergency information, and that delivering emergency information via IP raises issues with regard to timeliness and geographic relevance of the information. We agree that at the present time, the delivery of emergency information via IP raises issues—both in terms of scope and in terms of practicality—that currently make it difficult to achieve.[12] Accordingly, at this time, we find that the emergency information rules do not apply to IP-delivered video programming, such as the programming provided by online video distributors (''OVDs'') like Netflix and Hulu.[13] We recognize, however,

response to the Public Notice helped inform the *NPRM.* Public Notice, *Media Bureau and Consumer and Governmental Affairs Bureau Seek Comment on Second VPAAC Report: Video Description and Access to Emergency Information,* 27 FCC Rcd 4195 (2012).

[6] 47 U.S.C. 613(g); Public Law 111–260, § 203(d)(2). As noted, the VPAAC submitted its report to the Commission on April 9, 2012. Accordingly, the deadline for the emergency information proceeding is April 9, 2013, and the deadline for prescribing apparatus requirements is October 9, 2013.

[7] H.R. Rep. No. 111–563, 111th Cong., 2d Sess. at 19 (2010) (''House Committee Report''); S. Rep. No. 111–386, 111th Cong., 2d Sess. at 1 (2010) (''Senate Committee Report'').

[8] The Commission's rules state that ''the definitions in §§ 79.1 and 79.3 apply'' for purposes of § 79.2. 47 CFR 79.1(a)(1), 79.2(a)(1), 79.3(a)(4). Section 79.1(a)(1) defines ''video programming'' as ''[p]rogramming provided by, or generally considered comparable to programming provided by, a television broadcast station that is distributed and exhibited for residential use.'' Section 79.3(a)(4) defines ''video programming'' as ''[p]rogramming provided by, or generally considered comparable to programming provided by, a television broadcast station, but not including consumer-generated media.'' Although § 79.2 imposes requirements on covered *entities,* we find it useful to discuss the scope of the rules in terms of the *video programming* provided by covered entities, as it is such programming that must be made accessible. We discuss which entities are covered by our revised emergency information requirements in Section III.C herein.

[9] This includes video programming offered over mobile DTV apparatus, which is provided by television broadcast stations, a category of ''video programming distributors'' subject to the emergency information requirements in § 79.2(b) of our rules. 47 CFR 79.2(b). *See also* 47 CFR 79.1(a)(2) (defining ''video programming distributor''). The National Association of Broadcasters (''NAB'') does not dispute that television broadcast stations must comply with the emergency information requirements in § 79.2 when providing video programming via mobile DTV apparatus.

[10] As noted above, the Commission's rules state that for purposes of § 79.2, ''the definitions in §§ 79.1 and 79.3 apply.'' 47 CFR 79.1(a)(2), 79.2(a)(1), 79.3(a)(5). Section 79.1(a)(2) defines a ''video programming distributor'' as ''[a]ny television broadcast station licensed by the Commission and any multichannel video programming distributor as defined in § 76.1000(e) of this chapter, and any other distributor of video programming for residential reception that delivers such programming directly to the home and is subject to the jurisdiction of the Commission.'' In the *NPRM,* we proposed that the emergency information rules would continue to apply only to television broadcast services and MVPD services. After further consideration of this issue, however, we believe a better approach is to describe the scope of the emergency information rules more precisely by tracking the language used in our existing rules. Thus, the rules will continue to apply to video programming provided by covered entities, which includes programming provided by broadcasters, MVPDs, and ''any other distributor of video programming for residential reception that delivers such programming directly to the home and is subject to the jurisdiction of the Commission.''

[11] Although section 613(g)(2) also refers to ''program owners,'' a term that is not defined separately in § 79.1 of the Commission's rules, we note that the definition of ''video programming provider'' in § 79.1(a)(3) includes ''but [is] not limited to broadcast or nonbroadcast television network and the owners of such programming.'' 47 U.S.C. 613(g)(2); 47 CFR 79.1(a)(3). *See infra* Section III.C. Thus, we believe our interpretation also is consistent with Congress's inclusion of ''program owners'' as responsible parties in section 202 of the CVAA.

[12] We also note that § 79.2(b)(2) applies the rule ''to emergency information primarily intended for distribution to an audience in the geographic area in which the emergency is occurring.'' 47 CFR 79.2(b)(2). Given this geographic limitation, applying the rule broadly to cover all IP-delivered video programming, regardless of location, may not serve a useful purpose for and may cause confusion to viewers in areas with no connection to the location of the emergency.

[13] There are situations, however, where our emergency information rules do apply to IP-delivered video programming provided by a covered entity. For example, as AT&T explains, although its U-Verse service is an Internet protocol television (''IPTV'') service, AT&T is an MVPD, and, thus, the video programming offered through this service would be subject to the emergency information rules. We also note that in the *Further Notice of Proposed Rulemaking* (''*FNPRM*'') adopted with the *Report and Order* and published elsewhere in this publication, we inquire whether an MVPD service is covered by the emergency information rules adopted herein, when an MVPD, as defined in the Commission's rules, permits its subscribers to access linear video programming that

that the nature of the delivery of video programming is evolving, and in the coming years, the Commission may need to consider the regulatory implications associated with new forms of video programming services provided by covered entities.

8. We also adopt the *NPRM*'s conclusion that the emergency information rule in § 79.2 applies more broadly than the regulations governing the Emergency Alert System (''EAS''), which are found in Part 11 of our rules. The EAS rules contain the technical standards and operational procedures of the EAS, which provides the President with the ability to communicate immediately to the general public during periods of national emergency, and which may be used to provide the heads of state and local governments, or their designated representatives, with a means of emergency communication with the public in their state or local areas. The EAS has its own guidelines and requirements for message content and transmission. In contrast, § 79.2 applies to televised information about a current emergency affecting the local geographic area, intended to further the protection of life, health, safety, and property. We agree with the National Cable & Telecommunications Association (''NCTA'') that the accessibility of televised emergency information required under § 79.2 is a separate matter from an activation of the EAS as governed by Part 11 of our rules. Accordingly, we clarify that the emergency information covered by this proceeding does not include emergency alerts delivered through the EAS, which are subject to separate accessibility requirements requiring the transmission of EAS attention signals and EAS messages in audio and visual formats. However, to the extent a broadcaster or other covered entity uses the information provided through EAS or any other source (*e.g.,* information from the National Weather Service) to generate its own crawl conveying emergency information as defined in § 79.2(a)(2) outside the context of an EAS activation, it must comply with the requirements of § 79.2.

B. Accessible Emergency Information Requirements

9. Section 79.2 of the Commission's rules requires video programming distributors to make emergency information accessible to individuals ''with visual disabilities,'' and it contains separate requirements for emergency information that is presented visually during newscasts and for emergency information that is provided visually during programming that is not a newscast. With regard to emergency information provided visually during newscasts, we make no changes to the requirement that covered entities make emergency information accessible to persons with visual disabilities by aurally describing such information in the main program audio. No commenter indicates a need to revise the existing requirement applicable to emergency information provided visually in a newscast. We agree with NAB and NCTA that there is no need to change this portion of the rule because emergency information conveyed during newscasts is currently required to be accessible to individuals who are blind or visually impaired through the aural presentation in the main program audio stream. Thus, the current rule with respect to newscasts satisfies the CVAA's mandate that our regulations require covered entities to ''convey . . . emergency information in a manner accessible to individuals who are blind or visually impaired.'' [14] While we are not changing the basic requirement that covered entities make emergency information provided in the video portion of a regularly scheduled newscast or newscast that interrupts regular programming accessible to persons with visual disabilities, we are expanding the rule to cover video programming providers (which includes program owners) as responsible parties, in addition to already covered video programming distributors, as required by the statute.[15]

1. Requirements Applicable to Emergency Information Provided Visually During Non-Newscast Programming

10. We revise the portion of our rule that addresses emergency information provided visually during non-newscast programming to require that covered entities make emergency information accessible to individuals who are blind or visually impaired by aurally describing the emergency information on a secondary audio stream.[16] We note that the VPAAC recommended the use of a secondary audio stream to provide accessible emergency information. As explained herein, we agree that use of a secondary audio stream is the best means to implement the CVAA's directive to make emergency information accessible because many covered entities already provide or have the capability to pass through secondary audio streams, and because individuals who are blind or visually impaired have familiarity with accessing this stream for video description services. We therefore adopt the VPAAC's recommendation. Under our current rules, if emergency information is provided in the video portion of programming that is not a regularly scheduled newscast or a newscast that interrupts regular programming, it must be accompanied with an aural tone. Although the rules do not specify the parameters of the ''aural tone,'' under standard industry practice, three high-pitched tones are used to indicate the presence of on-screen emergency information. While the aural tone alerts members of the program's audience who are blind or visually impaired that an emergency situation exists, these individuals must resort to an alternative source, such as the radio, to try to obtain more specific details about the nature and severity of the emergency. As a result, individuals who are blind or visually impaired may have inadequate or untimely access to the critical details

contains emergency information via tablets, laptops, personal computers, smartphones, or similar devices. At this time, however, we find that the emergency information rules do not apply to video programming available for viewing on an Internet Web site, even if such programming is provided by a covered entity.

[14] 47 U.S.C. 613(g)(2). In contrast, we revise the current rule applicable to non-newscast programming—which requires that emergency information be accompanied with an aural tone—as discussed herein to ensure that such information is conveyed in a manner accessible to individuals who are blind or visually impaired. *See infra* Section III.B.1.

[15] *See infra* Section III.C; 47 U.S.C. 613(g)(2). We also make a non-substantive change to §§ 79.2(b)(2)(i) and 79.2(b)(2)(ii) of the revised rule by replacing the term ''persons with visual disabilities,'' as reflected in our current rules, with ''individuals who are blind or visually impaired,'' as reflected in the language used in the CVAA. There is no indication in the CVAA that Congress considered there to be a substantive difference between the two phrases, nor do we intend one. We simply make this change to conform the language in our rules to be consistent with the language used in the CVAA.

[16] We also adopt non-substantive edits to our existing emergency information rules to make the meaning more clear. As proposed in the *NPRM,* we change references in §§ 79.2(b)(2)(i) and 79.2(b)(2)(ii) of the revised rule to ''[e]mergency information that is provided in the video portion'' to ''[e]mergency information that is provided visually.'' No commenter takes issue with this proposed change. Further, in § 79.2(b)(2)(ii) of the revised rule, we change the phrase ''programming that is not a regularly scheduled newscast, or a newscast that interrupts regular programming'' to read ''programming that is neither a regularly scheduled newscast, nor a newscast that interrupts regular programming.'' NAB supports a similar change to the language in this section to clarify that the requirement applies to programming that is *neither* a regularly scheduled programming, *nor* a newscast that interrupts regular programming.

of an emergency in the local viewing area.

11. In accordance with the CVAA's mandate in section 202, we modify the current rule applicable to emergency information provided visually in programming that is not a newscast to ensure that such information is conveyed in a manner accessible to consumers who are blind or visually impaired. Specifically, if emergency information is provided visually in programming that is neither a regularly scheduled newscast nor a newscast that interrupts regular programming, we require that covered entities also make an aural presentation of this information available on a secondary audio stream. We continue to require use of the aural tone as an alerting mechanism on the main program audio, and we also now require use of the aural tone to precede emergency information on the secondary audio stream. On the main program audio, the purpose of the aural tone is to alert persons who are blind or visually impaired that visual emergency information is available. On a secondary audio stream, the aural tone has the additional purpose of differentiating audio accompanying the underlying programming from emergency information audio. Under this approach, consumers who are blind or visually impaired would be alerted to the presence of an emergency situation through the aural tone, and would then be able to promptly access the televised emergency information on the secondary audio stream. With our new rule, consumers who are blind or visually impaired no longer need to use a source other than the television to obtain the critical details of an emergency.

12. There is a general consensus in the record among both industry and consumer groups that use of the secondary audio stream is the best method to ensure accessibility of visual emergency information presented during non-newscast programming. We agree with AT&T and other commenters that requiring use of a secondary audio stream to carry aural emergency information is ''a straightforward and ideal solution'' because many covered entities already provide a secondary audio stream for video description or foreign language translation, and there are few technical impediments to passing through aural emergency information on a secondary audio stream. Moreover, consumers who are blind or visually impaired have familiarity with using the secondary audio stream to access video description.

13. At this time, we do not require covered entities to provide an audio stream that is dedicated solely to aurally accessible emergency information. MVPD commenters argue that mandating more than two audio streams—one for main audio, one for video description, and one for emergency information—would be costly and, in some cases, would pose technical difficulties.[17] We therefore agree with commenters that requiring that stations and operators use a secondary audio stream to provide aural emergency information will allow them to achieve accessibility in a more efficient and cost-effective way. Notably, no commenter suggests that we should mandate more than two audio streams. Although additional audio streams are not required, if a covered entity does provide more than two audio streams, we encourage them as a best practice to make aurally accessible emergency information available on the same audio stream that is used to provide video description, because consumers who are blind or visually impaired should have more familiarity with accessing this stream.

14. While we mandate use of the secondary audio stream to aurally transmit emergency information to consumers, we do not adopt a specific method for providing an aural rendition of textual emergency information on a secondary audio stream. In the *NPRM,* we asked about the extent to which the Commission should allow the use of text-to-speech (''TTS'') technologies, which automatically generate an audio version of a textual message, and whether such technologies are sufficiently accurate and reliable for rendering an aural translation of emergency information text. The record reflects a consensus that the rules should permit the use of TTS because it can be a useful and quick method to perform the text-to-aural translation of emergency information. NAB argues that use of TTS should not be mandated, however, because while TTS may be useful, it may not be the best method to effectively convey emergency information in all circumstances. In particular, NAB requests flexibility with regard to use of TTS or other specific technologies for aural translation because broadcasters may face potential technical and operational challenges in implementing TTS, and ''there is no one size fits all solution.''

15. Based on the record, we permit, but do not require, the use of TTS technologies as a method for providing an aural rendition of emergency information, consistent with the Commission's approach in the EAS context. While we do not require the use of TTS, we believe it is necessary to revise our rule to provide qualitative standards for TTS for covered entities that choose to use TTS. Specifically, information provided through TTS must be intelligible and must use the correct pronunciation of relevant information to allow consumers to learn about and respond to the emergency, including, but not limited to, the names of shelters, school districts, streets, districts, and proper names noted in the visual information.[18] Given the critical and urgent nature of emergency information, we expect covered entities to ensure that the aural version of textual emergency information provided through TTS is as effectively communicated to consumers who are blind or visually impaired as the textual content is conveyed to people who are able to see, and we will entertain consumer complaints about the quality of TTS.

16. *Technical Capability Exception.* We decline to adopt a technical capability exception to our new rule. Thus, unlike our approach in the *2011 Video Description Order,* we require all covered entities that provide visual emergency information that is covered by the rules to get the equipment necessary to make a secondary audio stream available by the two-year compliance deadline adopted below.[19]

[17] In the *NPRM,* the Commission sought comment on the impact, if any, of the proposals contained in the *NPRM* on broadcasters' ability to channel share, which is an option for broadcast television stations that choose to participate in the Commission's incentive spectrum auction. *See Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF,* Report and Order, 77 FR 30423 (2012) (''establish[ing] the basic ground rules for sharing of broadcast channels by stations that choose to share a 6 MHz channel with one or more other stations in connection with the incentive auction''); *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions,* Notice of Proposed Rulemaking, 27 FCC Rcd 12357, 12385, para., 84 (2012) (stating that the reverse auction of broadcast television spectrum includes three bid options for participants, one of which is ''voluntary relinquishment of 'usage rights in order to share a television channel with another licensee''') (footnote omitted). Commenters did not address this issue, and we do not expect the requirements adopted herein to have any impact on channel sharing.

[18] A covered entity's *de minimis* failure to comply with the quality standards will not be treated as a violation of the regulations.

[19] We note all covered entities may petition for a waiver of these requirements for good cause pursuant to § 1.3 of our rules. *See* 47 CFR 1.3. In particular, we note that broadcast stations in smaller markets that do not have the necessary equipment to provide a secondary audio stream can file a request for waiver of the requirements adopted herein. Given the importance of accessible emergency information, we do not anticipate that waivers will be routinely granted.

The *2011 Video Description Order* reinstated a technical capability exception for certain stations and MVPDs that lack the technical capability to pass through video description. We inquired in the *NPRM* whether there are any technical capability concerns that should be taken into account in the context of providing emergency information on a secondary audio stream and, if so, how such technical capability considerations should be addressed in the rules. Some commenters support the inclusion of a technical capability exception. In particular, NAB requests that the Commission ''incorporate a technical capability exception in its rules . . . so that the emergency information requirements do not apply when a station lacks the technical capability necessary to create and transmit the emergency crawl in aural form—that is, on a secondary audio stream.'' According to NAB, a broadcast station should be considered to have the technical capability to support aural transcription of emergency information if it has the necessary equipment and infrastructure, except for items that would be of minimal cost, similar to the standard set forth in the video description context. The American Council of the Blind (''ACB''), on the other hand, argues that there should be more stringent standards for the technical capability exception for emergency information, and that this exception should apply only as an ''absolute last resort.'' We agree with ACB that the importance of providing accessible emergency information to consumers who are blind or visually impaired justifies a more rigorous standard from that adopted in the video description context.[20]

17. At the same time, however, we note that DISH Network L.L.C. (''DISH Network'') and DIRECTV raise concerns about spot beam capacity, which is a problem unique to direct broadcast satellite (''DBS'') providers. Spot beams allow satellite transmissions to be focused on a specific area within the footprint of the satellite, enabling DBS providers to deliver local channels to precisely defined areas. DIRECTV explains that, while it currently carries the secondary audio stream of affiliates of the four major networks and PBS in the markets where it provides local service, it would not have sufficient capacity on its spot beams if a significant number of additional local stations were to request carriage of their secondary audio channels. Similarly, DISH Network states that it ''may not have sufficient capacity in its spot beams if large numbers of local broadcast stations launch new [secondary audio] services.'' The DBS providers indicate that if the Commission imposes a pass-through requirement for all local stations that provide emergency information on a secondary audio stream, capacity constraints would affect their ability to add new local-into-local markets and to comply with their ''carry-one, carry-all'' obligations. They argue that there is no simple remedy for this problem, as DBS providers would have to replace existing satellites or launch additional satellites to expand capacity or would have to curtail other valuable services, such as carriage of local broadcast stations or carriage of stations in HD. As such, DIRECTV and DISH Network request that the Commission take into account spot beam capacity constraints in considering an exception for DBS providers from the revised emergency information rule.[21]

18. We require DBS providers to pass through the secondary audio streams of all stations that provide aural emergency information pursuant to our revised rule.[22] Nonetheless, given the technical constraints faced by DBS providers, we recognize DIRECTV and DISH Network may require relief from the requirement to pass through secondary audio streams in specialized circumstances, *e.g.,* for any stations carried in a market where they do not have sufficient spot beam capacity, but we believe our existing waiver process is an appropriate mechanism to address such concerns.[23] As we discussed in the *NPRM* in the context of section 203 obligations, the House Committee Report accompanying the CVAA recognized that DBS providers may face unique technical challenges, including capacity constraints on spot beams used to deliver local signals, which should be considered when promulgating rules. We believe that the general waiver approach, rather than the ''streamlined'' waiver procedure suggested by DIRECTV,[24] appropriately balances DBS capacity limitations with the statutory directive to make televised emergency information accessible to consumers who are blind or visually impaired. We also note that DBS providers are already required to carry stations' ''[s]econdary audio programming'' pursuant to the requirements governing satellite carriage of broadcast stations in § 76.66(j) of the Commission's rules. Thus, if either DBS provider seeks a waiver from the requirement to pass through a station's secondary audio channel adopted in this proceeding, it will also have to justify a waiver of this portion of § 76.66(j). This makes our adopting the streamlined waiver procedure proposed by DIRECTV in this proceeding inappropriate because the issue regarding compliance with § 76.66(j) of our rules has not properly been raised in this, or any, pending proceeding.

19. We recognize that small cable systems, particularly those that are analog-only, may face unique difficulties in complying with the rules adopted herein. Although it did not file comments or reply comments in this proceeding, the American Cable Association (''ACA'') recently submitted an *ex parte* filing in which it requested that the Commission: (1) ''[p]ermit hybrid digital/analog systems that do not have the equipment to pass through the broadcast [secondary audio stream] on their analog service the option of

[20] This action is consistent with our existing rules requiring visual access to emergency information, without exception, to people who are deaf or hard of hearing. *See* 47 CFR 79.2. Unlike our closed captioning rules, which permit certain exemptions, there are no exemptions applicable to our rules governing the provision of accessible emergency information to this same population because of the heightened public interest in ensuring that all viewers can access televised emergency information. *See id.* 79.1, 79.2.

[21] Specifically, DIRECTV asks that we adopt a streamlined procedure for granting a waiver of the requirement to pass through a station's secondary audio stream in a particular market, if the DBS provider certifies that the spot beam serving the relevant market does not have sufficient capacity. DISH Network argues that ''[t]he Commission should establish that, for the purposes of any new rules for accessibility of emergency information, the available capacity on the relevant spot beam should be included, among other things, in the determination of whether a DBS provider has the 'technical capability' to carry the [secondary audio channel] of any particular local broadcast station.''

[22] DISH Network represents that ''DBS providers generally have the technical capability to offer secondary audio streams for local broadcast stations that they retransmit,'' and DIRECTV represents that it currently passes through the secondary audio streams for the top four network affiliates and PBS in each market and that it ''passes through the secondary audio channel of every station that offers it to DIRECTV today.''

[23] 47 CFR 1.3. A certification from the Chief Technical Officer that the spot beam serving the relevant market does not have sufficient capacity to support carriage of the secondary audio would be probative in a request for waiver.

[24] Specifically, DIRECTV ''urge[s] the Commission to adopt a streamlined procedure for granting a waiver of any secondary audio carriage requirement in a particular market (including [§] 76.66). For example, when a DBS operator concludes that it cannot honor a request to add a new secondary audio stream from a broadcast station, a waiver would be granted if its Chief Technical Officer (or equivalent) certifies that the spot beam serving the relevant market does not have sufficient capacity to support carriage of the secondary audio without compromising the other broadcast signals carried on that beam. The waiver issued in response to such certification would remain in place for one year, subject to extension annually if the DBS operator re-certifies that it continues to have insufficient capacity to support additional secondary audio feeds in that market.''

making emergency information accessible to blind or visually impaired customers through that system's digital service by providing eligible customers with set-top boxes at no charge for up to three analog television sets in their home;'' (2) ''[p]rovide an exception for all-analog systems that serve 1,000 or fewer subscribers and lack the equipment to pass through broadcast [secondary audio stream];'' and (3) ''[d]efer for three years application of the emergency information pass-through requirement for all-analog systems with more than 1,000 subscribers.'' ACA filed a subsequent *ex parte* letter in which it further refined its proposals by requesting that the Commission: (1) Grant all all-analog systems, regardless of size, that lack the equipment to pass through secondary audio streams, an additional three years following the effective date of the revised emergency information requirements to come into compliance; and (2) address concerns raised with regard to hybrid digital/analog systems that lack the equipment necessary to pass through secondary audio streams on their analog service ''by inviting the filing of class waivers on behalf of these systems.'' Although we are sympathetic to the issues raised by ACA, we do not believe that we have an adequate record upon which to address its proposals in the context of the instant proceeding. In this regard, we note that there are several issues surrounding ACA's proposals that have not been sufficiently developed. For example, should there be an upper subscriber limit on the hybrid digital/analog systems that are permitted to comply through an alternate means, what notification requirements should we impose on operators of analog systems to ensure their subscribers are aware of the operator's inability to provide the secondary audio stream, and to the extent that cable operators provide eligible customers with free set-top boxes, how could subscribers certify that they need such an accommodation? Accordingly, we decline to address ACA's requests at this time, finding that they would be better handled through the existing waiver process in which ACA has an opportunity to further develop its proposals and other interested parties have a sufficient opportunity to comment. Should ACA choose to file a subsequent request for waiver or extension of time, we delegate authority to the Media Bureau to address such a request. Given that the requirements we adopt herein do not take effect for two years, ACA will have sufficient time to seek a waiver in advance of the new requirements taking effect.

20. *Alternatives to Use of Secondary Audio Stream.* We do not adopt any of the alternative methods for making emergency information accessible to consumers who are blind or visually impaired that were considered but not recommended by the VPAAC, as described in the *NPRM.*[25] There is little support in the record for these proposals. Although NAB, NCTA, and The Weather Channel propose that we grant covered entities flexibility in the methods used to convey emergency information in a manner accessible to individuals who are blind or visually impaired, we believe that mandating the use of the secondary audio stream to provide an aural representation of visual emergency information is a better approach to provide consistency for the viewing audience, particularly given the overwhelming support in the record for this method.

21. At this time, the record does not support taking additional steps to address the particular needs of people with both vision and hearing loss. National Public Radio, Inc. (''NPR'') asks the Commission to consider alternative methods of presenting visual emergency information to persons with hearing and visual disabilities, such as use of USB connections on digital televisions to port text of Common Alerting Protocol (''CAP'') messages to refreshable Braille devices. The Rehabilitation Engineering Research Center on Telecommunications Access *et al.* (''Consumer Groups'') explain that televised emergency information would remain inaccessible to individuals who are blind or visually impaired and deaf or hard of hearing if we mandate use of the secondary audio stream alone to convey emergency information provided in on-screen crawls, and that such a result is contrary to the intent of the CVAA. According to Consumer Groups, this issue can be addressed by requiring the transmission of emergency information in both the secondary audio stream and via closed captions, which would allow persons who are hearing and vision impaired to enlarge the font of the crawl and change the font color.[26] Although we recognize the importance of accessibility by individuals who are both blind or visually impaired and deaf or hard of hearing, we agree with NAB that we do not have a sufficient record on these complex issues to resolve them in this proceeding.[27] Given the importance of these issues, the Commission will consider in the future what can be done to better serve this community.

22. *Content of Emergency Information.* We do not require a verbatim aural translation of textual emergency information. At the same time, however, we require that the information presented aurally accurately and effectively communicate to consumers who are blind or visually impaired the critical details about a current emergency and how to respond to it to the same extent that this information is conveyed textually, *i.e.,* it must provide the emergency information required under § 79.2(a)(2).[28] We note that this requirement is consistent with the VPAAC's recommendation on this issue. NAB, Kelly Pierce, The Weather Channel, and Verizon agree that the

[25] For example, the VPAAC considered but did not recommend alternatives such as: (1) Including a shortened audio version of the textual emergency information on the main program audio; or (2) broadcasting a five to ten second audio message on the main program audio after the three aural tones to inform individuals who are blind or visually impaired of a means by which they can access the emergency information, such as a telephone number or radio station. VPAAC Second Report: Access to Emergency Information at 8. According to the VPAAC, these alternatives have disadvantages, including interruption to the main program audio that could be disruptive to viewers and the need for sufficient resources to create and manage the brief audio messages. *Id.* The VPAAC also considered but did not recommend other alternatives such as ''dipping'' or lowering the main program audio and playing an aural message over the lowered audio, providing screen reader software or devices on request, enabling users to select and enlarge emergency crawl text, providing guidance for consumers, and using an Internet-based standardized application to filter emergency information by location. *See id.* at 11–12. The VPAAC determined that these alternatives either did not meet the requirements of the CVAA, relied upon technology or services that are not widely available, or involved additional problems. *Id.*

[26] Consumer Groups argue that there would be no additional burden on apparatus manufacturers beyond the requirements imposed in the *IP Closed Captioning Order,* and that the burden on video programming distributors would be minimal because they can generate closed captions through an automated process using the same text from the visual crawl or from the text processed through TTS. In contrast, NAB indicates that there would be significant technical complexities involved in providing emergency information through closed captioning, in addition to other issues that would make use of closed captioning for emergency information problematic.

[27] In addition, we do not address here Consumer Groups' suggestion that we revise § 79.2(b)(1)(i) of the current rule to require the use of real-time closed captioning for news programs shown in areas that are outside of the top 25 markets, because this matter is outside the scope of this proceeding and is being addressed in a separate proceeding before the Commission. *See Closed Captioning of Video Programming, Telecommunications for the Deaf, Inc., Petition for Rulemaking,* Notice of Proposed Rulemaking, 70 FR 56150 (2005).

[28] Specifically, emergency information must contain ''[i]nformation, about a current emergency, that is intended to further the protection of life, health, safety, and property, *i.e.,* critical details regarding the emergency and how to respond to the emergency.'' 47 CFR 79.2(a)(2).

rules should not require a verbatim translation. In particular, NAB argues that broadcasters should have editorial discretion in the aural transcription of emergency crawls because requiring a verbatim translation could divert broadcasters' attention from ''complete and rapid dissemination of emergency information to policing the exact language in their screen crawls,'' and could lead to unnecessarily long aural announcements that may unduly interrupt video description. However, ACB and the Rehabilitation Engineering Research Center for Wireless Technologies (''Wireless RERC'') recommend that the emergency information provided aurally be identical to the information that is provided textually to ''ensure equivalent access'' for consumers who are blind or visually impaired. We find persuasive The Weather Channel's recommendation that ''the standard for the aural alert should be the same as the standard for the scroll alert, *i.e.,* both should be required to include the critical details of the emergency and instructions about how to respond.'' We believe that requiring information presented aurally to accurately and effectively convey the critical details of an emergency and how to respond to it as required by § 79.2(a)(2) appropriately addresses the concerns set forth by ACB and the Wireless RERC that consumers who are blind or visually impaired have equivalent access to the critical details of emergencies, while at the same time giving stations and MVPDs flexibility to carry out their responsibilities most effectively. We will entertain complaints from consumers that aural descriptions of emergency crawls are inadequate in this regard.

23. In the *NPRM,* we also asked what requirements should apply to the aural description of visual but non-textual emergency information (*e.g.,* maps or other graphic displays). Similar to the approach we adopt for textual emergency information, we find that if visual but non-textual emergency information is shown during non-newscast programming, the aural description of this information must accurately and effectively convey the critical details regarding the emergency and how to respond to the emergency, as set forth in § 79.2(a)(2).[29] We disagree with NAB's contention that the rules should not impose any requirement for visual but non-textual emergency information to be described aurally because such a requirement could ''limit[ ] the [broadcaster's] use of such graphic information in order to comply with the rules,'' and ''could be infeasible if automated TTS is used.'' The record does not support a finding that it would be overly burdensome for covered entities to provide an aural description of the critical details provided in a graphic display (such as a map) for the purpose of conveying emergency information (*e.g.,* a list of the counties, cities, or other locations affected by the emergency as shown on the map). Further, even if a broadcaster employs TTS technologies, the critical details of the emergency information conveyed in the graphic display can be included in the text that will be converted to speech using such technologies, provided that the description of non-textual emergency information is inserted as text before the TTS conversion takes place. Accordingly, we require that an aural description of such emergency information be provided on the secondary audio stream.

24. We require that emergency information provided aurally on the secondary audio stream be conveyed at least twice in full to ensure that consumers are able to hear all of the information after they switch from the main program audio to the secondary audio stream. Commenter Kelly Pierce explains that ''many blind people are tuned to the main audio stream because of its superior audio quality,'' and these individuals will need time to switch from the main program audio to the secondary audio stream to obtain emergency information. For this reason, Mr. Pierce recommends, and no one opposes, that the Commission require a delay in providing emergency information on the secondary audio stream or, alternatively, require the information to be provided immediately on the secondary audio stream but repeated so that consumers who are blind or visually impaired can hear it at least twice. Because there may be individuals who are blind or visually impaired who are already tuned to the secondary audio stream (*e.g.,* for video description), we do not think it is appropriate to impose a delay on airing emergency information on the secondary audio stream. Instead, we believe the better approach is to require covered entities to convey emergency information at least twice on the secondary audio stream so that individuals switching from the main program audio will be able to hear the emergency information in its entirety. To better assist consumers who are blind or visually impaired, we encourage providers of emergency information, in appropriate circumstances and at their discretion, to convey the emergency information more than twice. This would be particularly appropriate during portions of the day when the secondary audio stream is silent or merely duplicates the main program audio, because there would be no potential to disrupt the provision of video-described programming on the secondary audio channel during those times, a concern that was raised generally by NAB, and because individuals who are blind or visually impaired can switch from the secondary audio channel to the main program audio if they prefer to hear audio associated with the underlying programming.

25. *Priority of Emergency Information.* We find that emergency information should be prioritized over all other content on the secondary audio stream. Thus, we revise § 79.2 to require that aural emergency information supersede all other programming on the secondary audio stream, including video description, foreign language translation, or duplication of the main audio stream.[30] Commenters resoundingly support having emergency information take priority over video description or any other content that may be present on the secondary audio

[29] ACB suggests that the verbal rendition of information provided in maps, photographs, or other illustrative data should be conveyed meaningfully, using the Department of Justice's (''DOJ'') ''effective communication'' standard. The Wireless RERC argues that covered entities should not exactly replicate non-textual, visual information in the audio, but should use the attributes of alternative text to describe what is being shown consistently with the purpose of the image. We believe our approach to require the critical details of non-textual emergency information to be provided is consistent with ACB's and the Wireless RERC's proposals because it will ensure that meaningful and useful details are conveyed to consumers. We also find that, as proposed by ACB, our approach is consistent with DOJ's ''effective communication'' standard that is applied to state and local governments under Title II of the Americans with Disabilities Act (''ADA''). This ADA standard requires a public entity to ''take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others.'' 28 CFR 35.160(a)(1). As noted above, we similarly require the emergency information provided aurally to be as accurate and effective as is the emergency information conveyed textually for people who are able to see.

[30] NAB argues ''that a video-described program intended to count toward a broadcaster's quarterly requirement will still count, even if it is interrupted by an aural conveyance of emergency information that appears in an on-screen crawl.'' We agree with NAB. Once a covered entity goes to the expense and effort to comply with our video description rules for a particular program, that program should count toward that entity's video description total even if the video description is partially or wholly interrupted by aural emergency information.

stream.[31] Currently, the Commission's rules prohibit emergency information from blocking video description, and they prohibit video description from blocking emergency information provided by means other than video description. Because textual emergency information will be conveyed aurally utilizing the same audio stream as used for video description, the VPAAC recommended eliminating the proscription against emergency information blocking video description. In accordance with the VPAAC's recommendation, we delete the proscription against emergency information blocking video description. In the *NPRM,* we proposed to amend § 79.2(b)(3)(ii) of the current rule to read: ''Any video description provided should not block any emergency information.'' After further consideration of this issue, however, we believe that use of the term ''*supersede*'' here is more appropriate than use of the term ''*block,*'' because ''supersede'' more appropriately applies to the insertion and prioritization of aural programming on the secondary audio stream.[32] Thus, we require covered entities to ensure that aural emergency information provided in accordance with § 79.2(b)(2)(ii) of our revised rule *supersedes* all other programming on the secondary audio stream, including video description, foreign language translation, or duplication of the main audio stream. This change is consistent with the VPAAC's recommendation and with the record, which support prioritizing emergency information.

26. While we find that emergency information should supersede any other content provided on the secondary audio stream, we do not impose requirements with regard to what should be provided on the secondary audio stream when emergency information is not being provided, aside from our current video description requirements. We note that the VPAAC recommends that covered entities use best efforts to transmit the main program audio on the secondary audio stream when emergency information, video description, or alternate language audio are not present, rather than maintaining a silent channel. We agree with this recommendation and find that this approach would enable consumers to tune to the secondary audio stream all of the time, instead of needing to switch back and forth from the main program audio when video description or emergency information is available.

27. *Provision of Customer Support.* We do not at this time require covered entities to provide specific customer support services to assist consumers who are blind or visually impaired with accessing emergency information on the secondary audio stream, but we seek further comment on this issue. Although expressly raised in the *NPRM,* there was little comment on this issue. The American Foundation for the Blind (''AFB'') argues in favor of imposing requirements for identification and training of appropriate points of contact to assist with accessing emergency information on the secondary audio stream. On the other hand, AT&T argues that covered entities should have the flexibility to educate customers on use of the secondary audio stream, and NCTA contends that additional rules in this area are unnecessary because ''cable operators currently provide customer support for handling video description concerns.'' Given the lack of detailed comment on this issue, we seek further comment in the *FNPRM.* While we do not prescribe specific requirements for customer support services at this time, we believe that customer service representatives of covered entities should be able to answer consumer questions about accessing emergency information. Additionally, in order to make it easier for consumers to communicate directly with covered entities should they so choose, we encourage covered entities to provide a point of contact, as well as other information about how to seek assistance, on their Web sites and in other informational materials distributed to the public.

2. Definition of Emergency Information

28. We do not make any substantive revisions to the current definition of emergency information. Emergency information is defined in § 79.2(a)(2) as ''[i]nformation, about a current emergency, that is intended to further the protection of life, health, safety, and property, *i.e.,* critical details regarding the emergency and how to respond to the emergency.'' Critical details regarding an emergency ''include, but are not limited to, specific details regarding the areas that will be affected by the emergency, evacuation orders, detailed descriptions of areas to be evacuated, specific evacuation routes, approved shelters or the way to take shelter in one's home, instructions on how to secure personal property, road closures, and how to obtain relief assistance.'' The definition provides ''[e]xamples of the types of emergencies covered,'' which ''include tornadoes, hurricanes, floods, tidal waves, earthquakes, icing conditions, heavy snows, widespread fires, discharge of toxic gases, widespread power failures, industrial explosions, civil disorders, school closings and changes in school bus schedules resulting from such conditions, and warnings and watches of impending changes in weather.'' In the *NPRM,* we asked whether the definition of emergency information should be updated to include additional examples of emergencies. Of the two commenters who address this issue, NCTA indicates that the Commission should not expand the definition, and NAB proposes narrowing the definition ''to strike an appropriate balance'' with other services provided on the secondary audio stream. Specifically, NAB asks us to apply the definition only to ''critically urgent information'' and to delete certain categories of emergency information from the list of examples.[33] Given that no party favors expanding the definition and because the record presents no compelling reason to expand a definition that has served the public interest for over ten years, we decline to include additional examples in the definition of emergency information. However, we also do not

[31] We agree with the majority of commenters that the provision of emergency information, which is, by definition, ''intended to further the protection of life, health, safety, and property,'' should be prioritized over video description, which is typically provided for prime-time and children's programming. 47 CFR 79.2(a)(2), 79.3(b).

[32] In contrast, the term ''block,'' which refers to an obstruction, is appropriate in the context of closed captioning, where the rules are intended to address the overlap of visually presented information, namely closed captioning and visual emergency information. *See* 47 CFR 79.2(b)(3)(i) (stating that ''[e]mergency information should not block any closed captioning and any closed captioning should not block any emergency information provided by means other than closed captioning''). Although we make no substantive changes to § 79.2(b)(3)(i) of the current rule, we make a minor revision to change ''should'' to ''does,'' which is the grammatically appropriate word to use in conjunction with the term ''must ensure.'' *See infra* Appendix B (Final Rules), § 79.2(b)(4) (''Video programming distributors must ensure that emergency information *does* not block any closed captioning and any closed captioning *does* not block any emergency information provided by means other than closed captioning.'') (emphasis added).

[33] Specifically, NAB recommends that we delete ''school closings and changes in school bus schedules resulting from such conditions, and warnings and watches of impending changes in weather'' from the examples of emergency information in § 79.2(a)(2), because such categories are ''helpful, but not critical.'' NAB argues that such a revision will ''ensure that video described programming is not continuously disrupted during significant weather events.'' NAB also asks the Commission to specify that ''the emergency crawls to be aurally transcribed under the new rules will be generally limited to locally-provided (*i.e.,* licensee-provided) information.'' We do not think it is necessary to adopt NAB's proposed specification because the rule currently states that § 79.2 ''applies to emergency information primarily intended for distribution to an audience in the geographic area in which the emergency is occurring.'' 47 CFR 79.2(b)(2).

think it is appropriate to narrow the definition in the interest of lessening the impact on other services provided on the secondary audio stream, given the higher priority of emergency information.

29. We also specifically inquired in the *NPRM* whether severe thunderstorms are currently considered to be emergencies subject to our rule and, to the extent they are covered, whether they should be added to the list of examples in the rule. No commenter addresses this question. While we do not explicitly add severe thunderstorms to the list of examples, we interpret the current definition to include severe thunderstorms and other severe weather events because they are similar to other types of emergencies listed as examples in terms of severity and because these events could threaten life, health, safety, and property.

30. Although we reject NAB's recommendation that we modify our current emergency information definition to delete school closings and school bus schedule changes from the list of examples, we revise the requirements applicable to the provision of such information for purposes of the rules adopted in this proceeding. As required by the rule, the visual information regarding school closings and school bus schedule changes aired during non-newscast programming must be made accessible to individuals who are blind or visually impaired (*i.e.,* there must be an aural tone before the crawl on the main program audio, and the information conveyed in the crawl must be preceded by an aural tone and provided aurally on the secondary audio channel), if the school closings and school bus schedule changes result from a current emergency as defined in § 79.2(a)(2). We leave it to the good faith judgment of the broadcaster or other covered entity to decide whether school closings and school bus schedule changes result from a situation that is a current emergency based on its severity and potential to threaten life, health, safety, and property.[34] However, given the potential length of information about school closings and school bus schedule changes and therefore its potential to interfere with video description,[35] we find that, during a video-described program, covered entities have the option to air a brief audio message on the secondary audio stream at the start of the crawl indicating that this information will be aired at the conclusion of the video-described programming, and to subsequently provide this information aurally on the secondary audio stream at the conclusion of the video-described programming.

C. Responsibilities of Entities Subject to Section 202(a) of the CVAA

31. Congress directed the Commission to ''require video programming providers and video programming distributors (as those terms are defined in [§] 79.1 of title 47, Code of Federal Regulations) and program owners to convey such emergency information in a manner accessible to individuals who are blind or visually impaired.'' Thus, in the *NPRM,* we sought comment on definitions of the terms ''video programming providers,'' ''video programming distributors,'' and ''program owners,'' and we inquired about the roles and responsibilities of these various entities. We address each of those issues in turn below.

32. *Definition of Video Programming Providers and Video Programming Distributors.* We apply the current definitions for ''video programming distributor'' and ''video programming provider'' in § 79.1 to the emergency information rule, and we find that it is unnecessary to create a separate definition for ''program owner.''[36] The emergency information provision in section 202(a) of the CVAA applies to ''video programming provider'' and ''video programming distributor'' ''as those terms are defined in'' § 79.1 of the Commission's rules and, accordingly, we need not create new definitions for those terms. NAB supports this approach. However, section 202(a) also references ''program owners'' without defining this term. In the *NPRM,* we explained that the definition of ''video programming provider'' in § 79.1 includes but is not limited to a ''broadcast or nonbroadcast television network *and the owners of such programming.*'' Thus, we asked whether it is necessary to separately define a ''program owner'' for purposes of our implementing regulations, given that the definition of ''video programming provider'' in § 79.1 encompasses program owners. No commenter addresses this specific issue. We also sought comment in the *NPRM* on whether to define a ''program owner'' consistent with the definition of ''video programming owner'' adopted in the IP closed captioning context. NAB argues that the Commission should not impose definitions from the IP closed captioning rules in the emergency information context because ''[t]hose definitions are unnecessary and unhelpful here,'' because, for example, ''a [video programming owner], such as [a] network or a syndicator, would not have any knowledge that a licensee was crawling local emergency information over their programming at the station level.'' No other commenter addresses this issue. We agree with NAB that is not necessary to use the definition of ''video programming owner'' from the IP closed captioning rule. The record shows that the entities that typically insert emergency information into crawls are broadcasters, which are already covered as video programming distributors, and that, other than The Weather Channel, which is both a network program owner and video programming provider, program owners do not typically create emergency crawls. Because the current definition of ''video programming provider'' already includes but is ''*not limited to* broadcast or nonbroadcast television network and the owners of such programming,'' we interpret this definition to include the owners of any ''video programming that is intended for distribution to residential households'' by a video programming provider.[37] Thus, we see no public interest benefit in creating a separate definition of the term ''program owner.'' While not separately defined, however, program owners are subject to applicable accessible emergency information requirements, as explained below.

33. *Obligations of Video Programming Providers and Video Programming Distributors.* We revise the emergency information rule to include video

[34] We will not sanction broadcasters or other covered entities for a reasonable exercise of their judgment as to whether school closings and school bus schedule changes result from a situation that is a current emergency.

[35] While we agree with the concern about the potential of school closing and bus schedule change information to impede video description, we believe that, given the typical length and duration of these types of announcements, ACB's and AFB's suggestion to air this information in full once per hour may still significantly interfere with video description and, thus, may not be a feasible solution.

[36] Section 79.1 defines a ''video programming distributor'' as ''[a]ny television broadcast station licensed by the Commission and any multichannel video programming distributor as defined in § 76.1000(e) of this chapter, and any other distributor of video programming for residential reception that delivers such programming directly to the home and is subject to the jurisdiction of the Commission.'' 47 CFR 79.1(a)(2). We do not need to apply the remainder of the ''video programming distributor'' definition to the emergency information rule, as that portion is specific to the closed captioning context. Section 79.1 also defines a ''video programming provider'' as ''[a]ny video programming distributor and any other entity that provides video programming that is intended for distribution to residential households including, but not limited to broadcast or nonbroadcast television network and the owners of such programming.'' *Id.* 79.1(a)(3).

[37] 47 CFR 79.1(a)(3) (emphasis added).

programming providers as defined in § 79.1 (which includes program owners) as parties responsible for making emergency information available to individuals who are blind or visually impaired, in addition to already covered video programming distributors. Currently, § 79.2(b)(1) of our rules provides that video programming distributors must make emergency information accessible to individuals with visual disabilities, but our rules do not currently impose related requirements on video programming providers and program owners. However, section 202 of the CVAA directs us to impose accessible emergency information requirements on video programming providers and program owners, as well as on video programming distributors. In the *NPRM,* we asked for comment on the roles that the various entities listed in section 202 should play in ensuring that emergency information is conveyed in an accessible manner. We further inquired whether video programming distributors should hold primary responsibility, with video programming providers and program owners prohibited from interfering with or hindering the conveyance of accessible emergency information, or whether certain responsibilities should be allocated to each of the entities specified in section 202.

34. The record reflects support for allocating responsibility among each of the entities specified in section 202. A number of commenters emphasize that the allocation of responsibility should be based on the roles that each entity has with regard to making non-newscast emergency information accessible. Specifically, MVPD commenters explain that local broadcasters are the entities that typically create emergency information crawls and scrolls and, therefore, they should be responsible for providing an aural version of this information on the secondary audio stream. According to MVPD commenters, because MVPDs typically have no role in creating or managing the content of visual emergency information, they should not be required to produce the information in an aurally accessible format. Instead, these commenters suggest that MVPDs should be required to pass through aural emergency information that is provided by broadcasters and other video programming providers and owners. This description of the roles of the various entities was not disputed in the record.

35. We conclude that each entity specified in section 202(a) should be responsible for compliance with the emergency information rule, and we revise the portions of § 79.2 applicable to accessibility of emergency information for individuals who are blind or visually impaired accordingly to add video programming providers (which includes program owners) and to more clearly specify the obligations of covered entities. First, we find that among video programming distributors and video programming providers, the entity that creates the visual emergency information content and adds it to the programming stream is responsible for providing an aural representation of the information on a secondary audio stream, accompanied by an aural tone.[38] Second, we find that video programming distributors are responsible for ensuring that the aural representation of the emergency information (including the accompanying aural tone) gets passed through to consumers. This will allow us to take enforcement action not only against a non-compliant video programming distributor, but also against a program provider or owner that does not comply with its obligation to make visual emergency information accessible to consumers who are blind or visually impaired.[39] We also revise the rule to indicate that both video programming distributors and video programming providers are responsible for ensuring that emergency information supersedes any other programming on a secondary audio channel, with each entity responsible only for its own actions or omissions in this regard.

[38] We do not limit this obligation to video programming providers and program owners as some commenters suggest because local broadcasters who typically create emergency crawls are ''video programming distributors'' by definition, and because we believe that to the extent an MVPD does create a crawl or other visual graphic conveying local emergency information as defined in § 79.2 and embeds it in non-newscast programming, it should also be responsible for making the visual emergency information aurally accessible.

[39] NAB argues that the rules should ensure that broadcasters' aural emergency messages are not overridden by aural messages provided by an MVPD, and that broadcasters should not be subject to a finding of non-compliance if emergency information provided by the broadcaster is interrupted or overridden by an MVPD carrier. We believe our rules address these concerns because they assign liability for non-compliance based on each covered entity's acts or omissions. To the extent aural emergency information provided by a broadcaster is interrupted or overridden by aural emergency information provided by another covered entity, the broadcaster can raise this claim as a defense to any complaint or enforcement action. In addition, MVPDs are prohibited from altering a broadcaster's video feed, and the record indicates that MVPDs do not typically create local emergency information crawls, so we expect this problem to be extremely rare.

D. Compliance Deadlines

36. We adopt a deadline of two years from the date of **Federal Register** publication for compliance with the emergency information rules adopted herein. In the *NPRM,* the Commission inquired as to the appropriate time frame for requiring covered entities to convey emergency information in a secondary audio stream and noted that the VPAAC did not reach agreement as to recommended deadlines. Few commenters discuss the appropriate compliance deadline, with ACB suggesting a one year deadline and NAB suggesting a phased-in approach ranging from 36 months to 42 months. While we note ACB's explanation that there is an existing infrastructure for providing content via the secondary audio channel, we also find that even stations that already use a secondary audio stream may find it necessary to take a number of steps to achieve compliance, such as: (1) implementing software that transfers crawls into text that can be synthesized into audio; (2) integrating the software with the station's computer system; and (3) testing the system.[40] However, we find that 36 months is an unnecessarily long period of time to achieve these steps, given that in prior proceedings we have found that software and product development, along with time for testing and implementation, are achievable within a two year period. Accordingly, based on our review of the record, we conclude that a compliance deadline of two years after **Federal Register** publication is reasonable. We decline to implement a phased-in approach with a later deadline for stations that do not currently have a secondary audio stream, because we expect such stations to work concurrently to establish their secondary audio streams and to take other necessary steps towards compliance.

37. *The Weather Channel Waiver for Emergency Information on Cable Systems.* The Weather Channel expresses unique concerns regarding the compliance deadline. The Weather Channel is a nationally distributed programming network that provides not only national weather information, but also localized weather information, including breaking weather news and alerts, to its subscribers nationwide, which makes it a video programming

[40] Contrary to the suggestion of ACB and AFB, the record indicates that broadcasters currently use graphics machines to generate on-screen crawls and will need to work with vendors to develop an interface solution that will translate graphics into text. However, we note that at least one entity already has developed software that turns characters input as an image into text.

provider covered by the revised emergency information rule. To ensure that viewers are able to see locally relevant weather information on cable systems, including information on severe weather emergencies, The Weather Channel has deployed thousands of its ''WeatherSTAR'' devices[41] in cable headends throughout the country, with six different generations of these devices in service. While the most recent models are capable of providing emergency information aurally, none is currently capable of using a secondary audio stream to do so.[42] The Weather Channel estimates that it would need at least 30 months to comply with the requirements adopted herein for cable systems.

38. We grant The Weather Channel a six-month waiver beyond our established compliance deadline of the requirement to provide aural emergency information on a secondary audio stream when local emergency information is provided visually during The Weather Channel's programming on cable systems.[43] Thus, The Weather Channel will have 30 months to comply with this requirement. We conclude that there is good cause to support this waiver because The Weather Channel will need to upgrade or replace all of its WeatherSTAR devices to provide emergency information aurally on a secondary stream, as required herein. As a condition of the waiver, however, we require that as of the general two-year compliance deadline, The Weather Channel must provide its local emergency information on cable systems in a manner that is accessible to individuals who are blind or visually impaired on devices that are capable of providing aural alerts, but it need not use the secondary audio channel to do so prior to the end of the waiver period.

39. We also grant The Weather Channel a six-month waiver beyond the general compliance deadline from our rule requiring covered entities to provide all of the critical details of an emergency that are included in the text when it provides local emergency information visually on cable systems. During the six-month waiver period, The Weather Channel will be permitted instead to provide a limited aural announcement about the emergency that is reported. We conclude that there is good cause to support this temporary waiver because, as The Weather Channel explains, if it is required to provide an aural announcement on its main programming that includes all of the critical details of an emergency and how to respond, this ''would lead to the complete disruption of TWC programming—often for hours at a time—during many alerts.'' At the end of the waiver period,[44] we require The Weather Channel to be fully compliant with the emergency information rules adopted herein for all of its programming on cable systems.

40. *DIRECTV Waiver for Emergency Information from The Weather Channel.* We also grant DIRECTV a 12-month waiver of the requirement to provide aural emergency information when local emergency information is provided visually during The Weather Channel's programming on DIRECTV systems, as well as a waiver of the following requirements on DIRECTV's systems: (1) Providing aural emergency information on a secondary audio channel; (2) providing all of the critical details of an emergency that are included in the text; and (3) providing audio functionality on all set-top boxes.[45] The record indicates that DIRECTV faces its own unique challenges to making The Weather Channel's localized weather information aurally accessible to DIRECTV's customers, and that use of a secondary audio stream to provide detailed emergency information in the DIRECTV context is not feasible. We believe that these challenges justify additional time for implementation. Currently, DIRECTV has an ''interactive application through which it . . . provides visual emergency information to subscribers as they watch The Weather Channel.'' DIRECTV's application ''enables the set-top box to pull localized alerts from the national Weather Channel feed for the zip code provided by the subscriber,'' but currently, ''there is no audio accompanying this information.''[46] DIRECTV explains that it needs a waiver for several reasons. First, if the Commission requires DIRECTV to make The Weather Channel's localized information available on the secondary audio stream, DIRECTV says that it would ''face considerable challenges'' because it ''transmits national cable channel[s] on a nationwide satellite beam.'' Second, DIRECTV states that it would need three years to ''enable a majority of its set-top boxes with . . . emergency audio capability.'' Third, DIRECTV reports that this functionality cannot be implemented on all DIRECTV set-top boxes. Fourth, while it is possible to add audio messages to many of its set-top boxes to capture the nature of local weather emergencies presented visually on The Weather Channel, DIRECTV explains that those audio messages cannot be as detailed as the emergency information that is presented visually because ''constraints imposed by the bandwidth available in the satellite network and processing power in the set-top box, as well as the potential lack of a broadband connection to the subscriber's home, limit the amount of information that can be presented aurally.''[47]

41. For the various reasons enumerated by DIRECTV, we grant DIRECTV a 12-month waiver beyond

[41] The Weather Channel transmits local weather information for the entire country in a single, satellite-delivered data stream, and its WeatherSTAR device ''filters the national satellite data stream and permits only geographically relevant information to be delivered to each viewer.''

[42] The Weather Channel indicates that approximately 12 percent of WeatherSTARs could be upgraded to implement a secondary audio channel, while the remaining 88 percent of devices would need to be replaced to implement a secondary audio channel, at an estimated cost of at least $14 million, which is largely non-recoverable.

[43] 47 CFR 1.3.

[44] The waivers will expire 30 months from the date of **Federal Register** publication.

[45] The waiver applies only to DIRECTV and not to DISH Network because DIRECTV ''provides visual emergency information to subscribers as they watch The Weather Channel'' as a linear program provided by DIRECTV. Subscribers are able to do this by accessing an interactive application via their remote control. In contrast, DISH Network does not currently provide visual emergency alerts to subscribers that watch The Weather Channel via DISH Network's linear programming. Instead it ''offers a standalone application for The Weather Channel, which is accessible in the interactive features of select DISH set-top box models with a broadband Internet connection'' that ''is not integrated with The Weather Channel linear TV channel.'' Thus, DISH Network is not providing visual emergency information during The Weather Channel's video programming that would make it subject to the emergency information requirements adopted herein. Additionally, while in the cable context discussed above we grant a waiver to The Weather Channel because of the additional time necessary for it to provide localized emergency information via the secondary audio stream, here we grant a waiver to DIRECTV and not The Weather Channel because, as DIRECTV explains, ''The Weather Channel does not itself include any textual emergency alert information that would be subject to the rules,'' and ''[i]t is only the applications provided by the [DBS] distributors that make such alerts available at all.''

[46] When DIRECTV subscribers are tuned to The Weather Channel, local weather alerts for the viewing area are ''presented as a visual weather alert banner at the top of the screen,'' accompanied by three aural tones, along with a visual direction to press the red button on the handheld remote to access an alert page with additional detail related to the weather conditions in the area.

[47] DIRECTV proposes to pre-load audio messages in many of its set-top boxes that will ''capture the nature of the weather emergency.'' This approach would involve the capability to provide only a very brief audio message with limited details about the emergency (*e.g.,* ''A tornado watch is in effect for your area''), and would not include more specific information about the location or times of the emergency. DIRECTV argues that more specific locational information is unnecessary because the on-screen alert will only be picked up by set-top boxes in the zip codes affected by the emergency.

our established compliance deadline of the requirement to provide an aural presentation of local emergency information that is provided visually during The Weather Channel's programming on DIRECTV systems, so that DIRECTV has the extra time it needs to enable audio functionality in its set-top boxes. This waiver will extend until the date 36 months from **Federal Register** publication. We believe that there is good cause to permit DIRECTV an additional year beyond the general compliance deadline to comply with the requirement to provide an aural presentation of The Weather Channel's local emergency information because its current set-top boxes are not capable of providing aural emergency information. DIRECTV states that it will take three years to enable audio functionality in certain set-top boxes because adding such functionality ''require[s] a new design to deliver the necessary audio files, as well as additional satellite bandwidth . . . .'' For these reasons, we find a temporary waiver warranted. We note, however, that we may revoke or modify this waiver if circumstances change such that the waiver is no longer in the public interest.

42. We also grant DIRECTV a waiver of the requirement to provide aural emergency information on a secondary audio channel and the requirement to provide all of the critical details of an emergency that are included in the text when local emergency information is provided visually during The Weather Channel's programming on DIRECTV systems. We are persuaded that national cable channels are carried on a nationwide satellite beam, not on localized spot beams, and thus, carriage of localized audio streams for The Weather Channel is not feasible on DIRECTV systems.[48] At a minimum, consistent with DIRECTV's proposal, we require the aural version of the emergency information that DIRECTV provides to capture the nature of the emergency (*e.g.,* ''A tornado watch is in effect for your area''), and we require DIRECTV to provide that aural version to viewers whose set-top boxes are associated with zip codes in the affected area. We note that local weather alerts generated by The Weather Channel's application are provided only to subscribers in the zip codes affected by the emergency and, thus, all subscribers, including subscribers who are blind or visually impaired, would know that the emergency is taking place in the local viewing area. We recognize that, as a technical matter, it is not feasible for DIRECTV to provide more specific information such as individual localities affected and times of the emergency, because, as DIRECTV explains, currently ''the satellite capacity and other resources necessary to convey that additional information . . . would be prohibitive.''

43. Finally, we grant DIRECTV a waiver with respect to the set-top box models on which it is not able to implement audio functionality for emergency information. In this regard, however, we condition such relief by requiring DIRECTV to provide, upon request and at no additional cost to customers who are blind or visually impaired, a set-top box model that is capable of providing aural emergency information. DIRECTV may require reasonable documentation of disability as a condition to providing the box at no additional cost.[49]

44. Thus, as of the date 36 months from **Federal Register** publication, DIRECTV must provide an aural presentation of visual emergency information displayed on The Weather Channel. DIRECTV is not required to use the secondary audio channel to provide an aural presentation of visual emergency information displayed on The Weather Channel, and it may use limited aural messages, in accordance with its proposal. Additionally, as explained above, DIRECTV need not provide this functionality on all of its set-top boxes, but it must provide at no additional cost to customers who are blind or visually impaired a set-top box model that is capable of providing the aural emergency information. In granting this waiver, we are guided by Congress's directive to consider the unique technical challenges faced by DBS providers when promulgating rules. We believe that the costs of requiring DIRECTV to comply fully with these rules would outweigh the benefits. As DIRECTV has mentioned, if it ''finds that it cannot comply with requirements imposed in this proceeding, it may have to discontinue [The Weather Channel] application.'' We believe that DIRECTV is providing a critical service to its subscribers and we want to ensure that our regulations do not impede its ability to continue offering these localized emergency alerts. At the same time, we note that we may revoke or modify these waivers if circumstances change such that the waivers are no longer in the public interest.[50]

E. Complaint Procedures

45. We revise the complaint procedures for emergency information contained in § 79.2(c) of the Commission's rules to include video programming providers, to indicate that the complaint should be transmitted to the Consumer and Governmental Affairs Bureau, and to add the Commission's online informal complaint filing system as a method of transmitting a complaint to the Commission.[51] In the *NPRM,* the Commission asked if its proposal to amend the emergency information requirements in § 79.2 of the Commission's rules necessitates changes to the existing complaint procedures. No commenter addresses this issue. Because we are revising the rule to include video programming providers as responsible parties, we revise § 79.2(c) to indicate that complaints can be filed against video programming providers, as well as video programming distributors.

46. Pursuant to the revised rule, a complaint alleging a violation of this section may be transmitted to the Consumer and Governmental Affairs Bureau by any reasonable means, such as the Commission's online informal complaint filing system, letter, facsimile transmission, telephone (voice/TRS/TTY), Internet email, audio-cassette recording, and Braille, or some other method that would best accommodate

[48] As noted above, DISH Network is not providing visual emergency information during The Weather Channel's video programming that would make it subject to the emergency information requirements adopted herein and, therefore, it does not need a waiver of the requirement to provide an aural presentation of visual emergency information on a secondary audio stream.

[49] For example, we believe that documentation from any professional or service provider (*e.g.,* a social worker) with direct knowledge of the individual's disability would be reasonable. *See, e.g., Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals,* Report and Order, 76 FR 26641, 26642–43, para., 7 (2011) (''requiring individuals seeking equipment under the NDBEDP to provide verification from any practicing professional that has direct knowledge of the individual's disability,'' who ''must be able to attest to the individual's disability'').

[50] It is possible that the Commission could adopt requirements in its implementation of sections 204 and 205 of the CVAA that supersede the terms of this waiver. In that case, DIRECTV must comply with the rules adopted pursuant to these sections. For example, section 205 of the CVAA directs the Commission to require that on-screen text menus and guides for the display or selection of multichannel video programming on navigation devices provided by MVPDs to their subscribers ''are audibly accessible in real-time upon request by individuals who are blind or visually impaired.'' 47 U.S.C. 303(bb)(1). The CVAA provides that, with respect to this requirement, the Commission shall provide affected entities with ''not less than 3 years after the adoption of such regulations to begin placing in service devices that comply with the requirements.'' Public Law 111–260, § 205(b)(6)(A)(ii).

[51] The Consumer and Governmental Affairs Bureau reserves the discretion to refer complaints that reveal a pattern of noncompliance to the Commission's Enforcement Bureau.

the complainant's disability. The complaint should include the name of the video programming distributor or the video programming provider against whom the complaint is alleged, the date and time of the omission of emergency information, and the type of emergency. The Commission will notify the video programming distributor or the video programming provider of the complaint, and the distributor or the provider will reply to the complaint within 30 days.

IV. Section 203 of the CVAA

47. Section 203 of the CVAA directs the Commission to impose certain emergency information and video description requirements on apparatus designed to receive, play back, or record video programming transmitted simultaneously with sound. The Commission must prescribe these requirements by October 9, 2013. The section 203 regulations we adopt must include ''any technical standards, protocols, and procedures needed for the transmission of'' video description and emergency information. Below we set forth requirements for apparatus pertaining to emergency information and video description, and we specify what apparatus are subject to these obligations. Our section 203 discussion is focused on the availability of secondary audio streams because that is both the existing mechanism for providing video description and the mechanism adopted herein for making emergency information accessible. Given our understanding that most covered apparatus already make secondary audio streams available today, we do not expect the apparatus rules to impose undue hardship on equipment manufacturers.

A. Apparatus Requirements for Emergency Information and Video Description

48. We codify language comparable to that found in section 203 of the CVAA to explain what covered apparatus must do to comply with the emergency information and video description requirements. Specifically, we require all ''apparatus designed to receive or play back video programming transmitted simultaneously with sound, if such apparatus is manufactured in the United States or imported for use in the United States and uses a picture screen of any size,'' to ''have the capability to decode and make available'' the secondary audio stream, which will facilitate the following services: (1) ''the transmission and delivery of video description services as required by'' our video description rule; and (2) ''emergency information (as that term is defined in [our emergency information rule, § 79.2 of this Part]) in a manner that is accessible to individuals who are blind or visually impaired.'' [52] It is our understanding that most apparatus subject to the rules already comply with these requirements. In the discussion that follows, we discuss more specifically the compliance requirements for manufacturers of covered apparatus to ensure that video description services and emergency information provided via a secondary audio stream are available and accessible to individuals who are blind or visually impaired.

1. Performance and Display Standards

49. Section 203 of the CVAA directs the Commission to ''provide performance and display standards for . . . the transmission and delivery of video description services, and the conveyance of emergency information. . . .'' In accordance with the statutory language discussed above, our rules will require covered apparatus to decode and make available the secondary audio stream, in a manner that enables consumers to select the stream used for the transmission and delivery of emergency information and video description services.[53] Accordingly, covered apparatus must take any steps necessary to decode the secondary audio stream used in the provision of these services. We agree with commenters that, at this time, more specific technical standards might hinder innovation in the marketplace as manufacturers develop improved means of decoding and making available the secondary audio stream. Our record-based understanding that most covered apparatus already enable customers to access the secondary audio stream, in the absence of any specific requirement, demonstrates that specific, as opposed to general, performance and display standards are not currently needed. As the Consumer Electronics Association (''CEA'') notes, declining to adopt specific performance and display standards here is consistent with the *ACS Order,* in which the Commission adopted general performance objectives instead of more specific criteria.[54]

50. We do not require apparatus to contain any TTS capability at this time, although we do not prohibit manufacturers from including TTS capability in an apparatus.[55] In the *NPRM,* we sought comment on whether apparatus should have the capability to make textual emergency information audible through the use of TTS. Commenters strongly object to imposing such a requirement on apparatus because compliance would be costly, and because requiring apparatus itself to convert a text crawl into audio through the use of TTS would change the device from having a passive role of passing through information to having an active role of creating the oral emergency message from the text version. Based on these comments, we find that the costs of requiring apparatus manufacturers to include TTS capability would outweigh the benefits, given that other entities are already required to ensure that emergency information is converted from text format to an aural format. Although we do not, at this time, require apparatus to contain any TTS capability, we may revisit this issue in the future if circumstances evolve such that requiring TTS capability in the apparatus would be a preferable approach.

2. Recording Devices

51. Similar to our treatment of apparatus that receive or play back video programming, as discussed above, we codify language comparable to that found in section 203 of the CVAA to explain what recording devices must do to comply with the emergency information and video description requirements. Specifically, we require all ''apparatus designed to record video programming transmitted simultaneously with sound, if such apparatus is manufactured in the United States or imported for use in the United States,'' to enable the presentation or the pass through of the secondary audio stream, which will facilitate the

[52] We note that the regulatory text adopted herein includes certain minor modifications from that proposed in the *NPRM,* in an effort to better correspond to the statutory language.

[53] Proposals regarding accessible user interfaces are outside the scope of this proceeding; they will be covered by the forthcoming proceeding implementing sections 204 and 205 of the CVAA.

[54] *Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010,* Report and Order and Further Notice of Proposed Rulemaking, 76 FR 82354 (2011) (''*ACS Order*'').

[55] In the context of the requirements adopted pursuant to section 202 of the CVAA, we provide qualitative standards for TTS for covered entities that choose to use TTS. We do not impose such qualitative standards on TTS contained in apparatus unless entities subject to the emergency information requirements adopted herein pursuant to section 202 of the CVAA rely on TTS in apparatus to meet their obligations. For example, a cable operator might rely on TTS capability in the set-top box to convert emergency text into aural format. In such situations, the qualitative standards for TTS set forth in revised § 79.2 of our rules will apply to an entity's use of the TTS capability in the apparatus. This approach is supported by the fact that it is the entities subject to § 79.2 of our rules who are obligated to create the aural version of the emergency information, and not the apparatus.

provision of ''video description signals, and emergency information (as that term is defined in [§ 79.2 of this Part]) such that viewers are able to activate and de-activate the . . . video description as the video programming is played back on a picture screen of any size.'' [56] In the *NPRM,* the Commission asked what specifically it should require of recording devices to ''enable the rendering or the pass through of'' video description and emergency information. In compliance with the statutory directive, we require that recording devices store the secondary audio stream along with the recorded video, such that a consumer may switch between the main program audio and the secondary audio stream when viewing recorded video programming. The fact that most modern recording devices already record programming with the secondary audio stream demonstrates that this requirement is not burdensome, and that more specific standards are not currently needed.[57] ACB states that the Commission ''should require manufacturers who develop devices which record video programming to record the described content along with the nondescribed stream,'' and ''that the manufacturers must allow the user to choose whether to record the described content via accessible means.'' We understand ACB's concern to be ensuring that the secondary audio stream is accessible to consumers who record video programming. Because in modern recording devices the recording of the secondary audio stream occurs automatically, it is unnecessary to require that consumers be permitted to choose whether to record a secondary audio stream.

52. In the *NPRM,* the Commission asked how the rules relating to emergency information should apply to recording devices, given that emergency information is, by its nature, extremely time sensitive. Under the rules adopted herein, all covered apparatus must make available the secondary audio stream, which is used for both video description and emergency information; thus, there would be no practical impact if we were to say that recording devices are not required to record and make available emergency information carried on a secondary audio stream. Although ACB would prefer that recording devices record video description instead of emergency information, we find that such an approach would not be possible given that the apparatus does not play any role in deciding the content of the secondary stream, which may contain emergency information that has overridden video description. Additionally, we find that consumers may play back recorded programming moments after it was first shown on television, and thus, emergency information may still be relevant. The Entertainment Software Association (''ESA'') notes potential harm of emergency information appearing during recorded programming because ''a casual observer of recorded programming may be misled or confused by information that is no longer current or relevant.'' On balance, we find that it is preferable to ensure that consumers have access to recorded emergency information that may still be relevant, rather than attempting to avoid the seemingly attenuated possibility that a casual observer may not realize that the programming is recorded and could be misled by outdated emergency information.

3. Customer Support Services

53. We do not at this time require MVPDs that provide set-top boxes and manufacturers of other covered apparatus to provide specific customer support services to assist consumers who are blind or visually impaired to navigate between the main and secondary audio streams to access video description and accessible emergency information, but we seek further comment on this issue. Although expressly raised in the *NPRM,* there was little comment on this issue. As in the context of customer support services pursuant to section 202 of the CVAA, AT&T argues that covered entities should have the flexibility to educate customers on the use of the secondary audio stream, and NCTA contends that additional rules in this area are unnecessary because ''cable operators currently provide customer support for handling video description concerns.'' Given the lack of detailed comment on this issue, we seek further comment in the *FNPRM.* While we do not prescribe specific customer service requirements on manufacturers or MVPDs at this time, we believe that manufacturers' and MVPDs' customer service representatives should be able to answer consumer questions about accessing the secondary audio stream with respect to the devices each supports. Additionally, in order to make it easier for consumers to communicate directly with covered entities should they so choose, we encourage covered entities to provide a point of contact, as well as other information about how to seek assistance, on their Web sites and in other informational materials distributed to the public.

4. Interconnection Mechanisms

54. The CVAA directs the Commission to require that ''interconnection mechanisms and standards for digital video source devices are available to carry from the source device to the consumer equipment the information necessary . . . to make encoded video description and emergency information audible.'' In the *NPRM,* we sought comment on our understanding that devices already use interconnection mechanisms that make available audio provided via a secondary audio stream, and that no further steps would be needed to implement this requirement. NCTA, the only commenter that addresses this issue, states that no further steps are needed to implement this statutory provision because ''[o]perator-supplied set-top boxes already use interconnection mechanisms that make available audio provided via the secondary audio stream.'' We find that we need not require apparatus, including operator-supplied set-top boxes, to do more than that. In order to fulfill the interconnection mechanism provision of the CVAA and to provide clarity to the industry, however, we adopt a rule that states that covered apparatus must use interconnection mechanisms that make available the audio provided via the secondary audio stream. In doing so, it is our expectation, based on the record, that apparatus manufacturers will not need to take any additional steps to comply with this rule.

5. Issues From 2011 Video Description Order

55. In the *NPRM,* the Commission sought comment on three issues that arose in the 2011 video description proceeding. These issues pertain to equipment features that present challenges for video programming distributors and consumers. For the reasons discussed below, we decline to address these issues at this time, although we seek further comment on the first issue in the *FNPRM.*

56. First, the *NPRM* sought comment on whether the Commission should impose a requirement that broadcast

[56] Although the *NPRM* proposed rule language that would have required recording devices to ''enable the rendering or the pass through of video description signals and emergency information,'' we note that the term ''rendering'' is generally inapplicable to audio, and thus we substitute the term ''presentation.''

[57] We disagree, however, with arguments that the Commission need not prescribe *any* recording device requirements because of current compliance. The CVAA directs the Commission to impose requirements on recording devices, and such requirements will ensure that devices will continue to operate as needed to comply with the statute.

receivers detect and decode tracks marked for the ''visually impaired.'' The issue arose in the *2011 Video Description Order,* when the Commission observed that viewers with digital television sets, as well as other viewers, may be unable to find and activate an audio stream tagged as ''visually impaired'' (''VI''), which is the tag used for video description as dictated by the digital television standard, which is known as the ATSC standard.[58] The Commission also cited comments indicating that many legacy televisions may be compatible only with audio streams tagged as ''complete main'' (''CM''). Further, it has been reported that some television receivers do not properly handle two audio tracks if they are both identified as ''English,'' and thus to ensure compatibility, broadcasters often tag the video description stream as a foreign language, even though the content of the stream is video description. As a result of the tagging issues described above, consumers may find it difficult to identify and select audio streams containing video description. In the 2011 video description proceeding, the Commission decided that this issue would be better addressed in a later proceeding. CEA and NAB argue that we should not address the issue of tagging and decoding of secondary audio streams in this proceeding, particularly given the statutory deadlines imposed by the CVAA. We recognize that this is an important issue, but we also recognize that we currently lack a detailed record on these very technical matters. Accordingly, we seek comment on this issue in the *FNPRM.* In the interim we expect local broadcasters to coordinate with manufacturers to ensure that consumers can easily access video description and emergency information provided on a secondary audio stream, and we expect voluntary standards setting bodies to explore how best to impose a consistent tagging scheme.

57. Second, the *NPRM* sought input on the comment of Dolby Laboratories, Inc. in the 2011 video description proceeding that the audio experience for individuals accessing video-described programming could be enhanced if devices supported a ''receiver-mix'' technology that would enable the device to combine the full surround sound main audio with video description. Commenters specifically object to the ''receiver-mix'' proposal, claiming that it is inconsistent with the current digital television standard and has been considered and rejected by the industry. Further, CEA and NAB explain that we should not address the ''receiver-mix'' issue in this proceeding, particularly given the statutory deadlines imposed by the CVAA.[59] We agree, and thus we do not address this issue here.

58. Third, the *NPRM* asked if and how the Commission should address equipment limitations that may discourage video programming distributors from providing more than one additional audio channel. In the *2011 Video Description Order,* the Commission noted that such limitations may prevent some viewers from accessing a third audio channel, even if a video programming distributor provides such a channel. CEA and NAB explain that we should not address these equipment limitations in this proceeding, particularly given the statutory deadlines imposed by the CVAA.[60] We agree that we should not at this time address equipment limitations that may prevent consumers from accessing a third audio channel. In the *NPRM,* the Commission asked specifically whether it should address this problem by mandating compliance with what is known as ''CEA–CEB21,'' *Recommended Practice for Selection and Presentation of DTV Audio,* a bulletin that ''provides recommendations to manufacturers to facilitate user setup of audio features in the receiver without professional assistance.'' CEA explains that CEA–CEB21 is a recommended practice with no normative requirements, and that it is not designed for use as a rule for which compliance is enforced. Accordingly, we do not impose CEA–CEB21 as a required compliance standard. We expect the industry to continue its work to develop products that are capable of delivering multiple ancillary audio streams.

B. Apparatus Subject to Section 203 of the CVAA

1. General Scope of the Apparatus Requirements

59. The rules adopted in this proceeding pursuant to section 203 of the CVAA apply only to apparatus designed to receive, play back, or record video programming provided by the entities subject to our existing emergency information rules (as set forth in § 79.2) and our existing video description rules (as set forth in § 79.3).[61] In the *NPRM,* the Commission proposed to apply the video description and emergency information requirements adopted pursuant to section 203 of the CVAA only to apparatus designed to receive, play back, or record ''television broadcast services or MVPD services.'' Several commenters support the proposal to limit the apparatus requirements adopted herein to apparatus designed to receive, play back, or record television broadcast services or MVPD services. Consumer Groups, however, point out that the CVAA directs the Commission to impose emergency information requirements on video programming providers and distributors as defined in § 79.1 of its rules, which includes more than just broadcasters and MVPDs. Upon further consideration, we find no basis to deviate from our existing definition, and we agree with the Consumer Groups that we should not exclude from coverage video programming provided by the third category of video programming distributors, which is ''any other distributor of video programming for residential reception that delivers such programming directly to the home and is subject to the jurisdiction of the Commission.'' We thus conclude that it is more appropriate to extend the rules adopted in this proceeding pursuant to section 203 of the CVAA to apparatus designed to receive, play back, or record video programming provided by broadcasters, MVPDs, and ''any other distributor of video programming for residential reception that delivers such programming directly to the home and

[58] *See Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010,* Report and Order, 76 FR 55585 (2011) (''*2011 Video Description Order*''). A tag, in this context, refers to the metadata accompanying an audio stream that signals to the receiving device what type of audio stream it is.

[59] Some commenters also discuss the issue of making surround sound available on the secondary audio stream. One commenter supports such a requirement. Others explain that capacity constraints would lead to difficulty in providing two full surround sound audio streams.

[60] Other commenters also object to Commission-mandated technical standards with respect to the provision of multiple audio services.

[61] *See* 47 CFR 79.2, 79.3. Both rules apply to television broadcast stations, MVPDs, and ''any other distributor of video programming for residential reception that delivers such programming directly to the home and is subject to the jurisdiction of the Commission.'' *See id.* 79.1(a)(2), 79.2(a)(1), 79.3(a)(5). Although §§ 79.2 and 79.3 impose requirements on covered *entities,* we find it more useful in some instances to discuss the scope of the rules in terms of the *video programming* provided by covered entities, as it is such programming that must be provided aurally. We clarify that at this time, the apparatus requirements adopted herein are not triggered by an apparatus receiving, playing back, or recording video programming available for viewing on an Internet Web site, even if such programming is provided by a covered entity. We also clarify that at this time, the apparatus requirements adopted herein do not apply to mobile devices that do not include receivers used to access television broadcast or MVPD services. The *FNPRM* poses additional questions about applicability of the requirements adopted herein to mobile devices. As explained herein, the apparatus requirements adopted herein apply to mobile DTV apparatus.

is subject to the jurisdiction of the Commission.''

60. We disagree with Consumer Groups' contention that the apparatus rules should apply as broadly here as they did in the IP closed captioning proceeding.[62] We note that the CVAA does not define the term ''apparatus.'' Thus, we must give meaning to the term in a manner that best effectuates the intent of Congress and the purposes of the statute. We recognize that the CVAA's legislative history indicated Congress' intent to ''ensure[ ] that devices consumers use to view video programming are able to . . . decode, and make available the transmission of video description services, and decode and make available emergency information.'' However, given the current scope of §§ 79.2 and 79.3 of our rules, we decline at this time to adopt rules to encompass apparatus that are not designed to receive, play back, or record video programming provided by entities subject to our existing emergency information and video description rules. Such a limitation is reasonable because it ensures that consumers are able to use apparatus to access a secondary audio stream that relays programming that includes emergency information and video description yet, at the same time, ensures that we avoid placing undue and unnecessary burdens on industry. Accordingly, the apparatus requirements adopted herein are triggered only when the apparatus is designed to receive, play back, or record video programming that is subject to §§ 79.2 and 79.3 of our rules, *i.e.,* video programming provided by entities subject to those rules.[63]

61. We interpret the term ''apparatus'' to include the physical devices designed to receive, play back, or record video programming transmitted simultaneously with sound, as well as software integrated in those covered devices. The *NPRM* proposed to define apparatus subject to the emergency information and video description requirements to include ''the physical device and the video players that manufacturers install into the devices they manufacture before sale, whether in the form of hardware, software, or a combination of both, as well as any video players that manufacturers direct consumers to install after sale.'' As in its petition for reconsideration of the *IP Closed Captioning Order,* CEA argues that we should use the term ''video programming player'' in lieu of the term ''video player'' because the inclusion of ''video players'' in the definition of ''apparatus'' exceeds the scope of section 203 of the CVAA by failing to limit its scope to video players designed to receive or play back ''video programming,'' as that term is defined in the CVAA.[64] We find that, substituting the term ''video programming player'' for ''video player,'' as CEA requests, would not appear to provide any further clarity, as we are not aware of any commonly accepted definition of ''video programming player.''[65] Nonetheless, to address CEA's argument that our rules should not reach apparatus that only display video that does not constitute ''video programming,'' and to make the language of the rules more consistent with the statute, we revise the proposal in the *NPRM* by replacing references to ''video players'' with ''video player(s) capable of displaying video programming transmitted simultaneously with sound.''[66] We believe that by limiting the scope of our rules to video players that are capable of displaying ''video programming transmitted simultaneously with sound,'' we will address CEA's fundamental concern that our definition of ''apparatus'' should be consistent with the CVAA.

2. Interpretation of Statutory Terms Incorporated in the Commission's Apparatus Requirements

62. Below we interpret certain statutory terms incorporated in the Commission's apparatus requirements. Each of these interpretations is adopted as proposed in the *NPRM,* and each is consistent with the approach taken in the *IP Closed Captioning Order.*

63. *Designed to Receive, Play Back, or Record Video Programming.* Under the CVAA, the emergency information and video description requirements apply to ''apparatus designed to receive or play back video programming transmitted simultaneously with sound,'' and to ''apparatus designed to record video programming transmitted simultaneously with sound.'' In the *NPRM,* we proposed to consider an apparatus to be ''designed to'' receive, play back, or record video programming transmitted simultaneously with sound if it is sold with, or updated by the manufacturer to add, an integrated video player capable of displaying video programming. We adopt our proposed definition of ''designed to.'' In determining whether a device falls within this definition, we will look to the functionality of the device (*i.e.,* whether it is capable of receiving or playing back video programming), rather than the subjective intent of the manufacturer (*i.e.,* the manufacturer's intent when it designed the apparatus), to determine if the device is designed to receive, play back, or record video programming. CEA argues here, as in its petition for reconsideration of the *IP Closed Captioning Order,* that the Commission instead should consider the manufacturer's intent in determining what an apparatus was ''designed to'' accomplish. We disagree, because such an approach would allow the manufacturer unilaterally to dictate whether an apparatus falls within the

[62] We find unpersuasive Consumer Groups' claim that ''the fact that programming is not required to be made accessible under [s]ection 202 or other law does not excuse apparatus manufacturers from their obligations to render accessibility information pursuant to [s]ection 203(a).'' Consumer Groups cite specifically to the Commission's decision in the *IP Closed Captioning Order* to extend the apparatus requirements to DVD players, even though the DVDs themselves may not be required to include captions. *See Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010,* Report and Order, 77 FR 46632 (2012) (''*IP Closed Captioning Order'').* In the *IP Closed Captioning Order,* the Commission explained that the CVAA explicitly required coverage of apparatus that play back, but do not receive, video programming transmitted simultaneously with sound, such as DVD players.

[63] The Wireless RERC requests that the Commission investigate, via Public Notice or Notice of Inquiry, the technical feasibility of providing aural and visual emergency information on live IP-delivered video programming, including methods for identifying whether the viewing apparatus is within the geographic location of the emergency situation. CTIA-The Wireless Association (''CTIA'') responds that the Wireless RERC's proposal that the Commission investigate and require the inclusion of emergency information in live, IP-delivered video programming is beyond the scope of the CVAA.

[64] The CVAA defines ''video programming'' as ''programming by, or generally considered comparable to programming provided by a television broadcast station, but not including consumer-generated media.'' 47 U.S.C. 613(h)(2).

[65] We note that in another proceeding, CEA has proposed that we define ''video programming player'' as ''a component, application, or system that is specifically intended by the manufacturer to enable access to video programming, not video in general.'' *See* Petition for Reconsideration of the Consumer Electronics Association, MB Docket No. 11–154, at 8 (filed Apr. 30, 2012) (''CEA Recon. Petition''). The definition relies upon a consideration of the manufacturers' intent, which we find to be inappropriate here, as discussed below, since it would allow a manufacturer unilaterally to decide whether an apparatus falls within the scope of the rules.

[66] As in the *IP Closed Captioning Order,* the apparatus rules adopted herein cover manufacturer-provided updates and upgrades to devices; thus, a device that originally did not include a video player capable of displaying video programming transmitted simultaneously with sound, but that the manufacturer requires the consumer to update or upgrade to enable video reception or play-back, will be covered by our rules, and our rules equally cover updates or upgrades to existing video players. We would not, however, hold manufacturers liable for failure to comply with the apparatus requirements adopted herein for devices manipulated or modified by consumers in the aftermarket.

scope of the rules, which could harm consumers by making compliance with the apparatus emergency information and video description requirements effectively voluntary. As the Commission stated in the *IP Closed Captioning Order,* we are persuaded that adopting a bright-line standard based on the device's capability will provide more certainty for manufacturers.

64. *Uses a picture screen of any size.* Section 203 of the CVAA applies to apparatus designed to receive or play back video programming ''if such apparatus . . . uses a picture screen of any size.'' In the *NPRM,* we proposed interpreting this phrase to mean that the apparatus works in conjunction with a picture screen, which is the approach that the Commission adopted in the IP closed captioning proceeding. Commenters did not discuss this issue, and we see no reason to deviate from the well-reasoned approach adopted in the *IP Closed Captioning Order* regarding the same statutory provision. We consider an apparatus to *use* a picture screen of any size if the apparatus works in conjunction with a picture screen. Thus, apparatus that ''use[] a picture screen of any size'' include not only devices that have a built-in screen, but also devices that are designed to work in conjunction with a screen, such as set-top boxes, game consoles, personal computers, and other receiving or play back devices separated from a screen.

65. *Technically feasible.* The requirements of section 203 of the CVAA pertaining to apparatus designed to receive or play back video programming apply only to the extent they are ''technically feasible.'' In the *NPRM,* we proposed to consider compliance with the apparatus requirements to be technically infeasible if a manufacturer shows that changes to the design of the apparatus to incorporate the required capabilities are not physically or technically possible. We further proposed that it would not be sufficient to show that compliance is merely difficult. These proposals mirrored the approach adopted in the IP closed captioning context. As explained in that context, because neither the statute nor the legislative history provides guidance as to the meaning of ''technical feasibility,'' the Commission is obligated to interpret the term to best effectuate the purpose of the statute. In the *IP Closed Captioning Order,* the Commission looked to prior Commission interpretations of the phrase ''technically feasible'' and other similar terms in the context of accessibility for people with disabilities, which similarly relied on whether incorporation of the capability was physically and technically possible. Commenters did not discuss this issue, and we see no reason to deviate from the reasoned approach adopted in the *IP Closed Captioning Order* to the same statutory provision. Accordingly, we adopt the proposed interpretation of the meaning of ''technically feasible.'' Given our understanding that most covered apparatus already make secondary audio streams available today, we expect that covered apparatus will only rarely be able to demonstrate that it would be physically or technically impossible to change the design of the apparatus to incorporate the required capabilities. Consistent with the *IP Closed Captioning Order,* we permit parties to raise technical infeasibility as a defense when faced with a complaint alleging a violation of the apparatus requirements adopted herein, or to file a request for a ruling under § 1.41 of the Commission's rules as to technical infeasibility *before* manufacturing or importing the product.

66. *Achievability.* Section 203 provides that apparatus ''that use a picture screen that is less than 13 inches in size'' must meet the requirements of that section only if ''achievable,'' as that word is defined in section 716 of the Communications Act. Section 203 also provides that ''apparatus designed to record video programming transmitted simultaneously with sound'' are only required to comply with the emergency information and video description requirements ''if achievable (as defined in section 716).''[67] Section 716 of the Communications Act defines ''achievable'' as ''with reasonable effort or expense, as determined by the Commission,'' and it directs the Commission to consider the following factors in determining whether the requirements of a provision are achievable: ''(1) The nature and cost of the steps needed to meet the requirements of this section with respect to the specific equipment or service in question. (2) The technical and economic impact on the operation of the manufacturer or provider and on the operation of the specific equipment or service in question, including on the development and deployment of new communications technologies. (3) The type of operations of the manufacturer or provider. (4) The extent to which the service provider or manufacturer in question offers accessible services or equipment containing varying degrees of functionality and features, and offered at differing price points.''

67. In the *NPRM,* we proposed a flexible approach to achievability, consistent with that adopted in the *IP Closed Captioning Order* and in the *ACS Order,* pursuant to which a manufacturer may raise achievability as a defense to a complaint alleging a violation of section 203, or it may seek a determination of achievability from the Commission *before* manufacturing or importing the apparatus. We also proposed to model the scope of the achievability exception on the *IP Closed Captioning Order.* The only commenter that provides a substantive discussion of achievability urges the Commission to provide manufacturers maximum flexibility in meeting the requirements of the CVAA, and to consider only the four statutory factors in making a determination of achievability. As in the *IP Closed Captioning Order* and the *ACS Order,* we find that it is appropriate to weigh each of the four statutory factors equally, and that achievability should be evaluated on a case-by-case basis. When faced with a complaint for a violation of the requirements adopted herein pursuant to section 203 of the CVAA, a manufacturer may raise as a defense that a particular apparatus does not comply with the rules because compliance was not achievable under the statutory factors. Alternatively, a manufacturer may seek a determination from the Commission that compliance with all of our rules is not achievable *before* manufacturing or importing the apparatus. In evaluating evidence offered to prove that compliance is not achievable, we will be informed by the analysis in the *ACS Order,* in which the Commission provided a detailed explanation of each of the four statutory factors. We remind parties that the achievability limitation is applicable only with regard to apparatus using screens less than 13 inches in size and to recording devices.

68. *Purpose-Based Waivers.* As we proposed in the *NPRM,* we will address on a case-by-case basis any requests for waivers of the requirements adopted herein for apparatus designed to receive or play back video programming. Section 203 of the CVAA permits the Commission to waive the section 203 requirements for any apparatus or class of apparatus that is ''primarily designed for activities other than receiving or playing back video programming transmitted simultaneously with sound,'' or ''for equipment designed for

[67] As in the *IP Closed Captioning Order,* here ''we expect identifying apparatus designed to record to be straightforward,'' and ''when devices such as DVD, Blu-ray, and other removable media recording devices are capable of recording video programming, they also qualify as recording devices under [s]ection 203(b) and therefore'' are subject to the requirements that the CVAA imposes on recording devices.

multiple purposes, capable of receiving or playing video programming transmitted simultaneously with sound but whose essential utility is derived from other purposes.'' The CVAA does not define ''primarily designed,'' nor does it define ''essential utility'' except to state that it may be derived from more than one purpose. According to the legislative history of the CVAA, a waiver pursuant to the ''primarily designed'' provision is available ''where, for instance, a consumer typically purchases a product for a primary purpose other than viewing video programming, and access to such programming is provided on an incidental basis.'' We received little comment on purpose-based waivers. We will address any requests for waiver of the apparatus requirements adopted herein on a case-by-case basis, and waivers will be available prospectively for manufacturers seeking certainty prior to the sale of a device. We expect that over time, Commission precedent in this area will prove instructive to both manufacturers and consumers. As in the *ACS Order,* our evaluation of requests for a purpose-based waiver also will involve consideration of the Commission's general waiver standard, which requires good cause and a showing that particular facts make compliance inconsistent with the public interest. We find that this approach is particularly appropriate here, where waiver requests may impact accessibility and in particular accessibility of emergency information. Although we do not intend to prejudge any waiver requests that we might receive, we will consider the strong public interest in accessible emergency information when evaluating a manufacturer's request for waiver of compliance with the requirements adopted in this proceeding.[68]

3. Application of the Apparatus Requirements to Certain Categories of Apparatus

69. Below we explain the application of the apparatus requirements adopted herein to certain categories of apparatus. Application of the requirements to each category of apparatus is adopted as proposed in the *NPRM,* and each is consistent with the approach taken in the *IP Closed Captioning Order.*

70. *Removable media players.* We adopt our proposal in the *NPRM* not to exclude removable media play back apparatus, such as DVD and Blu-ray players, from the scope of the new requirements. Consumer Groups support the coverage of removable media play back apparatus, which they maintain would be consistent with the CVAA and the *IP Closed Captioning Order.* Based on the record, we believe that imposing emergency information and video description requirements on removable media players will require only minimal, if any, action on the part of manufacturers, because most removable media players, such as DVD and Blu-ray players, already support the secondary audio stream that the rules adopted herein require them to support. Additionally, the apparatus rules adopted herein focus on the availability of the secondary audio stream, and the apparatus itself is agnostic as to the content of that stream. That is, an apparatus will carry the stream regardless of whether that stream contains video description, emergency information, or something else. CEA argues that we should interpret the CVAA not to apply to removable media players the apparatus rules adopted herein. Specifically, CEA asserts that the CVAA applies to apparatus designed to receive, play back, or record video programming ''transmitted simultaneously with sound,'' and that the term ''transmitted'' describes ''how a signal is conveyed or sent over a *distance* via wire or radio between two different devices or parties,'' which would exclude from coverage removable media players. We disagree with CEA's interpretation of the term ''transmitted.'' Instead we reaffirm our interpretation in the *IP Closed Captioning Order* that the term ''apparatus'' covers devices that receive, play back, or record video programming ''*transmitted* simultaneously with sound,'' where ''transmitted'' describes how the video programming is conveyed from the device (*e.g.,* DVD player) to the end user (simultaneously with sound). We further note that, although the CVAA and the Commission's rules do not require removable media itself to contain emergency information and video description,[69] the fact that an increasing number of DVDs contain video description further demonstrates the merit in requiring removable media players to facilitate the secondary audio stream on which the video description is provided.[70]

71. *Professional and commercial equipment.* We adopt our proposal to exclude commercial video equipment, including professional movie theater projectors and similar types of professional equipment, from the section 203 rules adopted herein. Notably, no commenter objects to this proposal. Congress intended the Commission's regulations to cover apparatus that are used by consumers. Because a typical consumer would not view video programming via professional or commercial equipment, such equipment is beyond the scope of section 203's accessibility requirements discussed herein. We note, however, that other federal laws may impose accessibility obligations to ensure that professional or commercial equipment is accessible to employees with disabilities[71] or enables the delivery of accessible services.[72]

72. *Display-only monitors.* Section 203 of the CVAA provides that ''any apparatus or class of apparatus that are display-only video monitors with no playback capability are exempt from the requirements [of section 303(u)(1)].'' We find that the exemption for display-only video monitors is self-explanatory and thus we incorporate the language of the statutory provision directly into our rules. We also provide that a manufacturer may make a request for a Commission determination as to whether its apparatus qualifies for this

[68] We note that one consumer commenter objects to any waivers based on primary purpose or essential utility. We reject this argument because these waivers are statutorily-based.

[69] When multimedia, including video programming, is used for the provision of services covered by other disability law, such as educational services, the covered entity must ensure that those services are accessible. *See generally* 42 U.S.C. 12181 through 12189 (Title III of the ADA). *See also http://www.dcmp.org* (under a grant from the U.S. Department of Education, the Described and Captioned Media Program describes and captions multimedia for use by K–12 students).

[70] We note that the *NPRM* sought comment on whether we should require only video description, and not emergency information, to be accessible via removable media players. We find that it is unnecessary for us to distinguish between video description and emergency information requirements with respect to the secondary audio capabilities of apparatus, including removable media players, because it makes no difference to the apparatus capabilities whether the stream contains emergency information or video description. Further, not all emergency information needs to be viewed immediately to be of any use, for example, emergency information about a severe storm may include information about shelter locations that may remain relevant for a number of days. We find that the consumer will know that he or she is watching programming on a removable media player after its initial airing, and should be able to make a determination as to whether any steps are needed in response to recorded emergency information, thus mitigating any harm resulting from the provision of emergency information via removable media players.

[71] Title I of the ADA requires private and state and local government employers with more than 15 employees to provide reasonable accommodations to applicants and employees with disabilities. *See* 42 U.S.C. 12111 through 12117. A similar obligation applies to the federal government with respect to all federal employees with disabilities under section 501 of the Rehabilitation Act. 29 U.S.C. 791.

[72] *See,* for example, Part A of Title II and Title III of the ADA. 42 U.S.C. 12131 through 12134, 12181 through 12189.

exemption. We note that no commenters address this issue. A manufacturer may make a request for a Commission determination as to whether its device qualifies for the display-only monitor exemption pursuant to § 1.41 of the Commission's rules.

73. *Mobile DTV.* We find that the apparatus requirements adopted herein apply to mobile DTV apparatus because such apparatus make available video programming through mobile DTV services, which are provided by television broadcast stations subject to §§ 79.2 and 79.3 of our rules. NAB does not dispute that the apparatus requirements apply to mobile DTV apparatus; however, it argues that the Commission ''should not dictate transmission standards in the rapidly evolving mobile environment,'' but instead ''should afford flexibility to ensure that program originators and equipment manufacturers are able to decode and integrate additional audio information.'' We are concerned that allowing mobile DTV broadcasters to provide aural emergency information by means other than the secondary audio stream would not be effective because manufacturers may not include functionality for an alternate approach in their apparatus, and thus emergency information may be inaccessible to consumers. Additionally, we note that that the few mobile DTV devices currently on the market already support multiple audio streams. This demonstrates that support of the secondary audio stream is technically possible and may be the most appropriate means of providing emergency information and video description on mobile DTV apparatus. While we apply the same video description and emergency information requirements to mobile DTV apparatus as to other covered apparatus, to the extent that broadcasters find it preferable to use something besides a secondary audio stream to provide emergency information via mobile DTV, the Commission may consider waiver requests if supported by both broadcasters and manufacturers.

C. Alternate Means of Compliance

74. We implement a similar approach to alternate means of compliance to the approach we adopted in the *IP Closed Captioning Order.* Pursuant to section 203 of the CVAA, an entity may meet the emergency information and video description requirements ''through alternate means than those'' adopted herein. In the *NPRM,* we sought comment on our proposal to implement the same approach to alternate means of compliance that we adopted in the *IP Closed Captioning Order,* and we asked whether we should instead impose certain standards that any permissible alternate means must meet, given the nature of emergency information. We received very little comment on our implementation of this provision. As proposed in the *NPRM,* we adopt a similar approach to the one adopted in the *IP Closed Captioning Order, i.e.,* rather than specifying what may constitute a permissible alternate means, we will address specific requests from parties subject to the new rules on a case-by-case basis. Unlike the approach taken in the *IP Closed Captioning Order,* however, we will only permit an entity that seeks to use an ''alternate means'' to comply with the apparatus requirements adopted herein to request a Commission determination that the proposed alternate means satisfies the statutory requirements through a request pursuant to § 1.41 of our rules. We will not permit an entity to claim in defense to a complaint or enforcement action that the Commission should determine that the party's actions were a permissible alternate means of compliance. We find that this is the best approach, given the uniquely heightened public interest in emergency information, and the importance of ensuring that consumers know how they can use their apparatus to obtain emergency information provided via the secondary audio stream. Moreover, we believe few manufacturers should need to avail themselves of alternate means of compliance because most covered apparatus already make secondary audio streams available today. We also believe that the burden, if any, on such manufacturers is outweighed by the uniquely heightened public interest in emergency information, and that it will be beneficial to manufacturers to know in advance, before manufacturing a product, that their product will comply with Commission requirements.

D. Compliance Deadlines

75. We conclude that two years from the date of **Federal Register** publication is the appropriate deadline by which device manufacturers must comply with the emergency information and video description requirements of section 203 of the CVAA, as implemented herein. The CVAA does not specify the time frame by which the section 203 requirements must become effective, nor did the VPAAC recommend a compliance deadline. The *NPRM* sought comment on an appropriate deadline and we received comments from ACB and some industry commenters on this issue. While ACB supports a compliance deadline of no more than 18 months, there is widespread industry support for a deadline of two years from the date of **Federal Register** publication. The secondary audio stream is currently used for video description, and pursuant to this *Report and Order* it will be used for aural emergency information as well. Because televisions and navigation devices have long included the ability to access secondary audio streams, we do not expect any further action will need to be taken by manufacturers of most apparatus subject to the rules to come into compliance. We find that a two-year compliance deadline is nevertheless appropriate, as it will coincide with the section 202 emergency information deadline discussed above, and it is logical to require the use of the secondary audio stream to provide emergency information by the same date that the apparatus requirements pertaining to the secondary audio stream become effective. A two-year compliance deadline is also consistent with the precedent from the Commission's implementation of other recent apparatus requirements, which were based upon the time generally needed to implement apparatus modifications.

76. We clarify that the compliance deadline refers only to the date of manufacture. In its petition for reconsideration of the *IP Closed Captioning Order,* CEA requests that the deadline for compliance with the IP closed captioning rules should be interpreted to refer only to the date of manufacture. In the present proceeding, CEA similarly argues that the Commission should add explanatory notes to §§ 79.105(a) and 79.106(a) stating that the new obligations in those provisions ''place no restriction on the importing, shipping or sale of apparatus that were manufactured before'' the deadline for compliance with the apparatus requirements for emergency information and video description. We find that this approach would be consistent with the Commission's past practices regarding similar equipment deadlines. The Consumer Groups assert that the proposal to consider only the date of manufacture risks consumer confusion because consumers would not know whether the products they purchase are accessible. We find that a compliance deadline based on the date of importation or the date of sale would be inappropriate, given that the manufacturer often does not control the date of importation or sale. Further, because of the brief intervals between the date of manufacture and the date of importation, a labeling requirement to

address such situations would impose compliance costs with little practical benefit. For these reasons, we add explanatory notes to §§ 79.105(a) and 79.106(a) of our rules to clarify that those rules place no restrictions on the importing, shipping, or sale of apparatus that were manufactured before the compliance deadline.

E. Complaint Procedures

77. We adopt the procedures proposed in the *NPRM* for the filing of complaints alleging violations of the Commission's rules requiring apparatus designed to receive, play back, or record video programming to make available emergency information and video description services.[73] As proposed in the *NPRM* and consistent with the apparatus complaint procedures adopted in the *IP Closed Captioning Order,* complaints alleging a violation of the apparatus rules related to emergency information and video description should include: (a) The name, postal address, and other contact information, such as telephone number or email address, of the complainant; (b) the name and contact information, such as postal address, of the apparatus manufacturer or provider;[74] (c) information sufficient to identify the software or device used to view or to attempt to view video programming with video description or emergency information; (d) the date or dates on which the complainant purchased, acquired, or used, or tried to purchase, acquire, or use the apparatus to view video programming with video description or emergency information; (e) a statement of facts sufficient to show that the manufacturer or provider has violated or is violating the Commission's rules; (f) the specific relief or satisfaction sought by the complainant; and (g) the complainant's preferred format or method of response to the complaint. A complaint alleging a violation of the section 203 apparatus requirements adopted herein may be transmitted to the Consumer and Governmental Affairs Bureau[75] by any reasonable means, such as the Commission's online informal complaint filing system,[76] letter in writing or Braille, facsimile transmission, telephone (voice/TRS/TTY), email, or some other method that would best accommodate the complainant's disability. Given that the population intended to benefit from the rules adopted herein will be blind or visually impaired, we also note that, if a complainant calls the Commission for assistance in preparing a complaint, Commission staff will document the complaint in writing for the consumer.

78. The Commission will forward complaints, as appropriate, to the named manufacturer or provider for its response, as well as to any other entity that Commission staff determines may be involved. The Commission may request additional information from any relevant parties when, in the estimation of Commission staff, such information is needed to investigate the complaint or to adjudicate potential violations of Commission rules. After the apparatus rules adopted in this *Report and Order* become effective, the Consumer and Governmental Affairs Bureau will release a consumer advisory with instructions on how to file complaints in various formats, including via the Commission's Web site.[77]

V. Procedural Matters

A. Final Regulatory Flexibility Analysis

79. As required by the Regulatory Flexibility Act of 1980, as amended (''RFA''),[78] an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the *Notice of Proposed Rulemaking* in this proceeding.[79] The Federal Communications Commission (''Commission'') sought written public comment on the proposals in the *NPRM,* including comment on the IRFA. The Commission received no comments on the IRFA. This present Final Regulatory Flexibility Analysis (''FRFA'') conforms to the RFA.[80]

1. Need for, and Objectives of, the Report and Order

80. Pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010 (''CVAA''), the *Report and Order* adopts rules requiring that emergency information provided in video programming be made accessible to individuals who are blind or visually impaired and that certain apparatus be capable of delivering video description and emergency information to those individuals. Section 202 of the CVAA directs the Commission to promulgate rules requiring video programming providers, video programming distributors, and program owners to convey emergency information in a manner accessible to individuals who are blind or visually impaired. The *Report and Order* implements this mandate by requiring the use of a secondary audio stream to convey televised emergency information aurally, when such information is conveyed visually during programming other than newscasts, for example, in an on-screen crawl. This requirement, which has widespread industry support, will serve the public interest by ensuring that televised emergency information is accessible to individuals who are blind or visually impaired. Further, as directed by section 203 of the CVAA, the *Report and Order* requires certain apparatus that receive, play back, or record video programming to make available video description services and accessible emergency information. Specifically, the apparatus rules require that certain apparatus make available the secondary audio stream, which is currently used to provide video description and which will be used to provide aural emergency information. The apparatus requirements will benefit individuals who are blind or visually impaired by ensuring that apparatus on which consumers receive, play back, or record video programming are capable of accessing emergency information and

[73] The record contains little discussion of the proposed apparatus complaint procedures, and we see no reason to deviate from the procedures proposed in the *NPRM.* We reject Verizon's proposal that, if the Commission believes an informal complaint process is necessary, it should require complainants to confirm that they first attempted to resolve the matter directly with the manufacturer or provider. We did not adopt such a requirement in the *IP Closed Captioning Order,* also implementing section 203 of the CVAA, and we see no need to do so here, where consumers may have difficulty identifying the manufacturer or provider.

[74] We do not expect consumers to locate the names and addresses of manufacturers in all instances. For example, if a consumer uses a set-top box provided by its MVPD, then the consumer may indicate the MVPD's name and contact information.

[75] The Consumer and Governmental Affairs Bureau reserves the discretion to refer complaints that reveal a pattern of noncompliance to the Commission's Enforcement Bureau.

[76] Kelly Pierce asserts that the word limit for electronically filed consumer complaints is ''completely inadequate.'' Although this issue is outside the scope of this proceeding, we take note of it and will consider its merits in future updates to the electronic consumer complaint system.

[77] As it did in the *IP Closed Captioning Order,* the Commission further directs the Consumer and Governmental Affairs Bureau to revise the existing complaint form for disability access complaints (Form 2000C) in accordance with this *Report and Order,* to facilitate the filing of complaints alleging violations of the apparatus requirements adopted herein. Should the apparatus rules adopted in this *Report and Order* become effective before the revised Form 2000C is available to consumers, apparatus complaints may be filed in the interim by any reasonable means, as explained above.

[78] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 through 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''), Public Law 104–121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 (''CWAAA'').

[79] *See Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010,* Notice of Proposed Rulemaking, 77 FR 70970 (2012) (''*NPRM*'').

[80] *See* 5 U.S.C. 604.

video description services. We understand that most apparatus subject to the rules already comply with these requirements.

81. As discussed in Section III of the *Report and Order,* we adopt emergency information requirements for video programming distributors, video programming providers, and program owners pursuant to section 202(a) of the CVAA. Specifically, we adopt rules that will:

- Clarify that the new emergency information requirements apply to video programming provided by entities that are covered by § 79.2 of the Commission's rules—*i.e.,* broadcasters, MVPDs, and any other distributor of video programming for residential reception that delivers such programming directly to the home and is subject to the jurisdiction of the Commission;
- Require that covered entities make an aural presentation of emergency information that is provided visually in non-newscast programming available on a secondary audio stream;
- Continue to require the use of an aural tone to precede emergency information on the main program audio, and now also require use of the aural tone to precede emergency information on the secondary audio stream;
- Permit, but do not require, the use of text-to-speech (''TTS'') technologies as a method for providing an aural rendition of emergency information, and impose qualitative requirements if TTS is used;
- Require that emergency information provided aurally on the secondary audio stream be conveyed at least twice in full;
- Require that emergency information supersede all other programming on the secondary audio stream;
- Decline to make any substantive revisions to the current definition of emergency information, but clarify that severe thunderstorms and other severe weather events are included within the current definition;
- Revise the emergency information rule, as required by the statute, to include video programming providers (which includes program owners) as parties responsible for making emergency information available to individuals who are blind or visually impaired, in addition to already covered video programming distributors, and to allocate responsibilities among covered entities;
- Adopt a compliance deadline of two years from the date of **Federal Register** publication for compliance with the emergency information rules adopted in the *Report and Order;* and
- Grant waivers to The Weather Channel, LLC (''The Weather Channel'') and DIRECTV, LLC (''DIRECTV'') to provide them with additional time and flexibility to come into compliance with the rules adopted herein with regard to the provision of local weather alerts during The Weather Channel's programming via devices that are not currently capable of providing aural emergency information on a secondary audio stream.

82. As discussed in Section IV of the *Report and Order,* we adopt apparatus requirements for emergency information and video description pursuant to section 203 of the CVAA. Specifically, we adopt rules that will:

- Require apparatus designed to receive, play back, or record video programming transmitted simultaneously with sound to make secondary audio streams available, because such streams are the existing mechanism for providing video description and the new mechanism for making emergency information accessible;
- Decline at this time to adopt specific performance and display standards or policies addressing certain issues from the 2011 video description proceeding;
- Permit, but do not require, covered apparatus to contain TTS capability;
- Limit applicability of the apparatus requirements, at this time, to apparatus designed to receive, play back, or record video programming provided by entities subject to §§ 79.2 and 79.3 of our rules;
- Apply the apparatus requirements to removable media players, but not to professional and commercial equipment or display-only monitors;
- Find that the apparatus requirements adopted in the *Report and Order* apply to mobile digital television (''mobile DTV'') apparatus because such apparatus make available mobile DTV services, which are provided by television broadcast stations subject to §§ 79.2 and 79.3 of our rules;
- Implement the statutory provision that permits alternate means of compliance;
- Adopt a compliance deadline of two years from the date of **Federal Register** publication for compliance with the apparatus rules adopted in the *Report and Order;* and
- Adopt procedures for complaints alleging violations of the apparatus requirements adopted in the *Report and Order.*

2. Legal Basis

83. The authority for the action taken in this rulemaking is contained in the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 124 Stat. 2751, and sections 4(i), 4(j), 303, 330(b), 713, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, 330(b), 613, and 617.

3. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

84. No comments were filed in response to the IRFA.

4. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

85. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted in the *Report and Order.*[81] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[82] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[83] A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA'').[84]

86. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of ''Wired Telecommunications Carriers,'' which is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. Census data for 2007 shows that there

[81] 5 U.S.C. 603(b)(3).

[82] *Id.* 601(6).

[83] *Id.* 601(3) (incorporating by reference the definition of ''small-business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[84] 15 U.S.C. 632.

were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this category and the associated small business size standard, the majority of such firms can be considered small.

87. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide. Industry data indicate that all but ten cable operators nationwide are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 6,101 systems nationwide, 4,410 systems have under 10,000 subscribers, and an additional 258 systems have 10,000–19,999 subscribers. Thus, under this standard, most cable systems are small.

88. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that all but nine cable operators nationwide are small under this subscriber size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

89. *Television Broadcasting.* This Economic Census category ''comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.'' The SBA has created the following small business size standard for Television Broadcasting firms: Those having $14 million or less in annual receipts. The Commission has estimated the number of licensed commercial television stations to be 1,387. In addition, according to Commission staff review of the BIA Advisory Services, LLC's *Media Access Pro Television Database* on March 28, 2012, about 950 of an estimated 1,300 commercial television stations (or approximately 73 percent) had revenues of $14 million or less. We therefore estimate that the majority of commercial television broadcasters are small entities.

90. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

91. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 396. These stations are non-profit, and therefore considered to be small entities.

92. *Direct Broadcast Satellite (''DBS'') Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. DBS, by exception, is now included in the SBA's broad economic census category, ''Wired Telecommunications Carriers,'' which was developed for small wireline firms. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this category and the associated small business size standard, the majority of such firms can be considered small. Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and EchoStar Communications Corporation (''EchoStar'') (marketed as the DISH Network). Each currently offers subscription services. DIRECTV and EchoStar each report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS service provider.

93. *Satellite Telecommunications Providers.* Two economic census categories address the satellite industry. The first category has a small business size standard of $15 million or less in average annual receipts, under SBA rules. The second has a size standard of $25 million or less in annual receipts.

94. The category of ''Satellite Telecommunications'' ''comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Census Bureau data for 2007 show that 607 Satellite Telecommunications establishments operated for that entire year. Of this total, 533 establishments had annual receipts of under $10 million or less, and 74 establishments had receipts of $10 million or more. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

95. The second category, *i.e.,* ''All Other Telecommunications,'' comprises ''establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.'' For this category, Census Bureau data for 2007 shows that there were a total of 2,639 establishments that operated for the entire year. Of those 2,639 establishments, 2,333 operated with annual receipts of less than $10 million and 306 with annual receipts of $10 million or more. Consequently, the Commission estimates that a majority of All Other Telecommunications

establishments are small entities that might be affected by our action.

96. *Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs).* SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are now included in the SBA's broad economic census category, ''Wired Telecommunications Carriers,'' which was developed for small wireline firms. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this category and the associated small business size standard, the majority of such firms can be considered small.

97. *Home Satellite Dish (''HSD'') Service.* HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers, and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers' receipt of video programming. Because HSD provides subscription services, HSD falls within the SBA-recognized definition of ''Wired Telecommunications Carriers.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this category and the associated small business size standard, the majority of such firms can be considered small.

98. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and ''wireless cable,'' transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the ten winning bidders, two bidders that claimed small business status won four licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

99. In addition, the SBA's placement of Cable Television Distribution Services in the category of Wired Telecommunications Carriers is applicable to cable-based Educational Broadcasting Services. Since 2007, ''Wired Telecommunications Carriers'' have been defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. For these services, the Commission uses the SBA small business size standard for Wired Telecommunications Carriers, which is 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this category and the associated small business size standard, the majority of such firms can be considered small. In addition to Census data, the Commission's internal records indicate that as of September 2012, there are 2,241 active EBS licenses. The Commission estimates that of these 2,241 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.

100. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), and the 24 GHz Service, where licensees can choose between common carrier and non-common carrier status. At present, there are approximately 31,428 common carrier fixed licensees and 79,732 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. There are approximately 120 LMDS licensees, three DEMS licensees, and three 24 GHz licensees. The Commission has not yet

defined a small business with respect to microwave services. For purposes of the IRFA, we will use the SBA's definition applicable to Wireless Telecommunications Carriers (except satellite)—*i.e.,* an entity with no more than 1,500 persons. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For the category of ''Wireless Telecommunications Carriers (except Satellite),'' Census data for 2007 show that there were 11,163 firms that operated for the entire year. Of this total, 10,791 firms had employment of 999 or fewer employees and 372 had employment of 1,000 employees or more. Thus, under this category and the associated small business size standard, the majority of firms can be considered small. We note that the number of firms does not necessarily track the number of licensees. We estimate that virtually all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

101. *Open Video Systems.* The open video system (''OVS'') framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is ''Wired Telecommunications Carriers.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this category and the associated small business size standard, the majority of such firms can be considered small. In addition, we note that the Commission has certified some OVS operators, with some now providing service. Broadband service providers (''BSPs'') are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, at least some of the OVS operators may qualify as small entities.

102. *Cable and Other Subscription Programming.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.'' The SBA has developed a small business size standard for this category, which is: All such firms having $15 million dollars or less in annual revenues. To gauge small business prevalence in the Cable and Other Subscription Programming industries, the Commission relies on data currently available from the U.S. Census for the year 2007. Census Bureau data for 2007 show that there were 659 establishments in this category that operated for the entire year. Of that number, 462 operated with annual revenues of $9,999,999 million dollars or less, and 197 operated with annual revenues of 10 million or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small.

103. *Small Incumbent Local Exchange Carriers.* We have included small incumbent local exchange carriers in this present RFA analysis. A ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

104. *Incumbent Local Exchange Carriers (''LECs'').* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category ''Wired Telecommunications Carriers.'' Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this category and the associated small business size standard, the majority of such firms can be considered small.

105. *Competitive Local Exchange Carriers, Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.''* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category ''Wired Telecommunications Carriers.'' Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this category and the associated small business size standard, the majority of such firms can be considered small. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities.

106. *Motion Picture and Video Production.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in producing, or producing and distributing motion pictures, videos, television programs, or television commercials.'' We note that firms in this category may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms produce and/or distribute programming for cable television. The SBA has developed a small business size standard for this category, which is: All such firms having $29.5 million dollars or less in annual revenues. To gauge small business prevalence in the Motion Picture and Video Production industries, the Commission relies on data currently available from the U.S. Census for the year 2007. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 9,095 firms in this category that operated for the entire year. Of these, 8,995 had annual receipts of $24,999,999 or less, and 100 had annual receipts ranging from not less than $25,000,000 to $100,000,000 or more. Thus, under this category and associated small business size standard,

the majority of firms can be considered small.

107. *Motion Picture and Video Distribution.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in acquiring distribution rights and distributing film and video productions to motion picture theaters, television networks and stations, and exhibitors.'' We note that firms in this category may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms produce and/or distribute programming for cable television. The SBA has developed a small business size standard for this category, which is: All such firms having $29.5 million dollars or less in annual revenues. To gauge small business prevalence in the Motion Picture and Video Distribution industries, the Commission relies on data currently available from the U.S. Census for the year 2007. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 450 firms in this category that operated for the entire year. Of these, 434 had annual receipts of $24,999,999 or less, and 16 had annual receipts ranging from not less than $25,000,000 to $100,000,000 or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small.

108. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' The SBA has developed a small business size standard for ''Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,'' which is: all such firms having 750 or fewer employees. According to Census Bureau data for 2007, there were 919 establishments that operated for part or all of the entire year. Of those 919 establishments, 771 operated with 99 or fewer employees, and 148 operated with 100 or more employees. Thus, under that size standard, the majority of establishments can be considered small.

109. *Audio and Video Equipment Manufacturing.* The SBA has classified the manufacturing of audio and video equipment under in NAICS Codes classification scheme as an industry in which a manufacturer is small if it has less than 750 employees. Data contained in the 2007 Economic Census indicate that 491 establishments in this category operated for part or all of the entire year. Of those 491 establishments, 456 operated with 99 or fewer employees, and 35 operated with 100 or more employees. Thus, under the applicable size standard, a majority of manufacturers of audio and video equipment may be considered small.

5. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

110. Certain rule changes discussed in the *Report and Order* would affect reporting, recordkeeping, or other compliance requirements. In general, the *Report and Order* satisfies the requirements of section 202(a) of the CVAA with regard to making emergency information accessible to persons who are blind or visually impaired by mandating the use of a secondary audio stream to provide the emergency information aurally and concurrently with the emergency information being conveyed visually during non-newscast programming. The *Report and Order* also imposes certain apparatus requirements for emergency information and video description.

111. With regard to the emergency information requirements, there are certain provisions that would require covered entities to make a filing and, thus, to make and keep records of the filing. Specifically, the *Report and Order* provides that parties may petition for waiver of these requirements for good cause pursuant to § 1.3 of the Commission's rules. DBS operators may petition for a waiver of the emergency information requirements pursuant to § 1.3 of the Commission's rules if they have insufficient spot beam capacity. The *Report and Order* also adopts procedures for complaints alleging a violation of the emergency information rules.

112. With regard to the apparatus requirements, there are certain provisions that would require covered entities to make a filing and, thus, to make and keep records of the filing. Specifically, the *Report and Order* permits parties to raise technical infeasibility as a defense to a complaint or, alternatively, to file a request for a ruling under § 1.41 of the Commission's rules before manufacturing or importing the product. Similarly, the *Report and Order* permits parties to raise achievability as a defense to a complaint alleging a violation of section 203, or to seek a determination of achievability from the Commission before manufacturing or importing the apparatus. Pursuant to the *Report and Order,* a party may request a Commission determination of whether its apparatus is an exempt display-only video monitor, may request a waiver of the requirements for mobile digital television (''mobile DTV''), and may prospectively request a purpose-based waiver, which will be addressed on a case-by-case basis. Further, a covered entity that seeks to use an ''alternate means'' to comply with the apparatus requirements may file a request pursuant to § 1.41 of the Commission's rules for a determination that the proposed alternate means satisfies the statutory requirements. The *Report and Order* also adopts procedures for complaints alleging a violation of the emergency information and video description apparatus rules.

6. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

113. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[85] The *NPRM* invited comment on issues that had the potential to have significant impact on some small entities.

114. These rules in certain instances may have a significant economic impact on some small entities. Although alternatives to minimize economic impact have been considered, we emphasize that our action is governed by the congressional mandate contained in sections 202(a) and 203 of the CVAA. Specifically, the *Report and Order* declines to adopt alternative methods to make televised emergency information accessible to blind and visually impaired persons given the overwhelming support in the record for use of a secondary audio stream to achieve accessibility. For example, the

[85] 5 U.S.C. 603(c)(1) through (c)(4).

Commission considered alternatives that were considered but not recommended by the Video Programming Accessibility Advisory Committee (''VPAAC''), such as: (1) including a shortened audio version of the textual emergency information on the main program audio; or (2) broadcasting a five to ten second audio message on the main program audio after the three aural tones to inform individuals who are blind or visually impaired of a means by which they can access the emergency information, such as a telephone number or radio station. According to the VPAAC, these alternatives have disadvantages, including interruption to the main program audio that could be disruptive to viewers and the need for sufficient resources to create and manage the brief audio messages, and no commenters supported these proposals. The Commission also considered other alternatives that were considered but not recommended by the VPAAC such as ''dipping'' or lowering the main program audio and playing an aural message over the lowered audio, providing screen reader software or devices on request, enabling users to select and enlarge emergency crawl text, providing guidance for consumers, and using an Internet-based standardized application to filter emergency information by location. The VPAAC determined that these alternatives either did not meet the requirements of the CVAA, relied upon technology or services that are not widely available, or involved additional problems, and no commenters supported these proposals. Given the importance of providing accessible emergency information to blind and visually impaired consumers, the *Report and Order* also declines to create an exception from the requirements of the revised emergency information rule based on technical capability, but parties, including small entities, may petition for a waiver for good cause pursuant to § 1.3 of the Commission's rules. We note that many covered entities, including small entities, already provide or have the capability to pass through secondary audio streams, such that any economic impact will be minimized.

115. With regard to apparatus requirements, the *Report and Order* adopts procedures enabling the Commission to grant exemptions to the rules pursuant to section 203 of the CVAA, where a petitioner has shown that compliance is not achievable (*i.e.,* cannot be accomplished with reasonable effort or expense) or is not technically feasible. This exemption process will allow the Commission to address the impact of the rules on individual entities, including smaller entities, and to modify the application of the rules to accommodate individual circumstances. This will reduce the costs of compliance for these entities. As an additional means of reducing the costs of compliance, the *Report and Order* provides that parties may use alternate means of compliance to the rules adopted pursuant to section 203 of the CVAA. Under this approach, the Commission will permit an entity that seeks to use an ''alternate means'' to comply with the apparatus requirements to file a request pursuant to § 1.41 of the Commission's rules for a determination that the proposed alternate means satisfies the statutory requirements, and the Commission will consider such requests on a case-by-case basis. Individual entities, including smaller entities, may benefit from these provisions.

116. Overall, we believe we have appropriately considered both the interests of individuals who are blind and visually impaired and the interests of the entities who will be subject to the rules, including those that are smaller entities, consistent with Congress' goal to ''update the communications laws to help ensure that individuals with disabilities are able to fully utilize communications services and equipment and better access video programming.''

7. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

117. None.

8. Report to Congress

118. The Commission will send a copy of the *Report and Order,* including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[86] In addition, the Commission will send a copy of the *Report and Order,* including this FRFA, to the Chief Counsel for Advocacy of the SBA. The *Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.[87]

B. Paperwork Reduction Act

119. The *Report and Order* contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (''PRA''), Public Law 104–13.[88] The requirements will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the information collection requirements contained in this proceeding. The Commission will publish a separate document in the **Federal Register** at a later date seeking these comments. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

C. Congressional Review Act

120. The Commission will send a copy of the *Report and Order* in MB Docket No. 12–107 in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

D. Ex Parte Rules

121. *Permit-But-Disclose.* This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other

[86] *See* 5 U.S.C. 801(a)(1)(A).

[87] *See id.* 604(b).

[88] Information collection requirements include: (1) The filing and processing of complaints alleging violations of the Commission's rules pertaining to accessible emergency information, pursuant to revised § 79.2(c); (2) the filing and processing of complaints alleging violations of the Commission's apparatus requirements for emergency information and video description; (3) the filing and processing of requests for waiver of the apparatus requirements on the basis of technical feasibility, pursuant to § 79.105(a); (4) the filing and processing of requests for waiver of the apparatus requirements on the basis of achievability, pursuant to § 79.105(b)(3); (5) the filing and processing of requests for a purpose-based waiver of the apparatus requirements, pursuant to § 79.105(b)(4); and (6) the submission and review of consumer eligibility information pertaining to the waiver granted to DIRECTV with respect to the provision of aural emergency information during The Weather Channel's programming on all set-top boxes.

filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

E. Additional Information

122. For additional information on this proceeding, contact Diana Sokolow, *Diana.Sokolow@fcc.gov,* or Maria Mullarkey, *Maria.Mullarkey@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–2120.

VI. Ordering Clauses

123. Accordingly, *it is ordered* that, pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 124 Stat. 2751, and the authority found in sections 4(i), 4(j), 303, 330(b), 713, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, 330(b), 613, and 617, this *Report and Order and Further Notice of Proposed Rulemaking is adopted,* effective thirty (30) days after the date of publication in the **Federal Register**, except for §§ 79.105(a), 79.105(b)(3), and 79.105(b)(4), and revised § 79.2(c), which shall become effective upon announcement in the **Federal Register** of OMB approval and an effective date of the rules.

124. *It is ordered* that, pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 124 Stat. 2751, and the authority found in sections 4(i), 4(j), 303, 330(b), 713, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, 330(b), 613, and 617, the Commission's rules *are hereby amended* as set forth in Appendix B.

125. *It is further ordered* that we delegate authority to the Media Bureau and the Consumer and Governmental Affairs Bureau to consider all requests for declaratory rulings pursuant to § 1.2 of the Commission's rules, 47 CFR 1.2, all waiver requests pursuant to §§ 1.3 or 79.105(b)(4) of the Commission's rules, 47 CFR 1.3, 79.105(b)(4), and all informal requests for Commission action pursuant to § 1.41 of the Commission's rules, 47 CFR 1.41, filed under these rules and pursuant to sections 202 and 203 of the CVAA as discussed herein.

126. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Report and Order and Further Notice of Proposed Rulemaking* in MB Docket No. 12–107, including the Final Regulatory Flexibility Analysis and the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

127. *It is further ordered* that the Commission *shall send* a copy of this *Report and Order and Further Notice of Proposed Rulemaking* in MB Docket No. 12–107 in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 79

Cable television operators, Communications equipment, Multichannel video programming distributors (MVPDs), Satellite television service providers, Television broadcasters.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 79 as follows:

PART 79—CLOSED CAPTIONING AND VIDEO DESCRIPTION OF VIDEO PROGRAMMING

■ 1. The authority citation for part 79 continues to read as follows:

Authority: 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, 330, 544a, 613, 617.

■ 2. Amend § 79.2 by revising paragraphs (b)(1) through (3), adding paragraphs (b)(4) and (5), and revising paragraph (c) to read as follows:

§ 79.2 Accessibility of programming providing emergency information.

* * * * *

(b) * * *

(1) Video programming distributors must make emergency information, as defined in paragraph (a) of this section, that is provided in the audio portion of the programming accessible to persons with hearing disabilities by using a method of closed captioning or by using a method of visual presentation, as described in § 79.1.

(2) Video programming distributors and video programming providers must make emergency information, as defined in paragraph (a) of this section, accessible as follows:

(i) Emergency information that is provided visually during a regularly scheduled newscast, or newscast that interrupts regular programming, must be made accessible to individuals who are blind or visually impaired; and

(ii) Emergency information that is provided visually during programming that is neither a regularly scheduled newscast, nor a newscast that interrupts regular programming, must be accompanied with an aural tone, and beginning May 26, 2015, must be made accessible to individuals who are blind or visually impaired through the use of a secondary audio stream to provide the emergency information aurally. Emergency information provided aurally on the secondary audio stream must be preceded by an aural tone and must be conveyed in full at least twice. Emergency information provided through use of text-to-speech (''TTS'') technologies must be intelligible and must use the correct pronunciation of relevant information to allow consumers to learn about and respond to the emergency, including, but not limited to, the names of shelters, school districts, streets, districts, and proper names noted in the visual information. The video programming distributor or video programming provider that creates the visual emergency information content and adds it to the programming stream is responsible for providing an aural representation of the information on a secondary audio stream, accompanied by an aural tone. Video programming distributors are responsible for ensuring that the aural representation of the emergency information (including the accompanying aural tone) gets passed through to consumers.

(3) This rule applies to emergency information primarily intended for distribution to an audience in the geographic area in which the emergency is occurring.

(4) Video programming distributors must ensure that emergency information does not block any closed captioning and any closed captioning does not block any emergency information

provided by means other than closed captioning.

(5) Video programming distributors and video programming providers must ensure that aural emergency information provided in accordance with paragraph (b)(2)(ii) of this section supersedes all other programming on the secondary audio stream, including video description, foreign language translation, or duplication of the main audio stream, with each entity responsible only for its own actions or omissions in this regard.

(c) *Complaint procedures.* A complaint alleging a violation of this section may be transmitted to the Consumer and Governmental Affairs Bureau by any reasonable means, such as the Commission's online informal complaint filing system, letter, facsimile transmission, telephone (voice/TRS/TTY), Internet email, audio-cassette recording, and Braille, or some other method that would best accommodate the complainant's disability. The complaint should include the name of the video programming distributor or the video programming provider against whom the complaint is alleged, the date and time of the omission of emergency information, and the type of emergency. The Commission will notify the video programming distributor or the video programming provider of the complaint, and the distributor or the provider will reply to the complaint within 30 days.

■ 3. Add § 79.105 to read as follows:

§ 79.105 Video description and emergency information accessibility requirements for all apparatus.

(a) Effective May 26, 2015, all apparatus that is designed to receive or play back video programming transmitted simultaneously with sound that is provided by entities subject to §§ 79.2 and 79.3, is manufactured in the United States or imported for use in the United States, and uses a picture screen of any size, must have the capability to decode and make available the secondary audio stream if technically feasible, unless otherwise provided in this section, which will facilitate the following services:

(1) The transmission and delivery of video description services as required by § 79.3; and

(2) Emergency information (as that term is defined in § 79.2) in a manner that is accessible to individuals who are blind or visually impaired.

Note 1 to paragraph (a): Apparatus includes the physical device and the video player(s) capable of displaying video programming transmitted simultaneously with sound that manufacturers install into the devices they manufacture before sale, whether in the form of hardware, software, or a combination of both, as well as any video players capable of displaying video programming transmitted simultaneously with sound that manufacturers direct consumers to install after sale.

Note 2 to paragraph (a): This paragraph places no restrictions on the importing, shipping, or sale of apparatus that were manufactured before May 26, 2015.

(b) *Exempt apparatus.* (1) *Display-only monitors.* Apparatus or class of apparatus that are display-only video monitors with no playback capability are not required to comply with the provisions of this section.

(2) *Professional or commercial equipment.* Apparatus or class of apparatus that are professional or commercial equipment not typically used by the public are not required to comply with the provisions of this section.

(3)(i) *Achievable.* Apparatus that use a picture screen of less than 13 inches in size must comply with the provisions of this section only if doing so is achievable as defined in this section. Manufacturers of apparatus that use a picture screen of less than 13 inches in size may petition the Commission for a full or partial exemption from the video description and emergency information requirements of this section pursuant to § 1.41 of this chapter, which the Commission may grant upon a finding that the requirements of this section are not achievable, or may assert that such apparatus is fully or partially exempt as a response to a complaint, which the Commission may dismiss upon a finding that the requirements of this section are not achievable.

(ii) The petitioner or respondent must support a petition for exemption or a response to a complaint with sufficient evidence to demonstrate that compliance with the requirements of this section is not ''achievable'' where ''achievable'' means with reasonable effort or expense. The Commission will consider the following factors when determining whether the requirements of this section are not ''achievable:''

(A) The nature and cost of the steps needed to meet the requirements of this section with respect to the specific equipment or service in question;

(B) The technical and economic impact on the operation of the manufacturer or provider and on the operation of the specific equipment or service in question, including on the development and deployment of new communications technologies;

(C) The type of operations of the manufacturer or provider; and

(D) The extent to which the service provider or manufacturer in question offers accessible services or equipment containing varying degrees of functionality and features, and offered at differing price points.

(4) *Waiver.* Manufacturers of apparatus may petition the Commission for a full or partial waiver of the requirements of this section, which the Commission may grant upon a finding that the apparatus meets one of the following provisions:

(i) The apparatus is primarily designed for activities other than receiving or playing back video programming transmitted simultaneously with sound; or

(ii) The apparatus is designed for multiple purposes, capable of receiving or playing back video programming transmitted simultaneously with sound but whose essential utility is derived from other purposes.

(c) *Interconnection.* Covered apparatus shall use interconnection mechanisms that make available the audio provided via a secondary audio stream.

■ 4. Add § 79.106 to read as follows:

§ 79.106 Video description and emergency information accessibility requirements for recording devices.

(a) Effective May 26, 2015, all apparatus that is designed to record video programming transmitted simultaneously with sound that is provided by entities subject to §§ 79.2 and 79.3 and is manufactured in the United States or imported for use in the United States, must comply with the provisions of this section except that apparatus must only do so if it is achievable as defined in § 79.105(b)(3).

Note 1 to paragraph (a): Apparatus includes the physical device and the video player(s) capable of displaying video programming transmitted simultaneously with sound that manufacturers install into the devices they manufacture before sale, whether in the form of hardware, software, or a combination of both, as well as any video players capable of displaying video programming transmitted simultaneously with sound that manufacturers direct consumers to install after sale.

Note 2 to paragraph (a): This paragraph places no restrictions on the importing, shipping, or sale of apparatus that were manufactured before May 26, 2015.

(b) All apparatus subject to this section must enable the presentation or the pass through of the secondary audio stream, which will facilitate the provision of video description signals and emergency information (as that term is defined in § 79.2) such that viewers are able to activate and de-activate the video description as the video

programming is played back on a picture screen of any size.

(c) All apparatus subject to this section must comply with the interconnection mechanism requirements in § 79.105(c).

[FR Doc. 2013–11577 Filed 5–23–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 79

[MB Docket Nos. 12–107, 11–43; FCC 13–45]

Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on issues related to rules implementing the requirements of the Twenty-First Century Communications and Video Accessibility Act of 2010 (''CVAA''). Specifically, the Commission explores whether a multichannel video programming distributor (''MVPD'') service is covered by the emergency information rules and by the video description rules when it permits its subscribers to access linear video programming on mobile and other devices. The Commission also explores whether the Commission should require that secondary audio streams be tagged for the visually impaired to ensure that consumers can find and locate those streams. Finally, the Commission asks whether it should require covered entities to provide customer support services and contact information to assist consumers who are blind or visually impaired.

DATES: Comments are due on or before July 23, 2013; reply comments are due on or before August 22, 2013. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before July 23, 2013.

ADDRESSES: You may submit comments, identified by MB Docket Nos. 12–107, 11–43, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- *People With Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act proposed information collection requirements contained herein should be submitted to the Federal Communications Commission via email to *PRA@fcc.gov* and to Nicholas A. Fraser, Office of Management and Budget, via email to *Nicholas_A._Fraser@omb.eop.gov* or via fax at (202) 395–5167. For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Diana Sokolow, *Diana.Sokolow@fcc.gov*, or Maria Mullarkey, *Maria.Mullarkey@fcc.gov*, of the Policy Division, Media Bureau, (202) 418–2120. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams at (202) 418–2918 or send an email to *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Further Notice of Proposed Rulemaking,* FCC 13–45, adopted on April 8, 2013 and released on April 9, 2013. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., Room CY–A257, Washington, DC 20554. This document will also be available via ECFS at *http://fjallfoss.fcc.gov/ecfs/.* Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. The complete text may be purchased from the Commission's copy contractor, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

This FNPRM seeks comment on a potential new or revised information collection requirement. If the Commission adopts a new or revised information collection requirement, the Commission will publish a separate document in the **Federal Register** inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501–3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

Summary of the Further Notice of Proposed Rulemaking

I. Introduction

1. We issue a *Further Notice of Proposed Rulemaking* (''*FNPRM*'') that:

- Explores whether a multichannel video programming distributor (''MVPD'') service is covered by the emergency information rules adopted herein when an MVPD, as defined in the Commission's rules, permits its subscribers to access linear video programming that contains emergency information via tablets, laptops, personal computers, smartphones, or similar devices;
- Explores whether an MVPD system must comply with the video description rules when it permits its subscribers to access linear video programming via tablets, laptops, personal computers, smartphones, or similar devices;
- Explores whether the Commission should impose a requirement that broadcast receivers detect and decode audio streams marked for the visually impaired, to ensure that consumers can find and locate those streams; and
- Explores whether the Commission should require covered entities to provide customer support services and contact information to assist consumers who are blind or visually impaired to navigate between the main and secondary audio streams.

II. Further Notice of Proposed Rulemaking

2. *Provision of linear programming to mobile and other devices.* We seek comment on whether, when an MVPD, as defined in the Commission's rules,[1] permits its subscribers to access linear video programming that contains emergency information via tablets, laptops, personal computers,

[1] The Commission's rules define an MVPD as ''an entity engaged in the business of making available for purchase, by subscribers or customers, multiple channels of video programming.'' *See* 47 CFR 76.1000(e).

smartphones, or similar devices, it is acting as a ''video programming distributor'' [2] that is providing ''video programming'' [3] and is covered by the emergency information rules adopted herein.[4] We also seek comment on whether, under this approach, an MVPD should be required to ensure that any application or plug-in [5] that it provides to the consumer to access this programming is capable of making the emergency information audible on a secondary audio stream. For example, Cablevision currently permits consumers to access its entire package of video programming, including broadcast channels that contain emergency information, via tablets, laptops, smartphones, and similar devices.[6] Should Cablevision be required to ensure that any emergency information contained in the programming it makes available on tablets and other devices is audible by means of a secondary stream? We recognize that some MVPDs currently enable subscribers to access linear video programming inside the home as well as outside the home (*e.g.,* TV Everywhere offerings). Should our rules apply to both situations—irrespective of where the subscriber may physically be when accessing the programming? Does it matter whether the emergency content is being delivered over the MVPD's IP network or over the Internet?

3. At the same time, we seek comment on whether instead of placing obligations on MVPDs to make the emergency information accessible on the types of devices described above, it should be the obligation of the apparatus manufacturer, under section 203, to ensure that the devices are capable of receiving the secondary audio stream. Or, do both the MVPD and the manufacturer have a role in facilitating the provision of the secondary audio stream on these types of devices?

4. What technological hurdles, if any, prevent or impede the delivery of the secondary audio service on mobile devices and personal computers? How much time is necessary for MVPDs and/or manufacturers to come into compliance and ensure that consumers can access the secondary audio stream on a mobile device or personal computer?

5. *Provision of video description services on mobile or other devices.* We note that the Commission's existing video description rules currently apply to ''MVPD systems.'' Specifically, MVPD systems that serve 50,000 or more subscribers must provide 50 hours of video description per calendar quarter during prime time or children's programming on each of the top five national nonbroadcast networks that they carry on those systems.[7] Further, MVPD systems of any size must pass through video description provided by a broadcast station or nonbroadcast network, if the channel on which the MVPD distributes the programming has the technical capability necessary to pass through the video description and if that technology is not being used for another purpose related to the programming. In discussions with industry in the context of the current proceeding, it has come to our attention that the pass-through obligations of an MVPD system may not be clear to the extent that the MVPD allows subscribers to access ''video programming'' [8] via tablets, laptops, personal computers, smartphones, or similar devices. To provide additional clarity on this issue, we seek comment on whether an MVPD system must comply with the video description rules when it permits its subscribers to access linear video programming via tablets, laptops, personal computers, smartphones, or similar devices. Because video description is provided using secondary audio streams, we seek comment on whether an MVPD must ensure that any application or plug-in that it provides to the consumer to access linear video programming is capable of providing or passing through video description on a secondary audio stream, regardless of the type of device (*e.g.,* tablets, laptops, personal computers, smartphones) the consumer uses to access such programming. How, if at all, should we apply in this context the technical capability exception to the video description requirements, pursuant to which the pass-through requirement does not apply when an MVPD lacks the technical capability necessary to pass through video description? What obligations, if any, fall on the manufacturers to ensure that these devices are capable of receiving the secondary audio stream, pursuant to section 203 of the CVAA?

6. We also seek comment on whether additional time is needed for MVPDs and/or manufacturers to comply with the video description rules for linear video programming services provided via tablets, laptops, personal computers, smartphones, or similar devices. We note, for example, that the Commission in the *2011 Video Description Order* gave mobile DTV additional time for compliance. Should the same timeframe apply for both emergency information and video description purposes? We note that, as a technical matter, once the secondary audio stream is received by a device, that stream can be made available regardless of whether it is used for emergency information or video description.

7. *Tagging of the secondary audio stream.* As explained in the *Report and Order,* we are concerned that some consumers may be unable to find and activate an audio stream tagged as ''visually impaired'' (''VI''), which is the label dictated by the digital television standard, and that the audio stream used for video description must be labeled as ''complete main'' (''CM'')

[2] *See id.* 79.1(a)(2) (defining ''video programming distributor'' to include any television broadcast station, MVPD, and ''any other distributor of video programming for residential reception that delivers such programming directly to the home and is subject to the jurisdiction of the Commission'').

[3] *See id.* 79.1(a)(1) (defining ''video programming'' to mean ''[p]rogramming provided by, or generally considered comparable to programming provided by, a television broadcast station that is distributed and exhibited for residential use'').

[4] We do not believe it is necessary to reach the question of whether this service is provided by an MVPD or an ''other distributor of video programming for residential reception that delivers such programming directly to the home and is subject to the jurisdiction of the Commission,'' as both are covered entities. We note that our inquiry is based on the specific definitions contained in § 79.1 of the Commission's rules and thus is limited to application of the emergency information requirements in the CVAA, 47 U.S.C. 613(g), and should not be read to imply a classification of these services for any other purpose. We seek comment on this issue.

[5] A ''plug-in'' is defined as ''[a] program of data that enhances, or adds to, the operation of a (usually larger) parent program.'' *See* H. Newton, *Newton's Telecom Dictionary* 642 (20th ed. 2004).

[6] Cablevision delivers programming both to traditional set-top boxes and to IP devices using ''its secure and proprietary Advanced Digital Cable television network to deliver cable programming to customers for viewing on the Optimum App for iPad [and other devices] and content is not delivered over the Internet. . . . Customers do not need to have Internet access to use the Optimum App for iPad.'' *See* Cablevision's New Optimum App Delivers the Full Cable Television Experience to an iPad in the Home, Apr. 2, 2011, *available at http://www.prnewswire.com/news-releases/cablevisions-new-optimum-app-delivers-the-full-cable-television-experience-to-an-ipad-in-the-home-119117379.html.*

[7] The top five national nonbroadcast networks must reach 50 percent or more of MVPD households and have at least 50 hours per quarter of prime time programming that is not live or near-live or otherwise exempt under the video description rules. 47 CFR 79.3(b)(4). *See also Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010,* Report and Order, 76 FR 55585 (2011) (''*2011 Video Description Order*''). For purposes of the rule, the top five nonbroadcast networks are USA, the Disney Channel, TNT, Nickelodeon, and TBS.

[8] *See* 47 CFR 79.3(a)(4) (defining ''video programming'' as ''[p]rogramming provided by, or generally considered comparable to programming provided by, a television broadcast station, but not including consumer-generated media'').

instead.[9] Further, it has been reported that some television receivers do not properly handle two audio tracks identified as English, and thus to ensure compatibility, broadcasters often tag the video description stream as a foreign language, even though the content of the stream is video description. Although the *NPRM,* 77 FR 70970, sought comment on this issue, the record is not yet sufficiently detailed for us to address these very technical matters. We recognize that broadcasters and MVPDs have not yet developed a solution pursuant to which tagging the video description stream as VI, to help consumers locate the stream, would be compatible with accessing the secondary audio stream on all equipment, including older equipment. In the absence of an industry solution to this problem, should the Commission mandate that the video description stream include a particular tag, and that all apparatus subject to the rules adopted herein enable consumers to access a video description stream with that tag? If so, is the ''visually impaired'' (''VI'') tag the one that the Commission should mandate? What would broadcasters and manufacturers need to do to comply with such a requirement? What deadline should the Commission impose by which broadcasters and manufacturers must comply with any such requirement? How can the Commission ensure that such a requirement does not affect consumers who have not upgraded their equipment? How can we minimize any confusion or cost to such consumers, and specifically, how can we mitigate the need for consumers to purchase new equipment to take advantage of the tagging requirements discussed herein? What other steps should the Commission take to ensure that the content of the secondary audio stream is properly tagged, for example so that a video description stream is tagged as video description and not as foreign language audio? We also invite comment on any other issues relevant to this portion of the *FNPRM.*

8. *Customer support services.* As explained in the *Report and Order* published elsewhere in this publication, although we request, but do not at this time require, that entities subject to the requirements adopted herein pursuant to sections 202 and 203 of the CVAA provide dedicated customer support services to assist consumers who are blind or visually impaired with accessing the secondary audio stream, we seek further comment on this issue. Should the Commission require covered entities to provide customer support services that are specifically designed to assist consumers who are blind or visually impaired to navigate between the main and secondary audio streams? Should customer support services consist of a dedicated telephone number, an accessible chat feature on the covered entity's Web site, or a different means by which regulated entities should provide customer support? How should such a requirement apply to manufacturers, which may not maintain an ongoing direct-to-consumer relationship? Should the Commission adopt contact information requirements comparable to those applicable to the television closed captioning rules, to require covered entities to make available contact information for the receipt and handling of immediate emergency information or video description complaints or concerns during a program's progress, and for the receipt and handling of written emergency information or video description complaints that do not raise immediate issues? What contact information should the Commission require of entities subject to the requirements adopted herein, and how should that information be made available to consumers? Instead of following the model of the television closed captioning rules, should we adopt contact information requirements comparable to those applicable to the IP closed captioning rules? Are there other ways by which entities subject to the requirements adopted herein can best provide assistance to consumers who are blind or visually impaired with accessing the secondary audio stream? Finally, we invite comment on any additional issues relevant to this portion of the *FNPRM.*

III. Procedural Matters

A. Initial Regulatory Flexibility Analysis

9. As required by the Regulatory Flexibility Act of 1980, as amended (''RFA''),[10] the Commission has prepared this present Initial Regulatory Flexibility Analysis (''IRFA'') concerning the possible significant economic impact on small entities by the policies and rules proposed in the *Further Notice of Proposed Rulemaking* (''*FNPRM*''). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the item. The Commission will send a copy of the *FNPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (''SBA'').[11] In addition, the *FNPRM* and IRFA (or summaries thereof) will be published in the **Federal Register.**[12]

1. Need for, and Objectives of, the Proposed Rule Changes

10. The *FNPRM:*

- Explores whether a multichannel video programming distributor (''MVPD'') service is covered by the emergency information rules adopted herein when an MVPD, as defined in the Commission's rules, permits its subscribers to access linear video programming that contains emergency information via tablets, laptops, personal computers, smartphones, or similar devices;
- Explores whether an MVPD system must comply with the video description rules when it permits its subscribers to access linear video programming via tablets, laptops, personal computers, smartphones, or similar devices;
- Explores whether the Commission should impose a requirement that broadcast receivers detect and decode audio streams marked for the visually impaired, to ensure that consumers can find and locate those streams; and
- Explores whether the Commission should require covered entities to provide customer support services and contact information to assist consumers who are blind or visually impaired to navigate between the main and secondary audio streams.

2. Legal Basis

11. The proposed action is authorized pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 124 Stat. 2751, and sections 4(i), 4(j), 303, 330(b), 713, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, 330(b), 613, and 617.

3. Description and Estimate of the Number of Small Entities to Which the Proposals Will Apply

12. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules if adopted.[13] The RFA

[9] In this context, a ''tag'' refers to the metadata accompanying an audio stream that signals to the receiving device what type of audio stream it is.

[10] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 through 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''), Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 (''CWAAA'').

[11] *See* 5 U.S.C. 603(a).

[12] *See id.*

[13] 5 U.S.C. 603(b)(3).

generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [14] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[15] A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA'').[16]

13. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of ''Wired Telecommunications Carriers,'' which is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this category and the associated small business size standard, the majority of such firms can be considered small.

14. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide. Industry data indicate that all but ten cable operators nationwide are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 6,101 systems nationwide, 4,410 systems have under 10,000 subscribers, and an additional 258 systems have 10,000–19,999 subscribers. Thus, under this standard, most cable systems are small.

15. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that all but nine cable operators nationwide are small under this subscriber size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

16. *Television Broadcasting.* This Economic Census category ''comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.'' The SBA has created the following small business size standard for Television Broadcasting firms: Those having $14 million or less in annual receipts. The Commission has estimated the number of licensed commercial television stations to be 1,387. In addition, according to Commission staff review of the BIA Advisory Services, LLC's *Media Access Pro Television Database* on March 28, 2012, about 950 of an estimated 1,300 commercial television stations (or approximately 73 percent) had revenues of $14 million or less. We therefore estimate that the majority of commercial television broadcasters are small entities.

17. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

18. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 396. These stations are non-profit, and therefore considered to be small entities.

19. *Direct Broadcast Satellite (''DBS'') Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. DBS, by exception, is now included in the SBA's broad economic census category, ''Wired Telecommunications Carriers,'' which was developed for small wireline firms. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this category and the associated small business size standard, the majority of such firms can be considered small. Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and EchoStar Communications Corporation (''EchoStar'') (marketed as the DISH Network). Each currently offers subscription services. DIRECTV and EchoStar each report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS service provider.

20. *Satellite Telecommunications Providers.* Two economic census categories address the satellite industry. The first category has a small business size standard of $15 million or less in average annual receipts, under SBA rules. The second has a size standard of $25 million or less in annual receipts.

21. The category of ''Satellite Telecommunications'' ''comprises establishments primarily engaged in

[14] *Id.* 601(6).

[15] *Id.* 601(3) (incorporating by reference the definition of ''small-business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[16] 15 U.S.C. 632.

providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Census Bureau data for 2007 show that 607 Satellite Telecommunications establishments operated for that entire year. Of this total, 533 establishments had annual receipts of under $10 million or less, and 74 establishments had receipts of $10 million or more. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

22. The second category, *i.e.,* ''All Other Telecommunications,'' comprises ''establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.'' For this category, Census Bureau data for 2007 shows that there were a total of 2,639 establishments that operated for the entire year. Of those 2,639 establishments, 2,333 operated with annual receipts of less than $10 million and 306 with annual receipts of $10 million or more. Consequently, the Commission estimates that a majority of All Other Telecommunications establishments are small entities that might be affected by our action.

23. *Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs).* SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are now included in the SBA's broad economic census category, ''Wired Telecommunications Carriers,'' which was developed for small wireline firms. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this category and the associated small business size standard, the majority of such firms can be considered small.

24. *Home Satellite Dish (''HSD'') Service.* HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers, and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers' receipt of video programming. Because HSD provides subscription services, HSD falls within the SBA-recognized definition of ''Wired Telecommunications Carriers.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this category and the associated small business size standard, the majority of such firms can be considered small.

25. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and ''wireless cable,'' transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the ten winning bidders, two bidders that claimed small business status won four licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

26. In addition, the SBA's placement of Cable Television Distribution Services in the category of Wired Telecommunications Carriers is applicable to cable-based Educational Broadcasting Services. Since 2007, ''Wired Telecommunications Carriers'' have been defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming

distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. For these services, the Commission uses the SBA small business size standard for Wired Telecommunications Carriers, which is 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this category and the associated small business size standard, the majority of such firms can be considered small. In addition to Census data, the Commission's internal records indicate that as of September 2012, there are 2,241 active EBS licenses. The Commission estimates that of these 2,241 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.

27. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), and the 24 GHz Service, where licensees can choose between common carrier and non-common carrier status. At present, there are approximately 31,428 common carrier fixed licensees and 79,732 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. There are approximately 120 LMDS licensees, three DEMS licensees, and three 24 GHz licensees. The Commission has not yet defined a small business with respect to microwave services. For purposes of the IRFA, we will use the SBA's definition applicable to Wireless Telecommunications Carriers (except satellite)—*i.e.,* an entity with no more than 1,500 persons. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For the category of ''Wireless Telecommunications Carriers (except Satellite),'' Census data for 2007 show that there were 11,163 firms that operated for the entire year. Of this total, 10,791 firms had employment of 999 or fewer employees and 372 had employment of 1,000 employees or more. Thus, under this category and the associated small business size standard, the majority of firms can be considered small. We note that the number of firms does not necessarily track the number of licensees. We estimate that virtually all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

28. *Open Video Systems.* The open video system (''OVS'') framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is ''Wired Telecommunications Carriers.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this category and the associated small business size standard, the majority of such firms can be considered small. In addition, we note that the Commission has certified some OVS operators, with some now providing service. Broadband service providers (''BSPs'') are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, at least some of the OVS operators may qualify as small entities.

29. *Cable and Other Subscription Programming.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.'' The SBA has developed a small business size standard for this category, which is: All such firms having $15 million dollars or less in annual revenues. To gauge small business prevalence in the Cable and Other Subscription Programming industries, the Commission relies on data currently available from the U.S. Census for the year 2007. Census Bureau data for 2007 show that there were 659 establishments in this category that operated for the entire year. Of that number, 462 operated with annual revenues of $9,999,999 million dollars or less, and 197 operated with annual revenues of 10 million or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small.

30. *Small Incumbent Local Exchange Carriers.* We have included small incumbent local exchange carriers in this present RFA analysis. A ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

31. *Incumbent Local Exchange Carriers (''LECs'').* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category ''Wired Telecommunications Carriers.'' Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this category and the associated small business size standard, the majority of such firms can be considered small.

32. *Competitive Local Exchange Carriers, Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.''* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category ''Wired Telecommunications Carriers.'' Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with

more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this category and the associated small business size standard, the majority of such firms can be considered small. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities.

33. *Motion Picture and Video Production.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in producing, or producing and distributing motion pictures, videos, television programs, or television commercials.'' We note that firms in this category may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms produce and/or distribute programming for cable television. The SBA has developed a small business size standard for this category, which is: All such firms having $29.5 million dollars or less in annual revenues. To gauge small business prevalence in the Motion Picture and Video Production industries, the Commission relies on data currently available from the U.S. Census for the year 2007. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 9,095 firms in this category that operated for the entire year. Of these, 8,995 had annual receipts of $24,999,999 or less, and 100 had annual receipts ranging from not less than $25,000,000 to $100,000,000 or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small.

34. *Motion Picture and Video Distribution.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in acquiring distribution rights and distributing film and video productions to motion picture theaters, television networks and stations, and exhibitors.'' We note that firms in this category may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms produce and/or distribute programming for cable television. The SBA has developed a small business size standard for this category, which is: All such firms having $29.5 million dollars or less in annual revenues. To gauge small business prevalence in the Motion Picture and Video Distribution industries, the Commission relies on data currently available from the U.S. Census for the year 2007. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 450 firms in this category that operated for the entire year. Of these, 434 had annual receipts of $24,999,999 or less, and 16 had annual receipts ranging from not less than $25,000,000 to $100,000,000 or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small.

35. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' The SBA has developed a small business size standard for ''Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,'' which is: All such firms having 750 or fewer employees. According to Census Bureau data for 2007, there were 919 establishments that operated for part or all of the entire year. Of those 919 establishments, 771 operated with 99 or fewer employees, and 148 operated with 100 or more employees. Thus, under that size standard, the majority of establishments can be considered small.

36. *Audio and Video Equipment Manufacturing.* The SBA has classified the manufacturing of audio and video equipment under in NAICS Codes classification scheme as an industry in which a manufacturer is small if it has less than 750 employees. Data contained in the 2007 Economic Census indicate that 491 establishments in this category operated for part or all of the entire year. Of those 491 establishments, 456 operated with 99 or fewer employees, and 35 operated with 100 or more employees. Thus, under the applicable size standard, a majority of manufacturers of audio and video equipment may be considered small.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

37. Certain proposals discussed in the *FNPRM* would affect reporting, recordkeeping, or other compliance requirements.

38. The *FNPRM* inquires whether, when an MVPD, as defined in the Commission's rules, permits its subscribers to access linear video programming that contains emergency information via tablets, laptops, personal computers, smartphones, or similar devices, this service is covered by the emergency information rules adopted in the *Report and Order.* An MVPD may seek a waiver of the emergency information requirements for good cause pursuant to § 1.3 of the Commission's rules. An MVPD may also be required to respond to complaints alleging a violation of the emergency information rules and the emergency information and video description apparatus rules.

39. The *FNPRM* also considers whether covered entities should provide customer support services that are specifically designed to assist consumers who are blind or visually impaired to navigate between the main and secondary audio streams. If the Commission adopts rules requiring the provision of such customer support services, covered entities may be required to keep records. For example, covered entities may be required to make available contact information for the receipt and handling of immediate emergency information or video description complaints or concerns during a program's progress, and for the receipt and handling of written emergency information or video description complaints that do not raise immediate issues.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

40. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[17]

41. First, the *FNPRM* seeks comment on whether an MVPD service is covered by the emergency information rules adopted in the *Report and Order* when

[17] 5 U.S.C. 603(c)(1) through (c)(4).

an MVPD, as defined in the Commission's rules, permits its subscribers to access linear video programming that contains emergency information via tablets, laptops, personal computers, smartphones, or similar devices. The *FNPRM* considers whether there are technological hurdles, if any, that will prevent or impede the delivery of the secondary audio service on mobile devices and personal computers, and whether obligations should be shared between MVPDs and apparatus manufacturers. These considerations will allow the Commission to consider the impact of the requirements on covered entities, including smaller entities.

42. Second, the *FNPRM* seeks comment on whether an MVPD system must comply with the video description rules when it permits its subscribers to access linear video programming via tablets, laptops, personal computers, smartphones, or similar devices. We note that an MVPD is exempt from the pass-through requirement under the video description rules if it does not have the technical capability necessary to pass through the video description. Thus, this exemption is available to small entities that will face more than minimal costs to comply with the pass-through requirement.

43. Third, the *FNPRM* considers whether the Commission should impose a requirement that broadcast receivers detect and decode audio streams marked for the visually impaired, to ensure that consumers can find and locate those streams. The *FNPRM* considers the steps broadcasters and manufacturers would need to take to comply with such a requirement, and whether there are any other steps the Commission should take to ensure that the content of the secondary audio stream is properly tagged. These considerations will allow the Commission to address alternatives that can potentially minimize the burden and costs of compliance for covered entities, including smaller entities.

44. Fourth, the *FNPRM* considers whether the Commission should require covered entities to provide customer support services and contact information to assist consumers who are blind or visually impaired to navigate between the main and secondary audio streams. The *FNPRM* considers alternatives for the provision of customer support services, including whether such services should consist of a dedicated telephone number, an accessible chat feature on the covered entity's Web site, or a different means by which regulated entities should provide customer support. The *FNPRM* also considers whether the Commission should require covered entities to make available contact information for the receipt and handling of immediate emergency information or video description complaints or concerns during a program's progress, and for the receipt and handling of written emergency information or video description complaints that do not raise immediate issues, as in the television closed captioning context, or whether it should instead adopt contact information requirements comparable to those applicable to the IP closed captioning rules. Further, the *FNPRM* considers whether there other ways by which entities subject to the emergency information and apparatus requirements can best provide assistance to consumers who are blind or visually impaired with accessing the secondary audio stream. These considerations will allow the Commission to address alternatives that can potentially minimize the burden and costs of compliance for covered entities, including smaller entities.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

45. None.

B. Paperwork Reduction Act

46. The *FNPRM* may result in new or revised information collection requirements. If the Commission adopts any new or revised information collection requirement, the Commission will publish a notice in the **Federal Register** inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501–3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

C. Ex Parte Rules

47. *Permit-But-Disclose.* This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b). In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

D. Filing Requirements

48. *Comments and Replies.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All

filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

49. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

50. *People With Disabilities.* 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 FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

E. Additional Information

51. For additional information on this proceeding, contact Diana Sokolow, *Diana.Sokolow@fcc.gov,* or Maria Mullarkey, *Maria.Mullarkey@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–2120.

IV. Ordering Clauses

52. Accordingly, *it is ordered* that, pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 124 Stat. 2751, and the authority found in sections 4(i), 4(j), 303, 330(b), 713, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, 330(b), 613, and 617, this *Report and Order and Further Notice of Proposed Rulemaking is adopted,* effective thirty (30) days after the date of publication in the **Federal Register**, except for §§ 79.105(a), 79.105(b)(3), and 79.105(b)(4), and revised § 79.2(c), which shall become effective upon announcement in the **Federal Register** of OMB approval and an effective date of the rules.

53. *It is ordered* that, pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 124 Stat. 2751, and the authority found in sections 4(i), 4(j), 303, 330(b), 713, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, 330(b), 613, and 617, the Commission's rules are hereby amended as set forth in Appendix B.

54. *It is further ordered* that we delegate authority to the Media Bureau and the Consumer and Governmental Affairs Bureau to consider all requests for declaratory rulings pursuant to § 1.2 of the Commission's rules, 47 CFR 1.2, all waiver requests pursuant to §§ 1.3 or 79.105(b)(4) of the Commission's rules, 47 CFR 1.3, 79.105(b)(4), and all informal requests for Commission action pursuant to § 1.41 of the Commission's rules, 47 CFR 1.41, filed under these rules and pursuant to sections 202 and 203 of the CVAA as discussed herein.

55. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Report and Order and Further Notice of Proposed Rulemaking* in MB Docket No. 12–107, including the Final Regulatory Flexibility Analysis and the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

56. *It is further ordered* that the Commission *shall send* a copy of this *Report and Order and Further Notice of Proposed Rulemaking* in MB Docket No. 12–107 in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2013–11574 Filed 5–23–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL REGISTER

Vol. 78 Friday,

No. 101 May 24, 2013

Part VI

The President

Proclamation 8985—National Maritime Day, 2013

Executive Order 13644—Amendment to Executive Order 13639

Federal Register
Vol. 78, No. 101
Friday, May 24, 2013

Presidential Documents

Title 3—

The President

Proclamation 8985 of May 21, 2013

National Maritime Day, 2013

By the President of the United States of America

A Proclamation

Through every chapter of the American story, ordinary men and women have accomplished extraordinary things as members of the United States Merchant Marine. When the idea of America depended on the success of a revolution, mariners took on the world's most powerful navy and helped secure our future as a sovereign Nation. In the decades since, they have sustained critical supply lines for our troops abroad—at times enduring profound losses to keep our sea lanes open. And through war and peace alike, the Merchant Marine has driven our economic growth by shipping our products all around the world. On National Maritime Day, we honor the generations of mariners who have served and sacrificed to make our country what it is today.

To keep America moving forward in the 21st century, we need to expand trade and commerce that creates good jobs for our people. Businesses in every corner of our country are stepping up to meet that challenge, ramping up manufacturing and selling more goods and services overseas. As they do, our Merchant Marine is making sure our products get wherever they need to go—from ports here at home to new markets halfway across the globe. Their work is essential to growing our economy, and my Administration remains committed to getting our mariners the support they need to carry out their mission.

Whether equipping our service members in the theater of war or guiding our maritime industry in the calm of peace, the United States Merchant Marine has helped keep America strong for more than two centuries. Let us mark this day by reflecting on that legacy of service, honoring the men and women who forged it, and saluting the proud mariners who carry it forward today.

The Congress, by a joint resolution approved May 20, 1933, has designated May 22 of each year as ''National Maritime Day,'' and has authorized and requested the President to issue annually a proclamation calling for its appropriate observance.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim May 22, 2013, as National Maritime Day. I call upon the people of the United States to mark this observance and to display the flag of the United States at their homes and in their communities. I also request that all ships sailing under the American flag dress ship on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of May, in the year of our Lord two thousand thirteen, and of the Independence of the United States of America the two hundred and thirty-seventh.

[FR Doc. 2013–12649
Filed 5–23–13; 11:15 am]
Billing code 3295–F3

Presidential Documents

Executive Order 13644 of May 21, 2013

Amendment to Executive Order 13639

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Amendment to Executive Order 13639.* Section 2 of Executive Order 13639 of March 28, 2013 (Establishment of the Presidential Commission on Election Administration), is amended by striking subsection 2(a) in its entirety and inserting in lieu thereof the following:

''(a) The Commission shall be composed of not more than ten members appointed by the President. The members shall be drawn from among distinguished individuals with knowledge about or experience in the administration of State or local elections, as well as representatives of successful customer service-oriented businesses, and any other individuals with knowledge or experience determined by the President to be of value to the Commission.''

Sec. 2. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to a department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
May 21, 2013.

[FR Doc. 2013–12650
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H.R. 1071/P.L. 113–10
To specify the size of the precious-metal blanks that will be used in the production of the National Baseball Hall of Fame commemorative coins. (May 17, 2013; 127 Stat. 445)
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