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Title 3—

The President

Memorandum of August 12, 2013

Reviewing Our Global Signals Intelligence Collection and Communications Technologies

Memorandum for the Director of National Intelligence

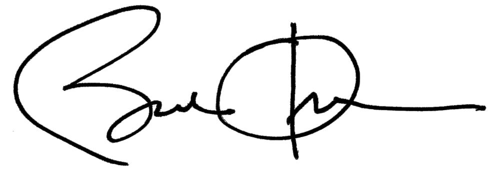
The United States, like all nations, gathers intelligence in order to protect its national interests and to defend itself, its citizens, and its partners and allies from threats to our security. The United States cooperates closely with many countries on intelligence matters and these intelligence relationships have helped to ensure our common security.

Recent years have brought unprecedented and rapid advancements in communications technologies, particularly with respect to global telecommunications. These technological advances have brought with them both great opportunities and significant risks for our Intelligence Community: opportunity in the form of enhanced technical capabilities that can more precisely and readily identify threats to our security, and risks in the form of insider and cyber threats.

I believe it is important to take stock of how these technological advances alter the environment in which we conduct our intelligence mission. To this end, by the authority vested in me as President by the Constitution and the laws of the United States of America, I am directing you to establish a Review Group on Intelligence and Communications Technologies (Review Group).

The Review Group will assess whether, in light of advancements in communications technologies, the United States employs its technical collection capabilities in a manner that optimally protects our national security and advances our foreign policy while appropriately accounting for other policy considerations, such as the risk of unauthorized disclosure and our need to maintain the public trust. Within 60 days of its establishment, the Review Group will brief their interim findings to me through the Director of National Intelligence (DNI), and the Review Group will provide a final report and recommendations to me through the DNI no later than December 15, 2013.

You are hereby authorized and directed to publish this memorandum in the **Federal Register.**



THE WHITE HOUSE,
Washington, August 12, 2013.

[FR Doc. 2013–19960
Filed 8–14–13; 8:45 am]
Billing code 3910–A7

Rules and Regulations

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2013–0384; Special Conditions No. 25–495–SC]

Special Conditions: Embraer, S.A., Model EMB–550 Airplane; Side-Facing Seats; Installation of Airbag Systems in Shoulder Belts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Embraer S.A. Model EMB–550 airplane. This airplane will have a novel or unusual design feature associated with multiple-place and single-place side-facing seats and the installation of airbag systems in the shoulder belts. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: *Effective Date:* September 16, 2013.

FOR FURTHER INFORMATION CONTACT: Jayson Claar, FAA, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–2194; facsimile 425–227–1232.

SUPPLEMENTARY INFORMATION:

Background

On May 14, 2009, Embraer S.A. applied for a type certificate for its new Model EMB–550 airplane. The Model EMB–550 airplane is the first of a new family of jet airplanes designed for corporate flight, fractional, charter, and private owner operations. The airplane has a conventional configuration with low wing and T-tail empennage. The primary structure is metal with composite empennage and control surfaces. The Model EMB–550 airplane is designed for 8 passengers, with a maximum of 12 passengers. It is equipped with two Honeywell HTF7500–E medium bypass ratio turbofan engines mounted on aft fuselage pylons. Each engine produces approximately 6,540 pounds (lbs) of thrust for normal takeoff. The primary flight controls consist of hydraulically powered fly-by-wire elevators, aileron and rudder, controlled by the pilot or copilot sidestick.

The Model EMB–550 airplane has interior configurations that include multiple-place side-facing seats and single-place side-facing seats (both referred to as side-facing seats) that include airbag systems in the shoulder belts for these seats. Existing regulations do not provide adequate or appropriate safety standards for occupants of side-facing seats. Also, existing regulations do not provide adequate or appropriate safety standards for the addition of airbag systems in the shoulder belt of side-facing seats. These special conditions address both issues.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.17, Embraer S.A. must show that the Model EMB–550 airplane meets the applicable provisions of part 25, as amended by Amendments 25–1 through 25–127 thereto.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Embraer S.A. Model EMB–550 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Embraer S.A. Model EMB–550 airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36 and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The Embraer S.A. Model EMB–550 airplane will incorporate the following novel or unusual design features: side-facing seats with airbag systems in the shoulder belts.

The Model EMB–550 airplane will have interior configurations with multiple-place side-facing seats and single-place side-facing seats that include airbag systems in the shoulder belts. Side-facing seats are considered a novel design for transport category airplanes that include Amendment 25–64 in their certification basis and were not anticipated when those airworthiness standards were issued. Therefore, the existing regulations do not provide adequate or appropriate safety standards for occupants of side-facing seats. The airbag systems in the shoulder belts are designed to limit occupant forward excursion in the event of an accident. Using airbag systems in the shoulder belts is novel for commercial aviation.

Discussion

The FAA has been conducting research to develop an acceptable method of compliance with Title 14, Code of Federal Regulations (14 CFR) 25.785(b) for side-facing seat installations. That research has identified additional injury considerations and evaluation criteria. See published report DOT/FAA/AR–09/41, July 2011.

Before this research, the FAA had been granting exemptions for the multiple-place side-facing seat installations since an adequate method of compliance was not available to produce an equivalent level of safety to that level of safety provided for the forward- and aft-facing seats. These exemptions were subject to many conditions that reflected the injury evaluation criteria and mitigation strategies available at the time of the exemption issuance. The FAA has now developed a methodology to address all fully side-facing seats (i.e., seats oriented in the aircraft with the occupant facing 90 degrees to the direction of aircraft travel) and is documenting those requirements in these special conditions. Some of the previous conditions issued for exemptions are still relevant and are included in these new special conditions. However, many of the conditions for exemption have been replaced by different criteria that reflect current research findings.

The FAA had been issuing special conditions to address single-place side-facing seats; however, application of the current research findings has allowed issuing special conditions that are applicable to all fully side-facing seats, both multiple-place and single-place.

Neck-injury evaluation methods applicable to the most common side-facing seat configurations were identified during recent FAA research. The scope of that research, however, did not include deriving specific injury criteria for all possible loading scenarios that could occur to occupants of fully side-facing seats. To limit the injury risk in those cases, these special conditions provide conservative injury evaluation means that are derived from past practice and applicable scientific literature.

Serious leg injuries, such as femur fractures, can occur in aviation side-facing seats that could threaten the occupants' lives directly or reduce their ability to evacuate. Limiting upper-leg axial rotation to a conservative limit of 35 degrees (approximately the 50 percentile range of motion) should also limit the risk of serious leg injuries. It is believed that the angle of rotation can be determined by observing lower-leg flailing in typical high-speed video of the dynamic tests. This requirement complies with the intent of the § 25.562 (b)(6) injury criteria in preventing serious leg injury.

The requirement to provide support for the pelvis, upper arm, chest, and head contained in the previous special conditions for single-place side-facing seats, has been replaced in the new special conditions applicable to all fully side-facing seats with requirements for neck-injury evaluation, leg-flailing limits, pelvis-excursion limits, head-excursion limits, and torso lateral-bending limits that directly assess the effectiveness of the support provided by the seat and restraint system.

To protect occupants in aft-facing seats, those seats must have sufficient height and stiffness to support their heads and spines. Providing this support is intended to reduce spinal injuries when occupant inertial forces cause their heads and spines to load against the seat backs. If, during a side-facing-seat dynamic test, the flailing of the occupants causes their heads to translate beyond the planes of the seat backs, then this lack of support would not comply with the intent of the requirement to prevent spine injuries and would not provide the same level of safety afforded occupants of forward- and aft-facing seats.

Results from tests that produced lateral flailing over an armrest indicate that serious injuries, including spinal fractures, would likely occur. While no criteria currently relates the amount of lateral flail to a specific risk of injury, if lateral flexion is limited to the normal static range of motion, then the risk of injury should be low. This range of motion is approximately 40 degrees from the upright position. Ensuring that lateral flexion does not create a significant injury risk is consistent with the goal of providing an equivalent level of safety to that provided by forward- or aft-facing seats, because that type of articulation of those seats does not occur during forward impacts.

Section 25.562 requires that the restraints remain on the shoulders and pelvises of the occupants during impact. Advisory Circular (AC) 25.562–1B, *Dynamic Evaluation of Seat Restraint Systems and Occupant Protection on Transport Airplanes,* dated January 10, 2006, clarifies this requirement by stating that restraints must remain on the shoulders and pelvises when loaded by the occupants. This criterion is necessary to protect the occupants from serious injuries that could be caused by lap-belt contact forces applied to soft tissue or by ineffectively restraining the upper torsos caused by the upper torso restraints sliding off the shoulders. In forward-facing seats (the type specifically addressed by that AC), occupant motion during rebound and any subsequent re-loading of the belts is limited by interaction with the seat backs. However, in side-facing seats subjected to a forward impact, the restraint systems may be the only means of limiting the occupants' rearward (rebound) motion. So to limit abdominal injury risk in side-facing seats, the lap belts must remain on the pelvis throughout the impact event, including rebound.

During side-facing-seat dynamic tests, the risk for head injury is assessed with only one occupant size (the 50th percentile male as represented by the ES–2re as defined in 49 CFR part 572 supbart U). However, protection for a range of occupant statures can be provided if the impacted surface is homogenous in the area contactable by that range of occupants.

The FAA has issued special conditions in the past for airbag systems on lap belts for some forward-facing seats. These special conditions for the airbag systems in the shoulder belts are based on the previous special conditions for airbag systems on lap belts with some changes to address the specific issues of side-facing seats. The special conditions are not an installation approval. Therefore, while the special conditions relate to each such system installed, the overall installation approval is a separate finding and must consider the combined effects of all such systems installed.

The FAA has considered the installation of airbag systems in the shoulder belts to have two primary safety concerns: first, that the systems perform properly under foreseeable operating conditions, and second, that the systems do not perform in a manner or at such times as would constitute a hazard to the occupants. This latter point has the potential to be the more rigorous of the requirements, owing to the active nature of the system.

For the reasons discussed above, these special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Discussion of Comments

Notice of proposed special conditions No. 25–13–02–SC for the Embraer Model EMB–550 airplanes was published in the **Federal Register** on May 6, 2013 (78 FR 26280). No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Embraer Model EMB–550 airplane. Should Embraer S.A. the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model of airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Embraer Model EMB–550 airplanes.

In addition to the requirements of §§ 25.562 and 25.785, the following special condition numbers 1 and 2 are part of the type certification basis of the Model EMB–550 airplane with side-facing-seat installations. For seat places equipped with airbag systems in the shoulder belts, additional special condition numbers 3 through 16 are part of the type certification basis.

1. Additional requirements applicable to tests or rational analysis conducted to show compliance with §§ 25.562 and 25.785 for side-facing seats:

(a) The longitudinal test(s) conducted in accordance with § 25.562(b)(2) to show compliance with the seat-strength requirements of § 25.562(c)(7) and (8) and these special conditions must have an ES–2re anthropomorphic test dummy (ATD) (49 CFR part 572 subpart U) or equivalent, or a Hybrid-II ATD (49 CFR part 572, subpart B as specified in § 25.562) or equivalent occupying each seat position and including all items contactable by the occupant (e.g., armrest, interior wall, or furnishing) if those items are necessary to restrain the occupant. If included, the floor representation and contactable items must be located such that their relative position, with respect to the center of the nearest seat place, is the same at the start of the test as before floor misalignment is applied. For example, if floor misalignment rotates the centerline of the seat place nearest the contactable item 8 degrees clockwise about the aircraft *x*-axis, then the item and floor representations must be rotated by 8 degrees clockwise also to maintain the same relative position to the seat place, as shown in Figure 1. Each ATD's relative position to the seat after application of floor misalignment must be the same as before misalignment is applied. To ensure proper loading of the seat by the occupants, the ATD pelvis must remain supported by the seat pan, and the restraint system must remain on the pelvis and shoulder of the ATD until rebound begins. No injury-criteria evaluation is necessary for tests conducted only to assess seat-strength requirements.

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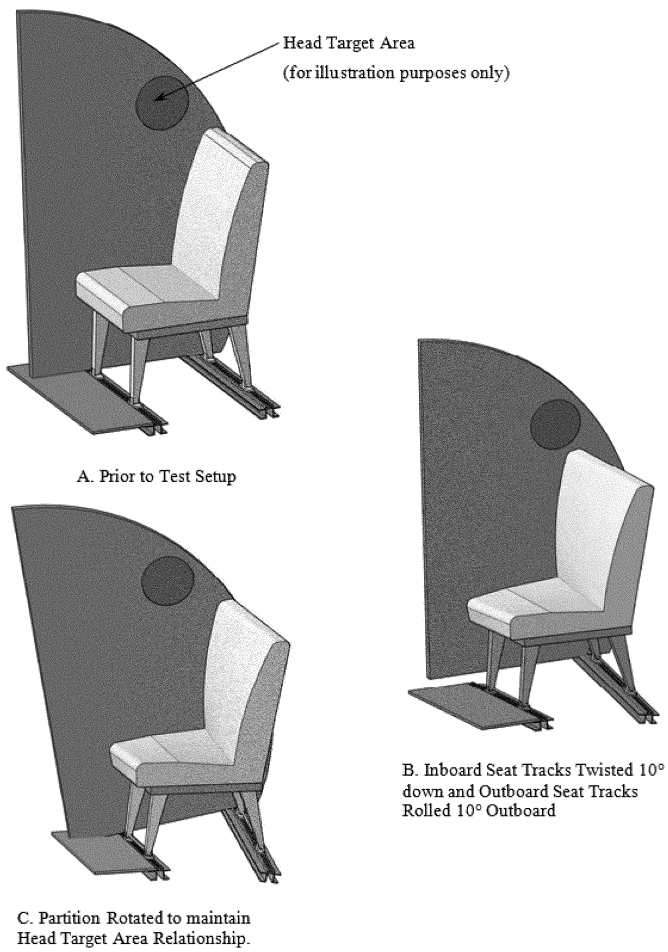

Figure 1: Head Target Areas Relative to Seat Position

(b) The longitudinal test(s) conducted in accordance with § 25.562(b)(2) to show compliance with the injury assessments required by § 25.562(c) and these special conditions may be conducted separately from the test(s) to show structural integrity. In this case, structural-assessment tests must be conducted as specified in paragraph 1(a) of these special conditions, and the injury-assessment test must be conducted without yaw or floor misalignment. Injury assessments may be accomplished by testing with ES–2re ATD (49 CFR part 572 subpart U) or equivalent at all places. Alternatively, these assessments may be accomplished by multiple tests that use an ES–2re at the seat place being evaluated and a Hybrid-II ATD (49 CFR part 572, subpart B, as specified in § 25.562) or equivalent used in all seat places forward of the one being assessed to evaluate occupant interaction. In this case, seat places aft of the one being assessed may be unoccupied. If a seat installation includes adjacent items that are contactable by the occupant, the injury potential of that contact must be assessed. To make this assessment, tests may be conducted that include the actual item located and attached in a representative fashion. Alternatively, the injury potential may be assessed by a combination of tests with items having the same geometry as the actual item but having stiffness characteristics that would create the worst case for injury (injuries due to both contact with the item and lack of support from the item).

(c) If a seat is installed aft of a structure (e.g., an interior wall or furnishing) that does not have a homogeneous surface contactable by the occupant, additional analysis and/or test(s) may be required to demonstrate that the injury criteria are met for the area which an occupant could contact. For example, different yaw angles could result in different injury considerations and may require additional analysis or separate test(s) to evaluate.

(d) To accommodate a range of occupant heights (5th percentile female to 95th percentile male), the surface of items contactable by the occupant must be homogenous 7.3 inches (185 mm) above and 7.9 inches (200 mm) below the point (center of area) that is contacted by the 50th percentile male size ATD's head during the longitudinal test(s) conducted in accordance with paragraphs 1(a), 1(b), and 1(c) of these special conditions. Otherwise, additional head-injury criteria (HIC) assessment tests may be necessary. Any surface (inflatable or otherwise) that provides support for the occupant of any seat place must provide that support in a consistent manner regardless of occupant stature. For example, if an inflatable shoulder belt is used to mitigate injury risk, then it must be demonstrated by inspection to bear against the range of occupants in a similar manner before and after inflation. Likewise, the means of limiting lower-leg flail must be demonstrated by inspection to provide protection for the range of occupants in a similar manner.

(e) For longitudinal test(s) conducted in accordance with § 25.562(b)(2) and these special conditions, the ATDs must be positioned, clothed, and have lateral instrumentation configured as follows:

(1) ATD positioning:

(i) Lower the ATD vertically into the seat while simultaneously (see Figure 2 for illustration):

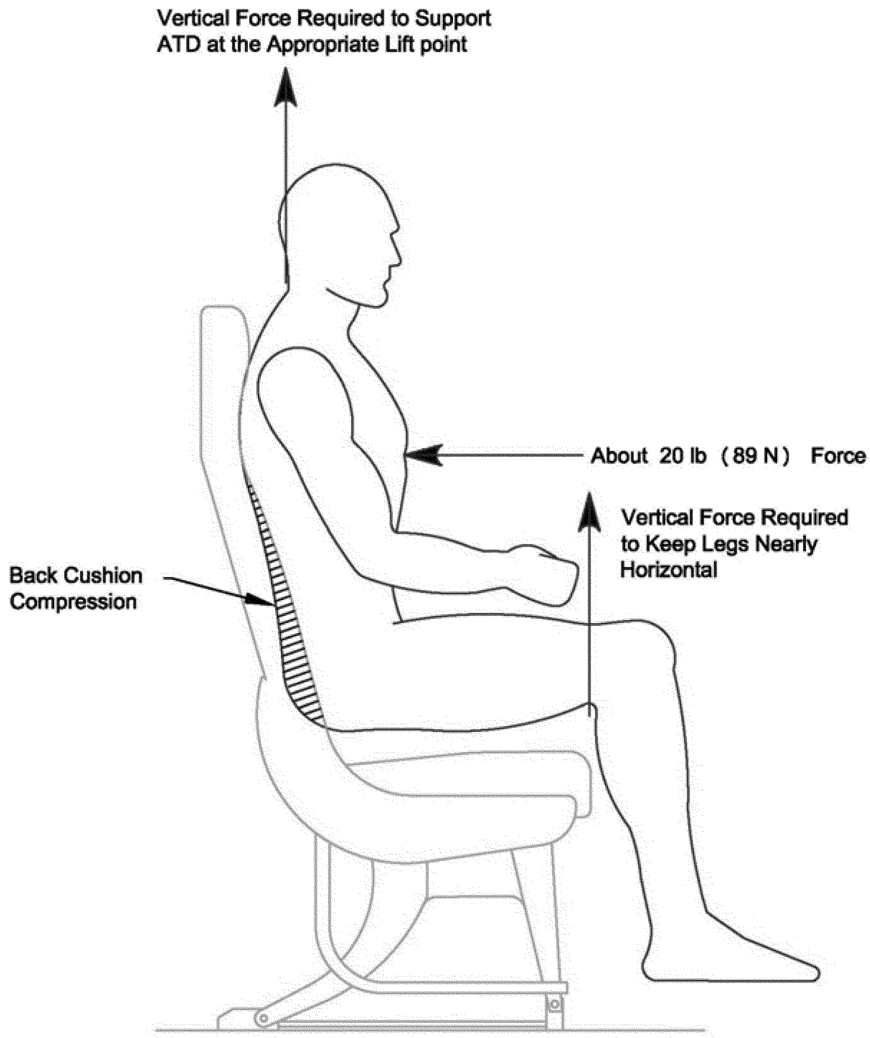

Figure 2: ATD Positioning

(A) Aligning the midsagittal plane (a vertical plane through the midline of the body; dividing the body into right and left halves) with approximately the middle of the seat place.

(B) Applying a horizontal *x*-axis direction (in the ATD coordinate system) force of about 20 pounds (lbs) (89 Newtons [N]) to the torso at approximately the intersection of the midsagittal plane and the bottom rib of the ES–2re or lower sternum of the Hybrid-II at the midsagittal plane, to compress the seat back cushion.

(C) Keeping the upper legs nearly horizontal by supporting them just behind the knees.

(ii) Once all lifting devices have been removed from the ATD:

(A) Rock it slightly to settle it in the seat.

(B) Separate the knees by about 4 inches (100 mm).

(C) Set the ES–2re's head at approximately the midpoint of the available range of *z*-axis rotation (to align the head and torso midsagittal planes).

(D) Position the ES–2re's arms at the joint's mechanical detent that puts them at approximately a 40-degree angle with respect to the torso. Position the Hybrid-II ATD hands on top of its upper legs.

(E) Position the feet such that the centerlines of the lower legs are approximately parallel to a lateral vertical plane (in the aircraft coordinate system).

(2) ATD clothing: Clothe each ATD in form-fitting, mid-calf-length (minimum) pants and shoes (size 11E) weighing about 2.5 lb (1.1 kg) total. The color of the clothing should be in contrast to the color of the restraint system. The ES–2re jacket is sufficient for torso clothing, although a form-fitting shirt may be used in addition if desired.

(3) ES–2re ATD lateral instrumentation: The rib-module linear slides are directional, i.e., deflection occurs in either a positive or negative ATD *y*-axis direction. The modules must be installed such that the moving end of the rib module is toward the front of the aircraft. The three abdominal force sensors must be installed such that they are on the side of the ATD toward the front of the aircraft.

(f) The combined horizontal/vertical test, required by § 25.562(b)(1) and these special conditions, must be conducted with a Hybrid II ATD (49 CFR part 572, subpart B, as specified in § 25.562), or equivalent, occupying each seat position.

(g) Restraint systems:

(1) If inflatable restraint systems are used, they must be active during all dynamic tests conducted to show compliance with § 25.562.

(2) The design and installation of seat-belt buckles must prevent unbuckling due to applied inertial forces or impact of the hands/arms of the occupant during an emergency landing.

2. Additional performance measures applicable to tests and rational analysis conducted to show compliance with §§ 25.562 and 25.785 for side-facing seats:

(a) Body-to-body contact: Contact between the head, pelvis, torso, or shoulder area of one ATD with the adjacent-seated ATD's head, pelvis, torso, or shoulder area is not allowed. Contact during rebound is allowed.

(b) Thoracic: The deflection of any of the ES–2re ATD upper, middle, and lower ribs must not exceed 1.73 inches (44 mm). Data must be processed as defined in Federal Motor Vehicle Safety Standards (FMVSS) 571.214.

(c) Abdominal: The sum of the measured ES–2re ATD front, middle, and rear abdominal forces must not exceed 562 lb (2,500 N). Data must be processed as defined in FMVSS 571.214.

(d) Pelvic: The pubic symphysis force measured by the ES–2re ATD must not exceed 1,350 lb (6,000 N). Data must be processed as defined in FMVSS 571.214.

(e) Leg: Axial rotation of the upper-leg (femur) must be limited to 35 degrees in either direction from the nominal seated position.

(f) Neck: As measured by the ES–2re ATD and filtered at channel frequency class (CFC) 600 as defined in SAE J211:

(1) The upper-neck tension force at the occipital condyle location must be less than 405 lb (1,800 N).

(2) The upper-neck compression force at the occipital condyle location must be less than 405 lb (1,800 N).

(3) The upper-neck bending torque about the ATD *x*-axis at the occipital condyle location must be less than 1,018 in-lb (115 Nm).

(4) The upper-neck resultant shear force at the occipital condyle location must be less than 186 lb (825 N).

(g) Occupant (ES–2re ATD) retention: The pelvic restraint must remain on the ES–2re ATD's pelvis during the impact and rebound phases of the test. The upper-torso restraint straps (if present) must remain on the ATD's shoulder during the impact.

(h) Occupant (ES–2re ATD) support:

(1) Pelvis excursion: The load-bearing portion of the bottom of the ATD pelvis must not translate beyond the edges of its seat's bottom seat-cushion supporting structure.

(2) Upper-torso support: The lateral flexion of the ATD torso must not exceed 40 degrees from the normal upright position during the impact.

3. For seats with airbag systems in the shoulder belts, show that the airbag systems in the shoulder belts will deploy and provide protection under crash conditions where it is necessary to prevent serious injury. The means of protection must take into consideration a range of stature from a 2-year-old child to a 95th percentile male. The airbag systems in the shoulder belts must provide a consistent approach to energy absorption throughout that range of occupants. When the seat systems include airbag systems, the systems must be included in each of the certification tests as they would be installed in the airplane. In addition, the following situations must be considered:

(a) The seat occupant is holding an infant.

(b) The seat occupant is a pregnant woman.

4. The airbag systems in the shoulder belts must provide adequate protection for each occupant regardless of the number of occupants of the seat assembly, considering that unoccupied seats may have active airbag systems in the shoulder belts.

5. The design must prevent the airbag systems in the shoulder belts from being either incorrectly buckled or incorrectly installed, such that the airbag systems in the shoulder belts would not properly deploy. Alternatively, it must be shown that such deployment is not hazardous to the occupant and will provide the required injury protection.

6. It must be shown that the airbag systems in the shoulder belts are not susceptible to inadvertent deployment as a result of wear and tear, inertial loads resulting from in-flight or ground maneuvers (e.g., including gusts and hard landings), and other operating and environmental conditions (e.g., vibrations and moisture) likely to occur in service.

7. Deployment of the airbag systems in the shoulder belts must not introduce injury mechanisms to the seated occupants or result in injuries that could impede rapid egress. This assessment should include an occupant whose belt is loosely fastened.

8. It must be shown that inadvertent deployment of the airbag systems in the shoulder belts, during the most critical part of the flight, will either meet the requirement of § 25.1309(b) or not cause a hazard to the airplane or its occupants.

9. It must be shown that the airbag systems in the shoulder belts will not impede rapid egress of occupants 10 seconds after airbag deployment.

10. The airbag systems must be protected from lightning and high-intensity radiated fields (HIRF). The threats to the airplane specified in existing regulations regarding lighting, § 25.1316, and HIRF, § 25.1317, are incorporated by reference for the purpose of measuring lightning and HIRF protection.

11. The airbag systems in the shoulder belts must function properly after loss of normal aircraft electrical power and after a transverse separation of the fuselage at the most critical location. A separation at the location of the airbag systems in the shoulder belts does not have to be considered.

12. It must be shown that the airbag systems in the shoulder belts will not release hazardous quantities of gas or particulate matter into the cabin.

13. The airbag systems in the shoulder-belt installations must be protected from the effects of fire such that no hazard to occupants will result.

14. A means must be available for a crew member to verify the integrity of the airbag systems in the shoulder-belts activation system prior to each flight or it must be demonstrated to reliably operate between inspection intervals. The FAA considers that the loss of the airbag-system deployment function alone (i.e., independent of the conditional event that requires the airbag-system deployment) is a major-failure condition.

15. The inflatable material may not have an average burn rate of greater than 2.5 inches/minute when tested using the horizontal flammability test defined in part 25, appendix F, part I, paragraph (b)(5).

16. Once deployed, the airbag systems in the shoulder belts must not adversely affect the emergency-lighting system (e.g., block floor proximity lights to the extent that the lights no longer meet their intended function).

Issued in Renton, Washington, on August 9, 2013.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–19754 Filed 8–14–13; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0262; Directorate Identifier 2013–NE–13–AD; Amendment 39–17548; AD 2013–16–10]

RIN 2120–AA64

Airworthiness Directives; Hamilton Standard Division and Hamilton Sundstrand Corporation Propellers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Hamilton Standard Division model 6/5500/F and 24PF and Hamilton Sundstrand Corporation model 14RF, 14SF, 247F, and 568F series propellers. This AD was prompted by the amount of corrosion detected during major inspections (MI). This AD requires incorporating inspections, based on a calendar time, into the propeller maintenance schedule. We are issuing this AD to prevent corrosion that could result in propeller failure and loss of airplane control.

DATES: This AD is effective September 19, 2013.

ADDRESSES: The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

For service information identified in this AD, contact Hamilton Sundstrand Corporation, One Hamilton Road, Mail Stop 1A–3–C63, Windsor Locks, CT 06096–1010; or Hamilton Standard Division, One Hamilton Road, United Technologies Corporation, Mail Stop 1A–3–C63, Windsor Locks, CT 06096–1010; phone: 877–808–7575; fax: 860–660–0372; email: *tech.solutions@hs.utc.com;* Internet: *http://myhs.hamiltonsundstrand.com.* You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7125.

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 street address for the Docket Office (phone: 800–647–5527) is provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Michael Schwetz, Aerospace Engineer, Boston Aircraft Certification Office, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7761; fax: 781–238–7170; email: *michael.schwetz@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. The NPRM published in the **Federal Register** on May 23, 2013 (78 FR 30795). The NPRM proposed to require incorporating inspections, based on a calendar time, into the propeller maintenance schedule.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (78 FR 30795, May 23, 2013) or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (78 FR 30795, May 23, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 30795, May 23, 2013).

Costs of Compliance

We estimate that this AD affects about 1,044 propeller/hub combinations installed on airplanes of U.S. registry. We also estimate that it will take about 160 hours per propeller to perform one MI. The average labor rate is $85 per hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $14,198,400.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

(3) Will not affect intrastate aviation in Alaska 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.

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):

2013–16–10 Hamilton Standard Division and Hamilton Sundstrand Corporation: Amendment 39–17548; Docket No. FAA–2013–0262; Directorate Identifier 2013–NE–13–AD.

(a) Effective Date

This AD is effective September 19, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Hamilton Standard Division 6/5500/F and 24PF and Hamilton Sundstrand Corporation 14RF, 14SF, 247F, and 568F series propellers.

(d) Unsafe Condition

This AD was prompted by the amount of corrosion detected during major inspections

(MI). We are issuing this AD to prevent corrosion that could result in propeller failure and loss of airplane control.

(e) Compliance

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

(f) MI for Blades and Hubs That Have an Updated Airworthiness Limitations Section (ALS)

For Hamilton Sundstrand Corporation propeller models 14RF–9, 14RF–21, 14SF–5, 14SF–7, 14SF–11E, and 568F–1, that have an approved update to the ALS, within 45 days after the effective date of this AD, perform an MI on the blades and hubs no later than seven years after the date since installation (DSI). The DSI will begin at initial installation after the most recent MI or initial installation after production. Guidance on the inspections can be found in the applicable Hamilton Sundstrand Corporation models/manuals 14RF–9/P5186, revision 12, January 20, 2012; 14RF–21/P5189, revision 8, February 20, 2013; 14SF–5/P5188, revision 10, dated January 14, 2013; 14SF–7/P5185, revision 13, dated December 13, 2011; 14SF–11E/P5207, revision 2, dated June 28, 2012; and 568F–1/P5206, revision 9, dated February 22, 2013.

(g) MI for Blades and Hubs That Do Not Have an Updated ALS

For Hamilton Standard Division propeller models 6/5500/F and 24PF and Hamilton Sundstrand Corporation propeller models 14RF–19, 14RF–37, 14SF–11, 14SF–15, 14SF–23, 14SF–17, 14SF–19, 247F–1, 247F–1E, 247F–3, 568F–1, 568F–5, and 568F–7, that do not have an approved update to the ALS, within one year after the effective date of this AD, perform an MI on the blades and hubs no later than seven years after the DSI. The DSI will begin at initial installation after the most recent MI or initial installation after production. Guidance on the inspections can be found in the applicable Hamilton Standard Division models/manuals 6/5500/F/P5190 and 24PF/61–12–01, and Hamilton Sundstrand Corporation models/manuals 14RF–19/P5199, 14RF–37/P5209, 14SF–11/P5196, 14SF–15/P5197, 14SF–23/P5197, 14SF–17/P5198, 14SF–19/P5198, 247F–1/P4202, 247F–1E/P5204, 247F–3/P5205, 568F–1/P5214, 568F–5/P5203, and 568F–7/P5211.

(h) Alternative Methods of Compliance (AMOCs)

The Manager, Boston Aircraft Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

(i) Related Information

(1) For more information about this AD, contact Michael Schwetz, Aerospace Engineer, Boston Aircraft Certification Office, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7761; fax: 781–238–7170; email: *michael.schwetz@faa.gov.*

(2) Hamilton Sundstrand Corporation models/manuals 14RF–9/P5186, revision 12, January 20, 2012; 14RF–21/P5189, revision 8, February 20, 2013; 14SF–5/P5188, revision 10, dated January 14, 2013; 14SF–7/P5185, revision 13, dated December 13, 2011; 14SF–11E/P5207, revision 2, dated June 28, 2012; and 568F–1/P5206, revision 9, dated February 22, 2013, which are not incorporated by reference in this AD, can be obtained from Hamilton Sundstrand Corporation, using the contact information in paragraph (i)(3) of this AD.

(3) For service information identified in the AD, contact Hamilton Sundstrand Corporation, One Hamilton Road, Mail Stop 1A–3–C63, Windsor Locks, CT 06096–1010; or Hamilton Standard Division, United Technologies Corporation, One Hamilton Road, Mail Stop 1A–3–C63, Windsor Locks, CT 06096–1010; phone: 877–808–7575; fax: 860–660–0372; email: *tech.solutions@hs.utc.com;* Internet: *http://myhs.hamiltonsundstrand.com.* You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7125.

(j) Material Incorporated by Reference

None.

Issued in Burlington, Massachusetts, on August 2, 2013.

Carlos A. Pestana,

Acting Assistant Directorate Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2013–19649 Filed 8–9–13; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0472; Directorate Identifier 98–CE–097–AD; Amendment 39–17538; AD 99–07–10 R1]

RIN 2120–AA64

Airworthiness Directives; PIAGGIO AERO INDUSTRIES S.p.A Airplanes

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

ACTION: Final rule; rescission.

SUMMARY: We are rescinding an airworthiness directive (AD) for PIAGGIO AERO INDUSTRIES S.p.A. Model P–180 airplanes. The rescinded AD resulted from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as partial detachment of the inner protective film of the composite nacelles. Since issuance of the rescinded AD, we have determined that the unsafe condition does not exist or is not likely to develop on affected type design airplanes.

DATES: This AD is effective September 19, 2013.

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

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by rescinding AD 99–07–10 (64 FR 14824, March 29, 1999) that applied to the specified products. The NPRM was published in the **Federal Register** on May 30, 2013 (78 FR 32363).

On March 18, 1999, we issued AD 99–07–10, Amendment 39–11095 (64 FR 14824, March 29, 1999), with an effective date of May 10, 1999. The AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 99–07–10, Amendment 39–11095 (64 FR 14824, March 29, 1999), the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD Cancellation Notice No.: 2013–0085–CN, dated April 8, 2013, which cancelled Ente Nazionale per l'Aviazione Civile (ENAC) (the airworthiness authority for Italy) AD No. 98–208, dated June 9, 1998. Italian AD No. 98–208 required the inspections and corrective actions of Piaggio Service Bulletin (Mandatory) No.: SB–80–0101, Original Issue: May 6, 1998. AD 99–07–10, Amendment 39–11095 (64 FR 14824, March 29, 1999), is the result of mandatory continuing airworthiness information (MCAI) issued by ENAC.

We have been notified that since 2000, all nacelles for PIAGGIO AERO INDUSTRIES S.p.A Model P–180 airplanes have been manufactured by a different supplier, and no new occurrences of film detachment have been reported on earlier manufactured airplanes. Therefore, nacelle inner panel protective film detachment is no longer considered probable. Consequently, PIAGGIO AERO INDUSTRIES S.p.A. issued Mandatory Service Bulletin No. SB 80–0101, Rev. N. ZZ, dated February 19, 2013, to cancel the previous revision of this service bulletin.

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: AD Cancellation Notice No.: 2013–0085–CN, dated April 8, 2013, and Ente Nazionale per l'Aviazione Civile (ENAC) AD No. 98–208, dated June 9, 1998, for related information; both may be found in the AD docket on the Internet at *http://www.regulations.gov.* You may also refer to Piaggio Service Bulletin (Mandatory) No.: SB 80 0101, Original Issue: May 6, 1998, for related information. For service information related to this AD, contact Piaggio Aero Industries S.p.A Airworthiness Office; Via Luigi Cibrario, 4–16154 Genova–Italy; telephone: +39 010 6481353; fax: +39 010 6481881; email: *airworthiness@piaggioaero.it;* Internet: *www.piaggioaero.com/#/en/after-sales/service-support.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (78 FR 32363, May 30, 2013).

Conclusion

We reviewed the relevant data and determined that rescinding the AD will not affect air safety and will reduce the burden on the public. We will rescind the AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (78 FR 32363, May 30, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 32363, May 30, 2013).

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 this regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing AD 99–07–10, Amendment 39–11095 (64 FR 14824, March 29, 1999), and adding the following new AD:

AD 99–07–10 R1 PIAGGIO AERO INDUSTRIES S.p.A: Amendment 39–17538; Docket No. FAA–2013–0472; Directorate Identifier 98–CE–097–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective September 19, 2013.

(b) Affected ADs

This AD rescinds AD 99–07–10, Amendment 39–11095 (64 FR 14824, March 29, 1999).

(c) Applicability

This AD applies to PIAGGIO AERO INDUSTRIES S.p.A Model P–180 airplanes, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 54; Nacelles/Pylons.

Issued in Kansas City, Missouri, on July 25, 2013.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–19816 Filed 8–14–13; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 39

RIN 3038–AC98

Enhanced Risk Management Standards for Systemically Important Derivatives Clearing Organizations

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is adopting final regulations to implement enhanced risk management standards for systemically important derivatives clearing organizations that include increased financial resources requirements for systemically important derivatives clearing organizations that are involved in activities with a more complex risk profile or that are systemically important in multiple jurisdictions, the prohibited use of assessments by systemically important derivatives clearing organizations in calculating their available default resources, and enhanced system safeguards for systemically important derivatives clearing organizations for business continuity and disaster recovery (''BC–DR''). This final rule also implements special enforcement authority over systemically important derivatives clearing organizations granted to the Commission under section 807(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'').

DATES: The rules will become effective October 15, 2013. Systemically important derivatives clearing organizations must comply with § 39.29 and § 39.30 no later than December 31, 2013.

FOR FURTHER INFORMATION CONTACT: Ananda Radhakrishnan, Director, 202–418–5188, *aradhakrishnan@cftc.gov,* Robert B. Wasserman, Chief Counsel, 202–418–5092, *rwasserman@cftc.gov,* M. Laura Astrada, Associate Chief Counsel, 202–418–7622, *lastrada@cftc.gov,* or Tracey Wingate, Special Counsel, 202–418–5319, *twingate@cftc.gov,* Division of Clearing and Risk, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

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I. Background

A. Core Principles for DCOs

On July 21, 2010, President Obama signed the Dodd-Frank Act.[1] Title VII of the Dodd-Frank Act, entitled the ''Wall Street Transparency and Accountability Act of 2010,'' [2] amended the Commodity Exchange Act (''CEA'' or the ''Act'') [3] to establish a comprehensive regulatory framework for over-the-counter (''OTC'') derivatives, including swaps. The legislation was enacted to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers and major swap participants; (2) imposing mandatory clearing and trade execution requirements on clearable swap contracts; (3) creating rigorous recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to, among others, all registered entities and intermediaries subject to the Commission's oversight.

Section 725(c) of the Dodd-Frank Act amended section 5b(c)(2) of the CEA, which sets forth core principles that a derivatives clearing organization (''DCO'') must comply with to register and maintain registration with the Commission. The core principles were originally added to the CEA by the Commodity Futures Modernization Act of 2000 (''CFMA''),[4] and in 2001, the Commission issued guidance on DCO compliance with these core principles.[5] However, in furtherance of the goals of the Dodd-Frank Act to reduce risk, increase transparency, and promote market integrity, the Commission, pursuant to the Commission's enhanced rulemaking authority,[6] withdrew the 2001 guidance and adopted regulations establishing standards for compliance with the DCO core principles.[7]

As noted in the preamble to the adopting release for subparts A and B of part 39 of the Commission's regulations, the regulations that implement the DCO core principles, the Commission sought to provide legal certainty for market participants, strengthen the risk management practices of DCOs, and increase overall confidence in the financial system by assuring the public that DCOs are meeting minimum risk management standards.[8] These risk management standards include, in part:

(1) With respect to financial resources, (a) Core Principle B, which requires DCOs to have ''adequate financial, operational, and managerial resources, as determined by the Commission, to discharge each responsibility of the [DCO],'' [9] and (b) Commission regulation 39.11, which requires a DCO to maintain sufficient financial resources to meet its financial obligations to its clearing members notwithstanding a default by the clearing member creating the largest financial exposure for the DCO in extreme but plausible market conditions,[10] and permits the inclusion of assessment powers to meet a limited portion of the DCO's default resources requirement; [11] and

(2) with respect to business continuity, (a) Core Principle I, which requires DCOs to ''establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allows for (I) the timely recovery and resumption of operations of the [DCO], and (II) the fulfillment of each obligation and responsibility of the [DCO],'' [12] and (b) Commission regulation 39.18, which requires a DCO to maintain a BC–DR plan, emergency procedures, and physical, technological, and personnel resources sufficient to enable the DCO to resume daily processing, clearing, and settlement no later than the next business day following the disruption of its operations.[13]

B. Designation of Systemically Important Derivatives Clearing Organizations Under Title VIII of the Dodd-Frank Act

Title VIII of the Dodd-Frank Act, entitled ''Payment, Clearing, and Settlement Supervision Act of 2010,'' [14]

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[1] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov/ucm/groups/public/@swaps/documents/file/hr4173_enrolledbill.pdf.*

[2] Section 701 of the Dodd-Frank Act.

[3] 7 U.S.C. 1 *et seq.*

[4] *See* Commodity Futures Modernization Act of 2000, Public Law 106–554, 114 Stat. 2763 (2000).

[5] *See* A New Regulatory Framework for Clearing Organizations, 66 FR 45604 (Aug. 29, 2001) (final rule) (adopting 17 CFR part 39, app. A).

[6] *See* section 725(c) of the Dodd-Frank Act (explicitly giving the Commission authority to promulgate rules regarding the core principles pursuant to its rulemaking authority under section 8a(5) of the CEA, 7 U.S.C. 12a(5)).

[7] *See* Derivatives Clearing Organization General Provisions and Core Principles, 76 FR 69334 (Nov. 8, 2011) (final rule).

[8] *Id.* at 69335.

[9] Core Principle B also expressly requires DCOs to ''possess financial resources that, *at a minimum,* exceed the total amount that would (I) enable the organization to meet its financial obligations to its members and participants notwithstanding a default by the member or participant creating the largest financial exposure for that organization in extreme but plausible market conditions; and (II) enable the [DCO] to cover operating costs of the [DCO] for a period of 1 year (as calculated on a rolling basis).'' Section 5b(c)(2)(B) of the CEA, 7 U.S.C. 7a–1(c)(2)(B) (emphasis added).

[10] 17 CFR 39.11(a)(1) (implementing Core Principle B pertaining to financial resources).

[11] *See* 17 CFR 39.11(d)(2)(iii) (requiring a DCO to apply a 30 percent haircut to the value of potential assessments); *see also* 17 CFR 39.11(d)(2)(iv) (permitting a DCO to count the value of assessments, after the 30 percent haircut, to meet up to 20 percent of its default obligations).

[12] Core Principle I also requires DCOs to ''establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk through the development of appropriate controls and procedures, and automated systems, that are reliable, secure, and have adequate scalable capacity,'' and ''periodically conduct tests to verify that the backup resources of the [DCO] are sufficient to ensure daily processing, clearing, and settlement.'' Section 5b(c)(2)(I) of the CEA, 7 U.S.C. 7a–1(c)(2)(I).

[13] 17 CFR 39.18(e)(3) (implementing Core Principle I pertaining to system safeguards).

[14] Section 801 of the Dodd-Frank Act.

was enacted to mitigate systemic risk in the financial system and promote financial stability.[15] Section 804 of the Dodd-Frank Act requires the Financial Stability Oversight Council (''Council'') [16] to designate those financial market utilities (''FMUs'') that the Council determines are, or are likely to become, systemically important.[17] An FMU includes ''any person that manages or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the person.'' [18] As noted by the Council,

FMUs form a critical part of the nation's financial infrastructure. They exist in many markets to support and facilitate the transfer, clearing or settlement of financial transactions, and their smooth operation is integral to the soundness of the financial system and the overall economy. However, their function and interconnectedness also concentrate a considerable amount of risk in the financial system due, in large part, to the interdependencies, either directly through operational, contractual or affiliation linkages, or indirectly through payment, clearing, and settlement processes. In other words, problems at one FMU could trigger significant liquidity and credit disruptions at other FMUs or financial institutions.[19]

In determining whether an FMU is systemically important, the Council uses a two-stage designation process, applying certain statutory considerations [20] and other metrics to assess, among other things, ''whether possible disruptions [to the functioning of an FMU] are potentially severe, not necessarily in the sense that they themselves might trigger damage to the U.S. economy, but because such disruptions might reduce the ability of financial institutions or markets to perform their normal intermediation functions.'' [21] On July 18, 2012, the Council designated eight FMUs as systemically important under Title VIII.[22] Two of these designated FMUs are CFTC-registered DCOs [23] for which the Commission is the Supervisory Agency.[24] Such designated CFTC-registered DCOs are also known as systemically important derivatives clearing organizations (''SIDCOs'').[25]

C. Standards for SIDCOs Under Title VIII of the Dodd-Frank Act

Section 805 of the Dodd-Frank Act directs the Commission to consider relevant international standards and existing prudential requirements when prescribing risk management standards governing the operations related to payment, clearing, and settlement activities for FMUs that are (1) designated as systemically important by the Council, and (2) engaged in activities for which the Commission is the Supervisory Agency.[26] Under Title VIII, the objectives and principles for these risk management standards are to: (1) Promote risk management; (2) promote safety and soundness; (3) reduce systemic risks; and (4) support the stability of the broader financial system.[27] As outlined in section 805(c), these standards may address such areas as: ''(1) Risk management policies and procedures; (2) margin and collateral requirements; (3) participant or counterparty default policies and procedures; (4) the ability to complete timely clearing and settlement of financial transactions; (5) capital and financial resources requirements for designated [FMUs]; and (6) other areas that are necessary to achieve the objectives and principles in [section 805(b) of the Dodd-Frank Act].''

The Commission has reviewed the risk management standards set forth in part 39 of the Commission's regulations in light of recently promulgated relevant international standards and existing prudential requirements to identify

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[15] Section 802(b) of the Dodd-Frank Act.

[16] The Council was established by section 111 of the Dodd-Frank Act. In general, the Council is tasked with identifying ''risks to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected bank holding companies or nonbank financial companies, or that could arise outside the financial services marketplace,'' promoting ''market discipline, by eliminating expectations on the part of shareholders, creditors, and counterparties of such companies that the Government will shield them from losses in the event of failure,'' and responding ''to emerging threats to the stability of the United States financial system.'' Section 112(a)(1) of the Dodd-Frank Act.

[17] Section 804(a)(1) of the Dodd-Frank Act. The term ''systemically important'' means ''a situation where the failure of or a disruption to the functioning of a financial market utility . . . could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the financial system of the United States.'' Section 803(9) of the Dodd-Frank Act; *see also* Authority to Designate Financial Market Utilities as Systemically Important, 76 FR 44763, 44774 (July 27, 2011) (final rule).

[18] Section 803(6)(A) of the Dodd-Frank Act. In section 803(6)(B) of the Dodd-Frank Act, the term expressly excludes designated contract markets, registered futures associations, swap data repositories, and swap execution facilities registered under the Commodity Exchange Act (7 U.S.C. 1 et seq.), or national securities exchanges, national securities associations, alternative trading systems, security-based swap data repositories, and swap execution facilities registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), solely by reason of their providing facilities for comparison of data respecting the terms of settlement of securities or futures transactions effected on such exchange or by means of any electronic system operated or controlled by such entities, provided that the exclusions in this clause apply only with respect to the activities that require the entity to be so registered; and any broker, dealer, transfer agent, or investment company, or any futures commission merchant, introducing broker, commodity trading advisor, or commodity pool operator, solely by reason of functions performed by such institution as part of brokerage, dealing, transfer agency, or investment company activities, or solely by reason of acting on behalf of a financial market utility or a participant therein in connection with the furnishing by the financial market utility of services to its participants or the use of services of the financial market utility by its participants, provided that services performed by such institution do not constitute critical risk management or processing functions of the financial market utility.

[19] 76 FR at 44763.

[20] Under section 804(a)(2) of the Dodd-Frank Act, in determining whether an FMU is or is likely to become systemically important, the Council must take into consideration the following: (A) The aggregate monetary value of transactions processed by the FMU; (B) the aggregate exposure of an FMU to its counterparties; (C) the relationship, interdependencies, or other interactions of the FMU with other FMUs or payment, clearing, or settlement activities; (D) the effect that the failure of or a disruption to the FMU would have on critical markets, financial institutions, or the broader financial system; and (E) any other factors the Council deems appropriate.

[21] 76 FR at 44766.

[22] *See* Press Release, Financial Stability Oversight Council, Financial Stability Oversight Council Makes First Designations in Effort to Protect Against Future Financial Crises (July 18, 2012), available at *http://www.treasury.gov/press-center/press-releases/Pages/tg1645.aspx.*

[23] Chicago Mercantile Exchange, Inc. (''CME'') and ICE Clear Credit LLC (''ICE Clear Credit'') are the CFTC-registered DCOs that were designated systemically important by the Council, for which CFTC is the Supervisory Agency. While The Options Clearing Corporation (''OCC''), a CFTC-registered DCO, was designated systemically important by the Council, the Securities and Exchange Commission (''SEC'') serves as OCC's Supervisory Agency.

[24] *See* section 803(8)(A) of the Dodd-Frank Act (defining ''Supervisory Agency'' as ''the Federal agency that has primary jurisdiction over a designated [FMU] under Federal banking, securities, or commodity futures laws'').

[25] Specifically, under Commission regulations, a systemically important derivatives clearing organization is a ''financial market utility that is a derivatives clearing organization registered under Section 5b of the Act, which has been designated by the Financial Stability Oversight Council to be systemically important and for which the Commission acts as the Supervisory Agency pursuant to Section 803(8) of the [Dodd-Frank Act].'' *See* 17 CFR 39.2.

[26] *See* section 805(a)(2) of the Dodd-Frank Act. The Commission notes that it also has the authority to prescribe risk management standards governing the operations related to payment, clearing, and settlement activities for FMUs that are designated as systemically important by the Council and that are engaged in activities for which the Commission is the appropriate financial regulator. Furthermore, section 805 establishes a review mechanism by which the Council may intervene if the Board of Governors of the Federal Reserve System (the ''Board'') determines that the existing risk management standards set by the Commission ''are insufficient to prevent or mitigate significant liquidity, credit, operational, or other risks to the financial markets or to the financial stability of the United States.'' Section 805(a)(2)(B) of the Dodd-Frank Act.

[27] Section 805(b) of the Dodd-Frank Act.

those areas in which additional risk management standards for SIDCOs would be necessary and appropriate.

D. Principles for Financial Market Infrastructures

1. Overview

The Commission has determined that the international standards most relevant to the risk management of SIDCOs, for purposes of meeting the Commission's obligation pursuant to section 805(a)(2)(A) of the Dodd-Frank Act, are the Principles for Financial Market Infrastructures (''PFMIs''), which were developed by the Bank for International Settlements' Committee on Payment and Settlement Systems (''CPSS'') and the Technical Committee of the International Organization of Securities Commissions (''IOSCO'') (collectively, ''CPSS–IOSCO'').[28] The Commission notes that the adoption and implementation of the PFMIs by numerous foreign jurisdictions highlights the role these principles play in creating a global, unified set of international risk management standards for central counterparties (''CCPs'').[29] Moreover, the Commission, which is a member of the Board of IOSCO, is working towards implementing rules and regulations that are fully consistent with the PFMIs by the end of 2013.[30]

The PFMIs establish international risk management standards for financial market infrastructures (''FMIs''), including CCPs, that facilitate clearing and settlement.[31] In February 2010, CPSS–IOSCO launched a review of the existing sets of international standards for FMIs in support of a broader effort by the Financial Stability Board (''FSB'') [32] to strengthen core financial infrastructures and markets by ensuring that gaps in international standards are identified and addressed.[33] CPSS–IOSCO endeavored to incorporate in its review process lessons from the 2008 financial crisis and the experience of using the existing international standards, as well as policy and analytical work by other international committees including the Basel Committee on Banking Supervision (''BCBS'').[34] The PFMIs replace CPSS–IOSCO's previous recommendations applicable to CCPs.[35] In issuing the PFMIs, CPSS–IOSCO sought to strengthen and harmonize existing international standards and incorporate new specifications for CCPs clearing OTC derivatives.[36] The stated objectives of the PFMIs are to enhance the safety and efficiency of FMIs and, more broadly, reduce systemic risk and foster transparency and financial stability.[37]

The PFMIs set out 24 principles addressing various risk components of an FMI's operations, including, as most relevant to this final rule, credit and operational risk.[38]

2. Principle 4: Credit Risk

Principle 4 addresses the risk that a counterparty to the CCP will be unable to fully meet its financial obligations when due.[39] Specifically, Principle 4 states that a ''CCP should cover its current and potential future exposures to each participant fully with a high degree of confidence using margin and other prefunded financial resources.'' [40] Additionally, Principle 4 provides that a CCP involved in activities with a more complex risk profile [41] or that is systemically important in multiple jurisdictions should maintain additional financial resources sufficient to cover a wide range of potential stress scenarios, including, but not limited to, the default of the two participants and their affiliates that would potentially cause the largest aggregate credit exposure to the CCP in extreme but plausible market conditions.[42]

[28] *See* Bank for International Settlements' Committee on Payment and Settlement Systems and Technical Committee of the International Organization of Securities Commissions, ''Principles for Financial Market Infrastructures,'' (April 2012), available at *http://www.iosco.org/library/pubdocs/pdf/IOSCOPD377.pdf; see also* Financial Stability Board, ''OTC Derivatives Market Reforms: Third Progress Report on Implementation,'' (June 15, 2012), available at *http://www.financialstabilityboard.org/publications/r_120615.pdf* (noting publication of the PFMIs as achieving ''an important milestone in the global development of a sound basis for central clearing of all standardised OTC derivatives'').

[29] In Asia, Singapore has adopted the PFMIs into its financial regulations pertaining to FMIs. *See* Monetary Authority of Singapore, ''Supervision of Financial Market Infrastructures in Singapore,'' (January 2013), available at *http://www.mas.gov.sg/~/media/MAS/About%20MAS/Monographs%20and%20information%20papers/MAS Monograph_Supervision_of_Financial_Market_Infrastructures_in_Singapore%202.pdf.* In addition, Australia, Canada and the European Union have publicly indicated their intent to adopt the PFMIs. *See* Reserve Bank of Australia, ''Consultation on New Financial Stability Standards,'' (August 2012), available at *http://www.rba.gov.au/payments-system/clearing-settlement/consultations/201208-new-fin-stability-standards/index.html;* Canadian Securities Administrators Consultation Paper 91–406 ''Derivatives: OTC Central Counterparty Clearing,'' (June 20, 2012), available at *http://www.osc.gov.on.ca/documents/en/Securities-Category9/csa_20120620_91-406_counterparty-clearing.pdf;* and Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC Derivatives, Central Counterparties and Trade Repositories, preamble paragraph 90, 2012 O.J. (L 201), available at *http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:201:FULL:EN:PDF.*

In the United States, the SEC adopted a final rule that incorporates heightened risk management standards for CCPs that clear security-based swaps, based on, in part, the PFMIs' ''cover two'' standard for CCPs engaged in a more complex risk profile or that are systemically important in multiple jurisdictions. *See* 17 CFR 240.17Ad–22(b)(3) (2013) (requiring, in relevant part, SEC-registered clearing agencies (*i.e.,* CCPs) to maintain sufficient financial resources to withstand, at a minimum, a default by the participant family to which they have the largest exposure in extreme but plausible conditions, provided that a security-based swap clearing agency, (*i.e.,* a CCP that clears security-based swaps) shall maintain sufficient financial resources to withstand, at a minimum, a default by the two participant families to which it has the largest exposure in extreme but plausible market conditions).

[30] Part 39 of the Commission's regulations was informed by the consultative report for the PFMIs and incorporates the vast majority of the standards set forth in the PFMIs. *See* Financial Resources Requirements for Derivatives Clearing Organizations, 75 FR 63113 (Oct. 14, 2010); Risk Management Requirements for Derivatives Clearing Organizations, 76 FR 3698 (Jan. 20, 2011); *see also* Bank for International Settlements' Committee on Payment and Settlement Systems and Technical Committee of the International Organization of Securities Commissions, ''Principles for Financial Market Infrastructures: Consultative Report,'' (March 2011), available at *http://www.iosco.org/library/pubdocs/pdf/IOSCOPD350.pdf* (''CPSS–IOSCO Consultative Report'').

[31] The PFMIs define a ''financial market infrastructure'' as a ''multilateral system among participating institutions, including the operator of the system, used for the purposes of clearing, settling, or recording payments, securities, derivatives, or other financial transactions.'' *See* PFMIs, Introduction, 1.8.

[32] The FSB is an international organization that coordinates with national financial authorities and international policy organizations to develop and promote effective regulatory, supervisory, and other financial sector policies. *See generally http://www.financialstabilityboard.org.*

[33] PFMIs, Background, 1.6.

[34] *Id.*

[35] The international standards for FMIs, prior to the publication of the PFMIs, included the ''Recommendations for Securities Settlement Systems'' published by CPSS in 2001, the ''Core Principles for Systemically Important Payment Systems'' published by CPSS–IOSCO in 2001, and the ''Recommendations for Central Counterparties'' published by CPSS–IOSCO in 2004 (collectively the ''CPSS–IOSCO Principles and Recommendations''). *See* PFMIs, Background, 1.4 and 1.5.

[36] *Id.* at Introduction, 1.2.

[37] *Id.* at Background, 1.15.

[38] Pursuant to the PFMIs, key risks faced by FMIs include legal, credit, liquidity, general business, custody, investment, and operational risks. *See id.* at Overview of Key Risks in Financial Market Infrastructures, 2.1.

[39] The PFMIs define ''credit risk'' as the ''risk that a counterparty, whether a participant or other entity, will be unable to meet fully its financial obligations when due, or at any time in the future.'' *Id.* at Annex H: Glossary.

[40] *Id.* at Principle 4: Credit Risk, Key Consideration 4.

[41] Such activities ''with a more complex risk profile'' include clearing financial instruments that are characterized by discrete jump-to-default price changes or that are highly correlated with potential participant defaults. *Id.* at Principle 4: Credit Risk, Explanatory Note 3.4.19.

[42] *Id.* at Principle 4: Credit Risk. Financial resources sufficient to cover the default of the two participants and their affiliates creating the largest credit exposure in extreme but plausible circumstances are sometimes referred to as cover

More generally, Principle 4 states that all FMIs should establish explicit rules and procedures to address any credit losses they may face as a result of an individual or combined default among its participants with respect to any of their obligations to the FMI.[43] These rules and procedures should also address how potentially uncovered credit losses would be allocated, how the funds an FMI may borrow from liquidity providers would be repaid, and how an FMI would replenish the financial resources used during a stress event, such as a default, so that the FMI can continue to operate in a safe and sound manner.[44]

3. Principle 17: Operational Risk

Principle 17 addresses the risk of deficiencies in information systems or internal processes, human errors, management failures, or disruptions from external events that will result in the reduction or deterioration of services provided by the FMI.[45] Principle 17 states that ''[b]usiness continuity management should aim for timely recovery of operations and fulfilment [sic] of the FMI's obligations, including in the event of a wide-scale or major disruption.'' [46] Additionally, an FMI's business continuity plan ''should incorporate the use of a secondary site and should be designed to ensure that critical information technology (IT) systems can resume operations within two hours following disruptive events.'' [47]

4. The Role of the PFMIs in International Banking Standards

Where a CCP is prudentially supervised in a jurisdiction that does not have domestic rules and regulations that are consistent with the PFMIs, the implementation of certain international banking regulations will have significant cost implications for that CCP and its market participants.

In July 2012, the BCBS,[48] the international body that sets standards for the regulation of banks, published the ''Capital Requirements for Bank Exposures to Central Counterparties'' (''Basel CCP Capital Requirements''), which sets forth interim rules governing the capital charges arising from bank exposures to CCPs related to OTC derivatives, exchange-traded derivatives, and securities financing transactions.[49] The Basel CCP Capital Requirements create financial incentives for banks [50] to clear financial derivatives with CCPs that are licensed in a jurisdiction where the relevant regulator has adopted rules or regulations that are consistent with the PFMIs. Specifically, the Basel CCP Capital Requirements introduce new capital charges based on counterparty risk for banks conducting financial derivatives transactions through a CCP.[51] These new capital charges relate to a bank's trade exposure and default fund exposure to a CCP.[52]

The capital charges for trade exposure are based upon a function that multiplies exposure by risk weight. Risk weight is a measure that represents the likelihood that the loss to which the bank is exposed will be incurred, and the extent of that loss. The risk weight assigned under the BCBS standards varies significantly depending on whether or not the counterparty is a ''qualified'' CCP (''QCCP'').[53] A ''QCCP'' is defined as an entity that (1) is licensed to operate as a CCP, and is permitted by the appropriate regulator to operate as such, and (2) is prudentially supervised in a jurisdiction where the relevant regulator has established and publicly indicated that it applies to the CCP on an ongoing basis, domestic rules and regulations that are consistent with the PFMIs.[54] If a bank transacts through a QCCP acting either as (1) a clearing member of a CCP for its own account or for clients,[55] or (2) a client of a clearing member that enters into an OTC derivatives transaction with the clearing member acting as a financial intermediary, then the risk weight is 2 percent for purposes of calculating the counterparty risk.[56] If

two. All other CCPs, under the PFMIs, are required to maintain financial resources sufficient to cover a wide range of potential stress scenarios, which includes, but is not limited to, the default of the participant and its affiliates that would potentially cause the largest aggregate credit exposure to the CCP in extreme but plausible market conditions, otherwise known as ''cover one.'' *Id.*

[43] *Id.* at Principle 4: Credit Risk, Key Consideration 7.

[44] *Id.*

[45] *Id.* at Overview of Key Risks in Financial Market Infrastructures, 2.9.

[46] *Id.* at Principle 17: Operational Risk.

[47] *Id.* at Key Consideration 6.

[48] The BCBS is comprised of senior representatives of bank supervisory authorities and central banks from around the world, including Argentina, Australia, Belgium, Brazil, Canada, China, France, Germany, Hong Kong SAR, India, Indonesia, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, Russia, Saudi Arabia, Singapore, South Africa, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. *See* Bank for International Settlements' Basel Committee on Banking Supervision, ''Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems,'' (December 2010; revised June 2011), available at *http://www.bis.org/publ/bcbs189.htm* (''Basel III: A Global Regulatory Framework'').

[49] *See* Bank for International Settlements' Basel Committee on Banking Supervision, ''Capital Requirements for Bank Exposures to Central Counterparties,'' (July 2012), available at *www.bis.org/publ/bcbs227.pdf* (''Basel CCP Capital Requirements''). The Basel CCP Capital Requirements are one component of Basel III, a framework that is part of ''a comprehensive set of reform measures, developed by the [BCBS], to strengthen the regulation, supervision and risk management of the banking sector.'' *See* Bank for International Settlements' Web site for a compilation of documents that form the regulatory framework of Basel III, available at *http://www.bis.org/bcbs/basel3.htm.*

[50] ''Bank'' is defined in accordance with the Basel framework to mean bank, banking group, or other entity (*i.e.,* bank holding company) whose capital is being measured. *See* Basel III: A Global Regulatory Framework, Definition of Capital, paragraph 51, at 12. The term ''bank,'' as used herein, also includes subsidiaries and affiliates of the banking group or other entity. The Commission notes that a bank may be a client and/or a clearing member of a SIDCO.

[51] *See* Basel CCP Capital Requirements, Annex 4, section II, 6(i).

[52] ''Trade exposure'' is a measure of the amount of loss a bank is exposed to based on the size of its position, given a CCP's failure. Under the Basel CCP Capital Requirements, ''trade exposure'' is defined to include the current and potential future exposure of a bank acting as either a clearing member or a client to a CCP arising from OTC derivatives, exchange traded derivatives transactions, or securities financing transactions, as well as initial margin. *See* Basel CCP Capital Requirements, Annex 4, section I, A: General Terms. ''Current exposure'' includes variation margin that is owed by the CCP but not yet been received by the clearing member or client. *Id.* at n. 2. ''Default fund exposure'' is a measure of the loss a bank acting as a clearing member is exposed to arising from the use of its contributions to the CCP's mutualized default fund resources. *See* Basel CCP Capital Requirements, Annex 4, section I, A: General Terms. BIS defines ''potential future exposure'' as ''the additional exposure that a counterparty might potentially assume during the life of a contract or set of contracts beyond the current replacement cost of the contract or set of contracts.'' *See* Bank for International Settlements' Committee on Payment and Settlement Systems, ''A Glossary of Terms Used in Payment and Settlement Systems,'' (March 2003), available at *http://www.bis.org/publ/cpss00b.pdf.*

[53] *See id.* at Annex 4, section IX., Exposures to Qualifying CCPs, paragraphs 110–119 (describing the methodology for calculating a bank's trade exposure to a qualified CCP); *see also id.* at paragraph 126 (describing the methodology for calculating a bank's trade exposure to a non-qualifying CCP).

[54] *Id.* at section I, A: General Terms.

[55] The term ''client'' as used herein refers to a customer of a bank.

[56] *Id.* at section IX: Central Counterparties, paragraphs 110 and 114. Client trade exposures are risk-weighted at 2 percent if the following two conditions are met: (1) the offsetting transactions are identified by the CCP as client transactions and collateral to support them is held by the CCP and/or clearing member, as applicable, under arrangements that prevent losses to the client due to the default or insolvency of the clearing member, or the clearing member's other clients, or the joint default or insolvency of the clearing member and any of its other clients, and (2) relevant laws, regulations, contractual or administrative arrangements provide that the offsetting transactions with the defaulted or insolvent clearing member are highly likely to continue to be indirectly transacted through the CCP, or by the CCP, should the clearing member default or become insolvent. However, in certain circumstances, risk weight may increase. Specifically, if the first condition is not met (*i.e.,* where a client is not protected from losses in the case that the clearing member and another client of the clearing member

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the CCP is non-qualifying, then the risk weight is the same as a bilateral OTC derivative trade and the bank applies the corresponding bilateral risk-weight treatment, which is at least 20 percent if the CCP is a bank, or as high as 100 percent if the CCP is a corporate financial institution.[57]

With respect to default fund exposure, whenever a clearing member bank is required to capitalize for exposures arising from default fund contributions to a QCCP, the clearing member bank may apply one of two methodologies for determining the capital requirement: The risk-sensitive approach, or the 1250 percent risk-weight approach.[58] The risk-sensitive approach considers various factors in determining the risk weight for a bank's default exposure to a QCCP, such as (1) the size and quality of a QCCP's financial resources, (2) the counterparty credit risk exposures of such CCP, and (3) the application of such financial resources via the CCP's loss bearing waterfall in the event one or more clearing members default.[59] The 1250 percent risk-weight approach allows a clearing member bank to apply a 1250 percent risk weight to its default fund exposures to the QCCP, subject to an overall cap of 20 percent on the risk-weighted assets from all trade exposures to the QCCP.[60] In other words, banks with exposures to QCCPs have a cap on their default fund exposure. In contrast, a clearing member bank with exposures to a non-qualified CCP must apply a risk weight of 1250 percent with no cap for default fund exposures.[61]

Thus, the Basel CCP Capital Requirements provide incentives for banks to clear derivatives through CCPs that are QCCPs by setting lower capital charges for exposures arising from derivatives cleared through a QCCP and setting significantly higher capital charges for exposures arising from derivatives cleared through non-qualifying CCPs. The increased capital charges for transactions through non-qualifying CCPs may have significant business and operational implications for U.S. DCOs, particularly SIDCOs that operate internationally and are not QCCPs.[62] Specifically, banks faced with much higher capital charges might transfer their OTC derivatives business away from such SIDCO to a QCCP in order to benefit from the preferential capital charges provided by the Basel CCP Capital Requirements. Alternatively, banks might reduce or discontinue their OTC business altogether. Banks might also pass on to their customers the higher costs of transacting with a non-qualifying DCO as a result of the higher capital treatment. Accordingly, customers using such banks as intermediaries would have an incentive to transfer their business to an intermediary that clears at a QCCP. In short, a SIDCO's failure to be a QCCP may cause it to face a competitive disadvantage retaining members and customers.

As discussed further below in Section VI, the incentives noted in the foregoing paragraph have important implications for the cost and benefit considerations required by section 15(a) of the CEA.

E. Existing Prudential Requirements

In April 2011, a year before the PFMIs were published, the Board proposed regulation HH, which sets forth, in part, risk management standards for those FMUs, for which the Board is the Supervisory Agency, that have been designated systemically important by the Council under Title VIII.[63] The Board, in proposing regulation HH, stated that the risk management standards most relevant to the risk management of FMUs, and the most appropriate basis for setting initial risk management standards under Title VIII, were the then-current international risk management standards set by CPSS–IOSCO's Principles and Recommendations.[64] The Board did note, in both its proposed and final rulemaking, that CPSS–IOSCO intended to update and replace the CPSS–IOSCO Principles and Recommendations with the PFMIs, and the Board anticipated at that time that it would review the PFMIs, consult with other appropriate agencies and the Council, and seek public comment on the adoption of the revised international standards.[65]

F. Risk Management Standards for SIDCOs

As noted above, the CEA specifies certain core principles that all DCOs must comply with in order to register and maintain registration with the Commission. Core Principle B sets out minimum financial resources requirements for all DCOs and expressly states that a DCO must have ''adequate financial, operational, and managerial resources, *as determined by the Commission,* to discharge each responsibility of the DCO.'' [66] Moreover, under Core Principle I, a DCO must have procedures, facilities, and a disaster recovery plan that allow it to, on an emergency basis, have a ''timely recovery and resumption'' of its operations, and fulfill each of its obligations and responsibilities.[67] In light of the statutory language described above, and because the failure of or a disruption to the functioning of a SIDCO could ''create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the financial system of the United States,'' [68] the Commission, in

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jointly default or become jointly insolvent), but the second condition is met, the bank's trade exposure is risk-weighted at 4 percent. If neither condition is met, the bank must capitalize its exposure to the CCP as a bilateral trade. *Id.* at paragraphs 115 and 116.

[57] *See* Bank for International Settlements' Basel Committee on Banking Supervision, ''Consultative Document: Capitalisation of Bank Exposures to Central Counterparties,'' (November 2011; revised July 2012), paragraph 28, available at *http://www.bis.org/publ/bcbs206.pdf* (stating that ''the applicable risk weight [for clearing member trades with a non-qualifying CCP] would be at least 20% (if the CCP is a bank) or 100% (if it is a corporate financial institution according to the definition included in paragraph 272 of the Basel framework, revised by Basel III''); *see also* Basel III: A global regulatory framework for more resilient banks and banking systems (June 2011), paragraph 102, available at *http://www.bis.org/publ/bcbs189.pdf* (revising paragraph 272 of the Basel framework).

[58] *See* Basel CCP Capital Requirements, Annex 4, section IX, paragraphs 121–125. The Commission notes that the 1250 percent risk weight represents the reciprocal of the 8 percent capital ratio, which is the percentage of a bank's capital to its risk-weighted assets (*i.e.,* 1250 percent times 8 percent equals 100 percent).

[59] *Id.* at paragraph 122.

[60] *Id.* at paragraph 125. *See* also Basel CCP Capital Requirements, Annex 4, section IX, paragraphs 125 (explaining that ''More specifically, under [the 1250 percent risk-weight] approach, the Risk Weighted Assets (RWA) for both bank i's trade and default fund exposures to each CCP are equal to: Min {(2% * TEi + 1250% * DFi); (20% * TEi)} where TEi is bank i's trade exposure to the CCP, as measured by the bank according to paragraphs 110 to 112 of this Annex; and DFi is bank i's pre-funded contribution to the CCP's default fund.'').

[61] *Id.* at paragraph 127.

[62] The Commission notes that the failure of SIDCOs to be QCCPs may negatively impact the broader US derivatives market as well. For example, higher clearing costs may result in fewer transactions, and less overall liquidity.

[63] Notice of Proposed Rulemaking for Financial Market Utilities (''Regulation HH''), 76 FR 18445 (April 4, 2011) (Financial Market Utilities) (proposing regulation HH in accordance with section 805 of the Dodd-Frank Act, which directed the Board to establish risk management standards governing the operations related to the payment, clearing, and settlement activities of those FMUs that have been designated as systemically important by the Council for which the Board is the Supervisory Agency. Note, however, that FMUs that are registered as clearing agencies with the SEC under section 17A of the Securities Exchange Act of 1934, or that are registered as DCOs with the CFTC under section 5b of the CEA are expressly exempt from regulation HH.).

[64] *Id.* at 18447.

[65] *Id.* at 18448; *see also* Financial Market Utilities (''Regulation HH''), 77 FR 45907, 45908 (Aug. 2, 2012) (final rule).

[66] Section 5b(c)(2)(B) of the CEA, 7 U.S.C. 7a–1(c)(2)(B) (emphasis added).

[67] Section 5b(c)(2)(I) of the CEA, 7 U.S.C. 7a–1(c)(2)(I).

[68] *See supra* discussion in n.17.

accordance with section 5b(c)(2) of the Act [69] and section 805 of the Dodd-Frank Act,[70] proposed heightened requirements to increase the minimum financial resources requirements for SIDCOs,[71] restrict the use of assessments in meeting such obligations,[72] enhance the system safeguards for SIDCOs,[73] and grant the Commission special enforcement authority over SIDCOs pursuant to section 807 of the Dodd-Frank Act.[74]

First, the Commission proposed to increase the amount of financial resources a SIDCO must maintain in order to comply with Core Principle B and Commission regulation 39.11.[75] Regulation 39.11, in part, (1) requires a DCO to maintain sufficient financial resources to meet its financial obligations to its clearing members notwithstanding a default by the clearing member creating the largest financial exposure for the DCO in extreme but plausible market conditions, provided that if a clearing member controls another clearing member or is under common control with another clearing member, affiliated clearing members shall be deemed to be a single clearing member for the purposes of this provision; [76] and (2) permits a DCO to include the value of potential assessments, subject to a 30 percent haircut, in calculating up to 20 percent of the default resource requirements.[77] For SIDCOs, the Commission proposed a regulation that would require a SIDCO to (1) maintain sufficient financial resources to meet the SIDCO's financial obligations to its clearing members notwithstanding a default by the two clearing members creating the largest combined financial exposure for the SIDCO in extreme but plausible market conditions,[78] and (2) only count the value of assessments, after a 30 percent haircut, to meet up to 20 percent of the resources required to meet obligations arising from a default by the clearing member creating the second largest financial exposure.[79]

In addition to financial resources requirements, the Commission also proposed to improve system safeguards for SIDCOs by enhancing certain BC–DR procedures.[80] Core Principle I requires a DCO to establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allows for the timely recovery and resumption of operations.[81] Pursuant to Commission regulation 39.18, the required recovery time objective would be no later than the next business day.[82] However, because the systemic importance of SIDCOs carries with it a responsibility to be reliably available on a near-continuous basis to fulfill their obligations, the Commission proposed a regulation that would require a SIDCO to have a BC–DR plan with the objective of enabling, and the physical, technological, and personnel resources sufficient to enable, the SIDCO to recover its operations and resume daily processing, clearing, and settlement no later than two hours following the disruption, including a wide-scale disruption.[83]

As part of the Commission's proposed regulations for SIDCOs, the Commission also included special enforcement authority over SIDCOs [84] pursuant to section 807(c) of the Dodd-Frank Act, which would grant the Commission authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (''FDIA'') [85] in the same manner and to the same extent as if the SIDCO were an insured depository institution and the Commission were the appropriate federal banking agency for such insured depository institution.[86]

The Commission requested comments on the proposed regulations,[87] including comments on the potential competitive effects of imposing higher risk standards on SIDCOs as a subset of DCOs.[88] The Commission received thirteen comment letters from the public regarding the proposed SIDCO rules. Several commenters advocated that any new Commission regulations correspond with applicable international standards.[89]

Because efforts to finalize the PFMIs were ongoing, new rules could have put SIDCOs at a competitive disadvantage vis-à-vis foreign CCPs not yet subject to comparable rules, and, at the time, no DCO had been designated as systemically important by the Council, the Commission concluded it would be premature to finalize the SIDCO regulations in the Derivatives Clearing Organization Core Principles adopting release.[90] Instead, the Commission decided, consistent with section 805(a)(1) of the Dodd-Frank Act,[91] to monitor domestic and international developments concerning CCPs and reconsider the proposed SIDCO regulations in light of such developments.[92]

As discussed above, since the final adoption of subparts A and B of part 39 of the Commission's regulations implementing the DCO core principles, there have been significant domestic and international developments, including (1) the publication of the final PFMIs in April 2012,[93] (2) the designation of two registered DCOs for which the Commission is the Supervisory Agency, as systemically important by the Council,[94] and (3) the adoption of the Basel CCP Capital Requirements in July 2012,[95] which provide for significantly less favorable capital treatment for bank exposures to CCPs unless the relevant regulator of the CCP establishes regulations that are consistent with the PFMIs by the end of

[69] Section 5b(c)(2) of the CEA, 7 U.S.C. 7a–1(c)(2).

[70] *See* section 805(a)(2) of the Dodd-Frank Act.

[71] *See* Financial Resources Requirements for Derivatives Clearing Organizations, 75 FR 63113, 63119–63120 (Oct. 14, 2010).

[72] *Id.*

[73] *See* Risk Management Requirements for Derivatives Clearing Organizations, 76 FR 3698, 3726–3727 (Jan. 20, 2011).

[74] *Id.* at 3727.

[75] *See* section 5b(c)(2)(B)(ii)(I) of the CEA, 7 U.S.C. 7a–1(c)(2)(B)(ii)(I); *see also* 75 FR at 63116.

[76] *See* 17 CFR 39.11(a)(1); *see also* 75 FR 63114 (noting that for purposes of determining the largest financial exposure for DCOs under Core Principle B, the treatment of commonly controlled affiliates as a single entity is necessary because the default of one affiliate could have an impact on the ability of the other to meet its financial obligations to the DCO).

[77] 17 CFR 39.11(d)(2)(iii) and (iv).

[78] 75 FR at 63119.

[79] *Id.*

[80] *See* 76 FR at 3726–3727.

[81] *See* section 5(c)(2)(I)(ii)(I) of the CEA, 7 U.S.C. 7a–1(c)(2)(I)(ii)(I).

[82] *See* 17 CFR 39.18(e)(3).

[83] 76 FR at 3726. Chicago Mercantile Exchange Inc. (''CME Clearing'') and ICC, the two existing SIDCOs, must comply with regulation 39.30, including the two-hour recovery time objective requirement, by December 31, 2013. Thereafter, any DCO that is designated as systemically important by the Council for which the Commission is the Supervisory Agency will be required to comply with regulation 39.30 within one year after designation by the Council.

[84] *Id.* at 3727.

[85] *See* 12 U.S.C. 1818 (b)–(n) (granting authority for enforcement powers).

[86] 76 FR at 3727.

[87] The comment period for the proposed rule on Financial Resources Requirements for Derivatives Clearing Organizations, which proposed the increased financial resources requirements for SIDCOs, initially closed on December 13, 2010, but was extended until June 3, 2011. The comment period for the proposed rule on Risk Management Requirements for Derivatives Clearing Organizations, which proposed a two hour recovery time and special enforcement authority, closed on April 25, 2011.

[88] *See* 75 FR at 63117.

[89] *See infra* n. 110 and 125.

[90] *See* 76 FR at 69352 (Derivatives Clearing Organization Core Principles) (final rule).

[91] The Commission notes again that section 805(a)(1) of the Dodd-Frank Act requires the Commission to consider international standards in promulgating risk management rules.

[92] *Id.*

[93] *See supra* n. 28.

[94] *See supra* n. 23, 24.

[95] *See supra* n. 48; *see also* discussion in section I. D. 4.

2013.[96] Given these developments and requests from market participants to harmonize CFTC regulations with the PFMIs,[97] the Commission believes the time is ripe to finalize the previously proposed SIDCO regulations.

II. Regulation 39.29

A. Proposed Regulation 39.29(a)

Regulation 39.29(a), as proposed, would have required SIDCOs to maintain sufficient financial resources to meet financial obligations to its clearing members notwithstanding a default by the two clearing members creating the largest combined financial exposure for the SIDCO in extreme but plausible market conditions.[98]

The Commission received nine comment letters from market participants regarding the specific requirements set forth in proposed regulation 39.29(a).[99] The majority of these commenters expressed concern that heightened requirements for SIDCOs could place them at a competitive disadvantage vis-à-vis other DCOs and foreign CCPs that clear and settle similar OTC derivatives.[100]

Two commenters, Mr. Michael Greenberger and LCH. Clearnet Group Limited (''LCH''), generally supported the proposed financial resources requirements for SIDCOs.[101] ICE Clear Credit LLC (''ICC''), one of the two existing SIDCOs, stated that it currently is in compliance with the proposed cover two requirement and acknowledged ''the importance of clearing houses with more complex risk management requirements maintaining robust financial resources.'' [102] Both the International Swaps and Derivatives Association (''ISDA'') and Americans for Financial Reform (''AFR'') suggested alternative approaches to the proposed cover two requirement for SIDCOs.[103] ISDA encouraged the Commission to consider ''whether the appropriate size of a SIDCO's financial resources should be determined following an assessment by the Commission of the specific risks posed by the relevant SIDCO and the individual products it clears, rather than set to a uniform level that may be either insufficient or overly conservative.'' [104] AFR stated that a SIDCO's minimum financial resources requirements should be based on risk exposure as well as the number of defaults because while in ''a concentrated market, a single default can have great consequence,'' and in ''a more diverse market, the probability of multiple defaults is greater and is a more meaningful scenario.'' [105]

OCC, however, disagreed with the necessity to impose a cover two requirement on all SIDCOs.[106] OCC argued that the Commission should not impose a rigid financial resources requirement on every SIDCO because mandating the default of the two largest clearing members for purposes of calculating the financial resources requirement does not necessarily have a beneficial result in that ''it restricts the ability of a DCO to measure its resources against those contingencies that it deems to be the most likely threats to its liquidity and solvency.'' [107] OCC agreed that all clearing organizations should consider possible simultaneous defaults by multiple clearing members but that the simultaneous defaults of a clearing organization's two largest clearing members, at least in the context of how that might occur within OCC, seem extremely implausible.[108] OCC did state that ''the clearing of OTC derivatives presents unique risk management concerns, and, depending on the particular product and applicable risk management framework, perhaps even heightened concerns that warrant special regulatory treatment.'' [109] Additionally, OCC argued for international consistency on this issue, and encouraged the Commission to follow the PFMIs and ''avoid taking final action on the Proposed Rules prior to receiving greater clarity in terms of the positions and proposals that European and U.K. legislators and regulators and CPSS[-]IOSCO eventually adopt.'' [110]

The Futures Industry Association (''FIA'') and, in its initial comment letter, CME commented that the proposed cover two requirement for SIDCOs could competitively disadvantage SIDCOs in both domestic and international markets.[111] FIA stated that the proposed regulation would create a two-tier system between those DCOs designated as systemically important and those DCOs that are not designated as such.[112] FIA believes that the two-tier system could put SIDCOs ''at a competitive disadvantage to the extent that they need to increase margin or guaranty fund requirements to cover the additional cost of covering the risk of loss resulting from the default of the second largest clearing member.'' [113] In this regard, FIA recommended that the Commission require all DCOs, not just SIDCOs, to maintain sufficient financial resources to withstand the default of the two clearing members creating the largest combined financial exposure for

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[96] *See* Bank for International Settlements' Basel Committee on Banking Supervision, ''Basel III Counterparty Credit Risk and Exposures to Central Counterparties—Frequently Asked Questions,'' (November 2012; revised December 2012), available at *http://www.bis.org/publ/bcbs237.pdf*) (stating that if (1) a CCP regulator has provided a public statement on the status of a CCP (QCCP or non-qualifying), then banks will treat exposures to this CCP accordingly. Otherwise, the bank will determine whether a CCP is qualifying based on the criteria in the definition of a QCCP in Annex 4, Section 1 of the Basel CCP Capital Requirements; (2) during 2013, if a CCP regulator has not yet implemented the PFMIs, but has publicly stated that it is working towards implementing these principles, the CCPs that are regulated by the CCP regulator may be treated as QCCPs. However, a CCP regulator may still declare a specific CCP non-qualifying; and (3) after 2013, if a CCP regulator has yet to implement the PFMIs, then the bank will determine whether a CCP subject to such a CCP regulator's jurisdiction is qualifying on the basis of the criteria outlined in the definition of a QCCP in Annex 4, Section 1 of the Basel CCP Capital Requirements.).

[97] *See, e.g.,* CME Group Inc., letter dated May 3, 2013 (''CME 2013 Letter'') (stating that the PFMIs establish ''more demanding international risk management and related standards for payment, clearing and settlement systems, including central counterparties'' and that in recognition of ''the systemic protections and robustness of designated CCPs who adhere to the PFMIs,'' the Basel CCP Capital Requirements provide ''capital incentives for exposures to such QCCPs relative to non-Qualified CCPs.'' Moreover, the letter states that it ''is important to [Chicago Mercantile Exchange Inc.] to be designated a QCCP . . . in order for [its] market participants to obtain optimal capital treatment for their business at [Chicago Mercantile Exchange Inc. . . .]'').

[98] *See* 75 FR at 63119.

[99] Comments on proposed regulation 39.29(a) include the following: *See* The Options Clearing Corporation, December 10, 2010 letter (''OCC December Letter''); Michael Greenberger, December 10, 2010 letter (''Greenberger Letter''); CME Group Inc., letter dated December 13, 2010 (''CME December Letter''); CME 2013 Letter; International Swaps and Derivatives Association, Inc., letter dated December 10, 2010) (''ISDA Letter''); Americans for Financial Reform, letter dated December 13, 2010 (''AFR Letter''); Futures Industry Association, letter dated December 13, 2010 (''FIA Letter''); LCH. Clearnet Group Limited, letter dated December 10, 2010 (''LCH December Letter''); ICE Clear Credit LLC, letter dated April 26, 2013 (''ICC Letter''). The comment files for each proposed rulemaking can be found on the Commission's Web site at *www.cftc.gov.*

[100] *See* CME December Letter at 7; FIA Letter at 2; LCH December Letter at 1. More broadly, Chris Barnard argued that all DCOs are SIDCOs ''[g]iven their aggregate nature and high levels of interconnectedness.'' *See* Chris Barnard, letter, dated May 10, 2011, (''Barnard Letter'') at 2.

[101] *See* Greenberger Letter at 6; LCH December Letter at 3.

[102] *See* ICC Letter at 2.

[103] *See* ISDA Letter at 8; AFR Letter at 3.

[104] *See* ISDA Letter at 8.

[105] *See* AFR Letter at 3.

[106] *See* OCC December Letter at 2, 5, and 6.

[107] *Id.* at 2. In addition, OCC argued that the proposed regulation did not fully consider the costs associated with meeting the cover two standard nor the risk of driving clearing volume to clearinghouses that are not required to meet the cover two standard. *Id.*

[108] *Id.* at 6.

[109] *Id.* at 5.

[110] *Id.* at 12.

[111] *See* FIA Letter at 2, CME December Letter at 7–8.

[112] *See* FIA Letter at 2.

[113] *Id.*

the DCO in extreme but plausible market conditions.[114]

CME's initial comment letter echoed FIA's approach, arguing that having lower financial resources requirements for DCOs that are not SIDCOs would allow those DCOs to offer lower guaranty fund and margin requirements.[115] According to CME, this ''would likely attract additional volume to at least some non-systemically important DCOs and transform them into *de facto* SIDCOs.'' [116] CME argued that until such time as a ''*de facto* SIDCO'' was designated as systemically important by the Council, SIDCOs would be competitively disadvantaged because the ''de facto SIDCO'' would be operating under the lower and less costly general regulatory standards for DCOs.[117] CME argued that such a result would disregard the objectives of Title VIII.[118] CME suggested that the Commission, in lieu of adopting the proposed regulation, adopt a regulation that subjects SIDCOs to more frequent stress testing (*e.g.,* bi-monthly rather than monthly) and reporting requirements (*e.g.,* monthly rather than quarterly).[119] Following publication of the PFMIs and the Basel CCP Capital Requirements, CME submitted a supplemental comment letter stating that its subsidiary, CME Clearing began offering clearing services for the interest rate swap and credit default swap markets.[120] As a result, CME Clearing has three distinct guaranty funds: one for interest rate swap products (''IRS Guaranty Fund''), one for credit default swap products (''CDS Guaranty Fund''), and one for futures and other cleared OTC products (''Base Guaranty Fund'').[121] Moreover, CME stated that the IRS Guaranty Fund and the CDS Guaranty Fund are already sized to the cover two standard.[122] While CME stated that it is satisfied with the size of the Base Guaranty Fund, which is currently set to meet a cover one standard, CME anticipates that the Commission will promulgate a cover two standard as part of the Commission's implementation of the standards set forth in the PFMIs.[123] As such, CME requested that the Commission ''consider the impact to clearing firms when specifying the timelines associated with compliance with the cover [two] standard and suggests as long a time horizon as possible for implementation,'' with ''an effective date of the end of 2013, or later to the extent practicable to maintain QCCP status in accordance with BCBS 227, which we believe would assist in minimizing the impact to the clearing firm community.'' [124]

Additionally, LCH, which was supportive of the proposal, urged the Commission ''to minimize the divergence'' between U.S.-regulated CCPs and other CCPs and ensure a level playing field between SIDCOs and other large CCPs around the world by conforming as much as possible the Commission's final rules on SIDCOs to the global standards set forth by the PFMIs.[125]

The Commission notes that Core Principle B requires DCOs to have ''adequate financial, operational, and managerial resources, as determined by the Commission, to discharge each responsibility of the DCO.'' [126] Pursuant to Core Principle B, at a minimum, DCOs must be able to meet a cover one requirement. As discussed above, because of the impact that the failure of or a disruption to the operations of a SIDCO could have on the U.S. financial markets, the Commission proposed increased standards for SIDCOs. However, after consideration of the comments, and consistent with the directive in section 805 of the Dodd-Frank Act to consider relevant international standards and existing prudential requirements, the Commission is adopting regulation 39.29(a) with a revision in order to harmonize U.S. regulations with international CCP risk management standards.[127]

Specifically, rather than apply the cover two requirement to all SIDCOs, the revised regulation 39.29(a) would parallel the financial resources standard in Principle 4 of the PFMIs and only require a SIDCO that is systemically important in multiple jurisdictions or that is involved in activities with a more complex risk profile to maintain financial resources sufficient to enable it to meet its financial obligations to its clearing members notwithstanding a default by the two clearing members creating the largest combined financial exposure for the SIDCO in extreme but plausible market conditions, provided that if a clearing member controls another clearing member or is under common control with another clearing member, affiliated clearing members shall be deemed to be a single clearing member for the purposes of this provision.[128]

Thus, regulation 39.29(a) will promote consistency and efficiency in the financial markets by holding SIDCOs to the same cover two standard as similarly situated foreign CCPs. Additionally, because the PFMIs set forth international risk management standards for CCPs, this international harmonization should mitigate some of the competition concerns raised by the commenters. Moreover, adoption of this revised regulation is part of the Commission's broader efforts to adopt and implement regulations that are consistent with the PFMIs so that SIDCOs operating internationally can be considered QCCPs. Such QCCP status should help a SIDCO avoid competitive harm internationally by providing bank clearing members and clients with the opportunity to obtain the more favorable capital charges set forth by the Basel CCP Capital Requirements.[129]

After careful review and consideration of the comments, and in light of international standards and prudential regulations, the Commission is adopting a regulation 39.29(a), as revised, to require the cover two standard for those SIDCOs that are systemically important in multiple jurisdictions or that are involved in activities with a more complex risk profile.

[114] *Id.*

[115] *See* CME December Letter at 7.

[116] *Id.*

[117] *Id.* at 7–8.

[118] *Id.* at 8.

[119] *Id.*

[120] CME 2013 Letter at 2.

[121] CME 2013 Letter at 2–3.

[122] CME 2013 Letter at 3.

[123] *Id.*

[124] *Id.*

[125] *See* LCH December Letter at 1–2 (citing to the Bank for International Settlements' Committee on Payment and Settlement Systems September 2010 report entitled *Market Structure Developments in the Clearing Industry: Implications for Financial Stability* for the opinion that ''regulatory complexity, and with it the potential for regulatory arbitrage, may increase, especially when competing CCPs are regulated by different authorities and/or are located in different jurisdictions.'' *Id.* at 4.

[126] Section 5b(c)(2)(B) of the CEA, 7 U.S.C. 7a–1(c)(2)(B).

[127] The Commission finds the comments arguing for international regulatory consistency to be persuasive and recognizes the importance of harmonizing U.S. regulations with international CCP risk management standards.

[128] *See supra* n. 41, 42. Moreover, the same proviso regarding the treatment of affiliate clearing members as set out in 39.11(a)(1), *i.e.,* that ''if a clearing member controls another clearing member or is under common control with another clearing member, affiliated clearing members shall be deemed to be a single clearing member for the purposes of this provision'' is incorporated in regulation 39.29(a) and is repeated in the rule text for clarity. *See also* 75 FR 63116 (stating that as DCOs, SIDCOs are still subject to Title VII and the regulations thereunder, except to the extent that the Commission proposes higher standards pursuant to Title VIII).

[129] *See supra* section I.D.4. for a more detailed discussion on the role of the PFMIs in international banking. *See also* CME 2013 Letter at 2 (stating that ''it is important to CME [Clearing] to be designated a QCCP . . . in order for [its] market participants to obtain optimal capital treatment for their business at CME [Clearing] . . .'').

B. Proposed Regulation 39.29(b)

Regulation 39.29(b), as proposed, would have precluded SIDCOs from counting the value of assessments in calculating the resources available to meet the obligations arising from a default by the clearing member creating the single largest financial exposure,[130] but would have permitted SIDCOs to count the value of assessments, after a 30 percent haircut, in calculating the resources available to meet up to 20 percent of the obligations arising from a default of the clearing member creating the second largest financial exposure.[131]

The Commission received five comment letters from market participants regarding the specific requirements set forth in proposed regulation 39.29(b).[132] FIA agreed with the Commission's proposed limitation on the use of assessments by SIDCOs, stating that the proposed limitation was reasonable, prudent, and sufficient to ensure that a SIDCO does not unduly rely on its assessment power.[133] In contrast, AFR argued that the use of assessments in calculating the resources available to meet a SIDCO's obligations under proposed regulation 39.29(b) should be prohibited.[134] AFR emphasized that a DCO should be financially viable at all times, regardless of whether it might be able to call on its members to provide additional capital.[135] In addition, ICC, one of the two existing SIDCOs, stated that it does not rely upon its right of assessment to meet the cover two standard [136] and CME, the parent company of the other existing SIDCO, stated that ''each of [CME Clearing's] guaranty funds are pre-funded by the respective clearing members.'' [137] More broadly, Chris Barnard commented that the use of assessments by DCOs may cause pro-cyclical problems and increase systemic risk in times of financial stress.[138]

The Commission recognizes the potential pro-cyclical effects of assessments and agrees that a SIDCO should not be permitted to use the value of assessments in calculating the resources available to meet its obligations under regulation 39.29(a).

''Pro-cyclicality,'' as defined in the PFMIs, refers to ''changes in risk-management practices that are positively correlated with market, business, or credit cycle fluctuations and that may cause or exacerbate financial instability.'' [139] In the context of assessments, a SIDCO's call for additional capital from its clearing members in order to cover any losses in a default scenario (generally needed on an expedited basis) may trigger greater distress on the financial markets, which presumably have already been weakened. In other words, in a stressed market where credit is tightening and margin calls are increased, a SIDCO's assessment of additional claims upon its clearing members may well exacerbate already weakened financial markets by potentially forcing clearing members and/or their customers to deleverage in falling asset markets, which will further drive down asset prices and stifle liquidity, or force clearing members to default in their obligations to the SIDCO. This in turn could start a downward spiral which, combined with restricted credit, might lead to additional defaults of clearing members and/or their customers, and would play a significant role in the destabilization of the financial markets. In striking a balance between the need for SIDCOs to effectively and efficiently use their resources and the mitigation of pro-cyclical behaviors, the Commission believes prefunding default obligations is the appropriate mechanism for SIDCOs to meet their default resource obligations.

As discussed above, Core Principle B requires DCOs to have ''adequate financial, operational, and managerial resources, as determined by the Commission, to discharge each responsibility of the DCO.'' [140] Moreover, the PFMIs require a CCP to use prefunded financial resources to cover current and potential future exposures,[141] which may include initial margin, contributions to a prefunded default arrangement (*e.g.,* a guaranty fund), and a specified portion of the CCP's own funds.[142] In addition, the PFMIs encourage CCPs to address pro-cyclicality in their margin arrangements [143] and state that ''a CCP could consider increasing the size of its prefunded default arrangements to limit the need and likelihood of large or unexpected margin calls in times of market stress.'' [144] Prefunding financial resources requires market participants to pay more during times of relative market stability and low-market volatility through prefunded default arrangement contributions.[145] However, paying more during a period of economic stability or even an upturn may ''result in additional protection and [be] potentially less costly and less disruptive adjustments in periods of high market volatility.'' [146]

The Commission believes the role of a SIDCO, in part, is to add stability and confidence in the financial markets, and to the extent that the prohibition of the inclusion of the value of assessments by SIDCOs in meeting their default resource requirements helps to stem pro-cyclicality and the potential weakening of financial markets, the Commission is in favor of this approach. Moreover, prohibition of the inclusion of the value of assessments will help ensure that a SIDCO has, when needed, adequate resources to discharge each of its responsibilities.

Accordingly, after consideration of the comments, relevant international standards, and existing prudential requirements, the Commission is adopting regulation 39.29(b) with a revision to prohibit the use of assessments by SIDCOs in calculating financial resources available to meet the SIDCO's obligations under regulation 39.29(a).

III. Regulation 39.30

Regulation 39.30(a), as proposed, would have required a SIDCO to have a BC–DR plan, that has the objective of, and the physical, technological, and personnel resources sufficient to, enable the SIDCO to recover operations and resume daily processing, clearing, and settlement no later than two hours following a disruption,[147] including a wide-scale disruption.[148]

[130] *See* 75 FR at 63117. Accordingly, SIDCOs would have to hold a greater percentage of financial resources in margin and guaranty funds. *Id.*

[131] *Id.*

[132] *See* AFR Letter; FIA Letter; Barnard Letter; ICC Letter; CME 2013 Letter.

[133] *See* FIA Letter at 3.

[134] *See* AFR Letter at 3.

[135] *Id.* AFR also argued that DCOs should be prohibited from including assessments in meeting their financial resources requirements as well.

[136] *See* ICC Letter at 2.

[137] *See* CME 2013 Letter at 3, n.7.

[138] *See* Barnard Letter at 2.

[139] *See* PFMIs, Definitions; *see also* Principle 5: Collateral, Explanatory Note 3.5.6; *see also* Bank for International Settlements' Committee on the Global Financial System, ''The Role of Margin Requirements and Haircuts in Procyclicality,'' CGFS Papers No. 36 (March 2010), available at *http://www.bis.org/publ/cgfs36.htm.*

[140] Section 5b(c)(2)(B) of the CEA, 7 U.S.C. 7a–1(c)(2)(B).

[141] *See supra* n. 40 and accompanying text.

[142] *See* PFMIs, Principle 4: Credit Risk, Explanatory Note 3.4.17 (stating that a CCP typically uses a sequence of prefunded financial resources, often referred to as a ''waterfall,'' to manage its losses caused by participant defaults. The waterfall may include a defaulter's initial margin, the defaulter's contribution to a prefunded default arrangement, a specified portion of the CCP's own funds, and other participants' contributions to a prefunded default arrangement).

[143] *Id.* at Principle 6: Margin, Explanatory Note 3.6.10.

[144] *Id.*

[145] *Id.*

[146] *Id.*

[147] *See* 76 FR at 3726.

[148] The following definitions pertaining to system safeguards were codified at 17 CFR 39.18(a):

In order to achieve the specified recovery time objective (''RTO'') in proposed regulation 39.30(a), proposed regulation 39.30(b) would have required SIDCOs to maintain a geographic dispersal of physical, technological, and personnel resources.[149] Pursuant to proposed regulation 39.30(b)(1), physical and technological resources would have to be located outside the relevant area of the infrastructure the entity normally relies upon to conduct activities necessary to the clearance and settlement of existing and new contracts, and the entity could not rely on the same critical transportation, telecommunications, power, water, or other critical infrastructure components the entity normally relies upon for such activities.[150] Additionally, proposed regulation 39.30(b)(2) would have required SIDCOs to maintain personnel sufficient to meet the RTO after interruption of normal clearing by a wide-scale disruption affecting the relevant area, who live and work outside the relevant area.[151] To avoid duplication and maximize flexibility, proposed regulation 39.30(b)(3) [152] provided that SIDCOs could use the outsourcing provisions applicable to non-SIDCO DCOs as set forth in regulation 39.18(f).[153]

Regulation 39.30(c), as proposed, would have required that each SIDCO conduct regular, periodic tests of its BC–DR plans and resources, and of its capacity to achieve the required RTO in the event of a wide-scale disruption.[154] Additionally, proposed regulation 39.30(c) incorporated the provisions of regulation 39.18(j) concerning testing by DCOs, including the purpose of the testing, the conduct of the testing, and reporting and review of the testing.[155]

The Commission received five comment letters regarding the specific requirements set forth in proposed regulation 39.30(a).[156] One commenter stated that the recovery time for its technology systems is currently approximately two hours based upon past disaster recovery tests,[157] and three commenters opposed the two-hour RTO.[158] ICC, one of the two existing SIDCOs, acknowledged ''the importance of maintaining market integrity during disruptive events'' and noted that a two-hour RTO is consistent with Principle 17 of the PFMIs.[159] In addition, ICC stated that the ''two-hour benchmark is unlikely to require [it] to hire additional personnel or to require a different level of cross-training related to its wide-scale disruption plan,'' and that it ''is unlikely that [ICC] will incur any additional backup technology costs related to the CFTC's proposed RTO.[160]

Both Intercontinental Exchange, Inc. (''ICE'') and CME, on the other hand, expressed concern that requiring a more stringent RTO for SIDCOs would impose significant costs.[161] ICE argued that ''assigning an RTO to a SIDCO instead of assigning the objective the RTO is intended to achieve adds significant cost to a SIDCO's business continuity program but does not necessarily increase overall resilience of the financial system.'' [162] ICE and CME also highlighted the approach referenced in the *Interagency Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial System* (the ''Sound Practices Paper''),[163] published in 2003, which argued for a same-business-day RTO with a two-hour RTO as an aspirational goal for clearing and settlement organizations.[164] CME urged the Commission to adopt the same approach as the Sound Practices Paper for SIDCOs, *i.e.,* the same-business-day RTO with a two-hour RTO on a voluntary basis.[165] In addition, CME stated that ''[m]oving to a 2-hour RTO would impose enormous costs on SIDCOs, and the CFTC has provided no cost/benefit analysis in connection with this aspect of the proposed Regulation.'' [166] Nonetheless, in a supplemental comment letter, CME stated that ''in light of the systemic importance of CME [Clearing]'s clearing functions and the intended benefits, including compliance with the PFMI requirements for critical information technology, CME [Clearing] has obtained budget approval and allocated resources towards a two hour RTO and will be working throughout 2013 towards achieving a two hour RTO.'' [167]

OCC commented that, though a laudable goal, a two-hour RTO was not consistently achievable without sacrificing core DCO functions and increasing the risks of error and backlogs.[168] In addition, OCC argued that in its experience, it often takes three hours to fully recover and meet its responsibilities and avoid significant market disruption.[169] OCC also argued that further efforts to reduce RTO would not be cost-effective and could increase rather than decrease reliability risk.[170]

With respect to commenters' concerns that the proposed regulation will significantly increase costs on SIDCOs, the Commission recognizes these concerns but notes that a systemic importance designation under Title VIII means that the failure of a SIDCO to meet its obligations will have a greater impact on the U.S. financial system than the failure of a DCO not so designated. Thus, the Commission believes the financial system has a vested interest in enhancing risk management requirements for SIDCOs to increase a SIDCO's financial resiliency and to

A ''recovery time objective'' is defined as ''the time period within which an entity should be able to achieve recovery and resumption of clearing and settlement of existing and new products, after those capabilities become temporarily inoperable for any reason up to or including a wide-scale disruption.'' A ''wide-scale disruption'' is defined as ''an event that causes a severe disruption or destruction of transportation, telecommunications, power, water, or other critical infrastructure components in a relevant area, or an event that results in an evacuation or unavailability of the population in a relevant area.'' ''Relevant area'' is defined as ''the metropolitan or other geographic area within which a derivatives clearing organization has physical infrastructure or personnel necessary for it to conduct activities necessary to the clearing and settlement of existing and new products. The term 'relevant area' also includes communities economically integrated with, adjacent to, or within normal commuting distance of that metropolitan or other geographic area.''

[149] *See* 76 FR at 3726–3727.

[150] *Id.*

[151] *Id.* at 3727.

[152] *Id.*

[153] *See* 17 CFR 39.18(f) (stating, in relevant part, that a DCO may maintain the resources required under BC–DR procedures enumerated in regulation 39.18(e)(1) by ''either (1) Using its own employees as personnel, and property that it owns, licenses, or leases (own property); or (2) Through written contractual arrangements with another derivatives clearing organization or other service provider (outsourcing).'')

[154] *See* 76 FR at 3727.

[155] *See id; see also* 17 CFR 39.18(j).

[156] Comments on proposed regulation 39.30 include the following: *See* Intercontinental Exchange, Inc. letter dated March 21, 2011 (''ICE Letter''); OCC letter dated March 21, 2011 (''OCC Letter''); CME Group Inc., letter dated March 21, 2011 (''CME March Letter''); ICC Letter; and CME 2013 Letter. The Commission received no comments regarding proposed regulation 39.30(b) or 39.30(c).

[157] *See* ICC Letter at 2.

[158] *See* ICE Letter at 7–8; CME March Letter at 14–15; OCC Letter at 19–20.

[159] ICC Letter at 2.

[160] *Id.*

[161] *See* ICE Letter at 7; CME March Letter at 14.

[162] ICE Letter at 8.

[163] *See* the Federal Reserve Board, the Office of the Comptroller of the Currency and the Securities and Exchange Commission, ''Interagency Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial System'' (the ''Sound Practices Paper''), 68 FR 17809 (April 11, 2003).

[164] *Id.* at 17812 (stating that core clearing and settlement organizations should develop the capacity to recover and resume clearing and settlement activities within the business day on which the disruption occurs with the overall goal of achieving recovery and resumption within two hours after an event).

[165] CME March Letter at 15.

[166] CME March Letter at 14.

[167] CME 2013 Letter at 4 (CME also acknowledges that ''Principle 17 of the PFMIs states that a BC–DR Plan should be designed to ensure that critical information technology systems can resume operations within *two hours* following disruptive events.'') (emphasis added).

[168] OCC Letter at 19.

[169] *Id.*

[170] *Id.*

mitigate the risk of significant liquidity or credit problems spreading among financial institutions or markets, threatening the stability of the U.S. financial system. In the event of a wide-scale disruption, the resiliency of the U.S. financial markets might depend on the rapid recovery of SIDCOs to support critical market functions and thereby allow other market participants (*i.e.,* the counterparties) to process their transactions. In addition, in such a scenario, it is reasonable to assume that there will be other market participants in locations not affected by the disruption that will need to clear and settle pending transactions as well. In short, the failure of a SIDCO to complete core clearing and settlement functions within a rapid period could create systemic liquidity and credit dislocations on a global scale.

Additionally, the Commission notes that while it may be true that a two-hour RTO was an aspirational goal in 2003, standards and technology have advanced in the last ten years. As discussed above, the current international standard for CCPs, as set forth by the PFMIs, is to have a BC–DR plan that incorporates a two-hour RTO.[171] Specifically, the PFMIs state that an FMI's business continuity plan ''should incorporate the use of a secondary site and should be designed to ensure that critical information technology systems can resume operations within two hours following disruptive events.'' [172] Because the two-hour RTO is the international standard and foreign CCPs are anticipated to operate under this timeframe, any competitive disadvantages to SIDCOs in implementing this regulation should be mitigated because all similarly situated CCPs will likely be operating under this standard. Indeed, ICC, one of the two existing SIDCOs, has stated that it is unlikely that it will need to hire additional personnel or incur additional technology costs to meet this standard.[173] Moreover, as discussed above, CME Clearing, the other existing SIDCO, ''has obtained budget approval and allocated resources towards a two hour RTO and will be working throughout 2013 towards achieving a two hour RTO.'' [174]

The Commission believes that enhancing the system safeguard requirements a SIDCO must maintain under Core Principle I will increase stability in the financial markets and is therefore consistent with Title VIII's objectives. Moreover, regulation 39.30(a) will promote regulatory consistency for SIDCOs and similarly situated CCPs because the two-hour RTO is the international standard, under the PFMIs, for CCPs operating in other jurisdictions. As discussed above, the Commission is fully committed to adopting and implementing regulations that are consistent with the PFMIs to ensure that SIDCOs are QCCPs under the Basel CCP Capital Requirements so that banks transacting through SIDCOs can receive preferential capital treatment.[175] Therefore, the Commission is adopting regulation 39.30(a) as proposed.

The Commission did not receive any comments regarding proposed regulations 39.30(b) or 39.30(c). Therefore, for reasons stated in the proposal, the Commission is adopting regulations 39.30(b) and 39.30(c) as proposed.[176] However, to mitigate costs, the Commission notes that regulation 39.30(b) should be interpreted in a manner consistent with the PFMIs, which state ''[a] particular site may be primary for certain functions and secondary for others. It is not intended that an FMI would be required to have numerous separate secondary sites for each of its essential functions.'' [177]

IV. Regulation 39.31

Regulation 39.31 proposed to codify the special enforcement authority granted to the Commission over SIDCOs pursuant to section 807(c) of the Dodd-Frank Act, which states that for purposes of enforcing the provisions of Title VIII of the Dodd-Frank Act, a SIDCO is subject to, and the Commission has authority under, provisions (b) through (n) of section 8 of the FDIA[178] in the same manner and to the same extent as if the SIDCO were an insured depository institution and the Commission were the appropriate Federal banking agency for such insured depository institution.[179] The Commission did not receive any comment letters on this proposed regulation, which tracks the statutory text in section 807 of the Dodd-Frank Act. Therefore, for reasons stated in the proposal, the Commission is adopting regulation 39.31 as proposed.

V. Effective Date and Compliance Dates

For purposes of publication in the Code of Federal Regulations, all of the rules adopted herein will have an effective date of 60 days after publication in the **Federal Register**. The Commission received three comments, however, requesting additional time to come into compliance with these rules. Regarding the compliance date of regulation 39.29, OCC requested that DCOs be afforded a reasonable amount of time to raise ''any material amount of additional resources'' and requested a delayed implementation of two years.[180] CME stated that the financial resources that DCOs are required to maintain will increase dramatically and requested an implementation period of no less than 180 days.[181] Regarding the compliance date of regulation 39.30, the Commission had proposed a compliance date of one year after publication of the final rules or July 12, 2012.[182] OCC commented that this is a short and burdensome deadline that will be difficult to meet and encouraged the Commission to adopt a two-year compliance period for the requirements applicable to SIDCOs.[183] The Commission received no comments regarding regulation 39.31.

Given the mandate to implement these standards, and the necessity of SIDCOs to fulfill their obligations on a near continuous basis, after careful consideration of the comments received, the Commission is extending the compliance date for regulations 39.29 and 39.30 to December 31, 2013.

VI. Consideration of Costs and Benefits

A. Introduction

Section 15(a) requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders.[184]

[171] *See supra* n. 46, 47 (referring to the PFMIs, Principle 17: Operational Risk).

[172] *Id.*

[173] *See supra* n. 160 and accompanying text.

[174] CME 2013 Letter at 4.

[175] *See supra* section I.D.4.

[176] *See* 76 FR at 3726–3727.

[177] *See* PFMIs, Principle 17: Operations Risk.

[178] *See also* 12 U.S.C. 1818(b)–(n) (granting authority for enforcement powers).

[179] 76 FR at 3727. The Commission notes that Title VIII preserved and expanded the CFTC's examination and enforcement authority with respect to designated entities within its jurisdiction. *See* Cong. Rec. 156 S5924–5 (daily ed. July 14, 2010) (statement of Sen. Lincoln that Title VIII ''preserves and expands the CFTC's and SEC's examination and enforcement authorities with respect to designated entities within their respective jurisdictions,'' and that ''the authorities granted in Title VIII are intended to be both additive and complementary to the authorities granted to the CFTC and SEC in Title VII and to those agencies' already existing legal authorities. The authority provided in Title VIII to the CFTC and SEC with respect to designated clearing entities and financial institutions engaged in designated activities would not and is not intended to displace the CFTC's and SEC's regulatory regime that would apply to these institutions or activities.'').

[180] OCC December Letter at 11.

[181] CME December Letter at 8.

[182] *See* 76 FR at 3714.

[183] OCC March Letter at 21.

[184] 7 U.S.C. 19(a).

Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission's cost and benefit considerations in accordance with section 15(a) are discussed below.

B. Background

In this final rulemaking, the Commission is adopting regulations to implement enhanced risk management standards for SIDCOs.[185]

As noted above, consistent with the DCO core principles and section 805 of the Dodd-Frank Act, which requires the Commission to consider relevant international and existing prudential requirements when prescribing risk management standards for SIDCOs, the Commission proposed the following enhanced requirements for SIDCOs:[186]

(1) Regulation 39.29(a) which would require a SIDCO to maintain sufficient resources to meet a ''cover two'' standard in order to comply with Core Principle B;[187] (2) regulation 39.29(b) which would strictly limit the value of assessments that could be used in meeting that requirement;[188] (3) regulation 39.30 which would require a SIDCO to have a BC–DR plan with a two-hour RTO in order to comply with Core Principle I (''two-hour RTO'');[189] and (4) regulation 39.31 which, under section 807(c) of the Dodd-Frank Act, grants the Commission special enforcement authority over SIDCOs.[190]

As also discussed above, after the Commission proposed the SIDCO risk management standards and received comments, the PFMIs were published.[191] The PFMIs establish international risk management standards for FMIs, including CCPs, that facilitate clearing and settlement.[192] The PFMIs also play a significant role in the Basel CCP Capital Requirements, which introduce new capital charges based on counter party risk for banks conducting financial derivatives transactions through a CCP.[193] These capital charges vary significantly depending on whether or not the counterparty is a QCCP, that is, a CCP that is subject to regulations consistent with the PFMIs.[194] Effectively, the Basel CCP Capital Requirements incentivize banks to clear derivatives through QCCPs by setting lower capital charges for exposures arising from derivatives cleared through a QCCP and setting significantly higher capital charges for exposures arising from derivatives cleared through non-qualifying CCPs.[195] As discussed further below, these differences in capital charges are extremely important in considering whether to adopt requirements for SIDCOs, which are consistent with the PFMIs, or requirements that fall short of that standard.

In light of the directive of section 805 of the Dodd-Frank Act to consider relevant international standards and existing prudential requirements when prescribing risk management standards for designated systemically important FMUs, as well as the recent publication of the PFMIs, and public comments on the proposed SIDCO regulations, the Commission has determined it is necessary and appropriate to finalize the proposed enhanced risk management standards for SIDCOs. However, in order to harmonize the proposed regulations with the existing international standards set forth by the PFMIs, as requested by some commenters,[196] the Commission has revised proposed regulation 39.29(a) and 39.29(b). Rather than apply the cover two requirement to all SIDCOs, revised regulation 39.29(a) parallels the financial resources standard in Principle 4 of the PFMIs and only requires a SIDCO that is systemically important in multiple jurisdictions or that is involved in activities with a more complex risk profile to maintain financial resources sufficient to meet the cover two requirement.[197] Revised regulation 39.29(b), which is also consistent with Principle 4 of the PFMIs, prohibits a SIDCO from the use of assessments in calculating its financial resources available to meet the SIDCO's obligations under regulation 39.29(a).[198]

The Commission considered the following alternatives: (1) Not to adopt any of the proposed SIDCO risk management regulations, (2) to adopt the SIDCO risk management regulations only as proposed, or (3) to adopt the proposed SIDCO risk management regulations with revisions consistent with relevant international standards and existing prudential requirements. As detailed above, the Commission has concluded it is necessary and appropriate in this final rulemaking to adopt regulation 39.29, as revised, regulation 39.30, as proposed, and regulation 39.31, as proposed.[199]

In the discussion that follows, the Commission considers the costs and benefits of the final rulemaking in light of the comments it received and section 15(a) of the CEA. As the requirement in regulation 39.31 is imposed by the Dodd-Frank Act, any associated costs and benefits are the result of statutory directives as determined by Congress, not an act of Commission discretion.

For the remaining regulations in this rulemaking, 39.29(a) (cover two), 39.29(b) (prohibition of assessments) and 39.30 (two-hour RTO), the Commission considers the costs and benefits attributable to these enhanced requirements against the DCO regulatory framework established in part 39, which provides minimum risk standards for DCOs and sets the baseline for cost and benefit considerations. Specifically, regulation 39.11 (implementing DCO Core Principle B) sets a cover one standard as the minimum financial resources requirement for all DCOs whereas regulation 39.29(a) sets a cover two financial resources requirement for all SIDCOs engaged activities with a more complex risk profile or that are systemically important in multiple jurisdictions. Regulation 39.11 permits the inclusion of assessment powers, to a limited extent, in calculating whether a DCO meets its default resources requirement, whereas regulation 39.29(b) prohibits the use of assessments by SIDCOs in meeting those obligations. Regulation 39.18 requires a DCO to have an RTO of no later than the next business day following the disruption of its operations whereas regulation 39.30 (implementing DCO Core Principle I) requires SIDCOs to have a BC–DR plan with a two-hour

[185] *See supra* section I.A. through I.F. for a more detailed discussion on the risk management standards for SIDCOs, including the designation process for SIDCOs and standards for SIDCOs under Title VIII of the Dodd-Frank Act.

[186] *See supra* section I.F. for discussion on the risk management standards for SIDCOs proposed by the Commission.

[187] *Id.*

[188] *Id.*

[189] *Id.*

[190] *Id.*

[191] *See supra* section I.D.1. for a general discussion on the PFMIs.

[192] *Id.*

[193] *See supra* section I.D.4. for a discussion on the role of the PFMIs in international banking standards.

[194] *Id.*

[195] *Id.*

[196] *See* OCC December Letter at 12 (OCC requesting that the Commission avoid taking final action on the proposed SIDCO regulations until the adoption of the PFMIs to ensure consistency with international regulations) and LCH December Letter at 1–2 (LCH urging the Commission to conform as much as possible the Commission's final rules on SIDCOs to the global standards set forth in the PFMIs).

[197] *See supra* section II. for a discussion on the proposed and revised rule text of regulation 39.29.

[198] *Id.*

[199] *See supra* discussion I.C. and I.F.

RTO following the disruption of its operations.

The Commission invited public comment on all aspects of the proposed SIDCO rulemaking but did not receive any comments with quantitative data from which the Commission could calculate the costs and benefits of the proposed enhanced requirements. The Commission did receive qualitative comments on the Commission's proposed consideration of costs and benefits generally, as well as specifically to the requirements central to this final rule: Cover two, use of assessments and two-hour RTO. These comments are summarized below in connection with the Commission's consideration of the costs and benefits of the final rules being promulgated herein.

C. Benefits and Costs of the Final Rule

1. Benefits

As explained in the subsections that follow, this final rule promotes the financial strength, operational security and reliability of SIDCOs, reduces systemic risk, and increases the stability of the broader U.S. financial system. In addition, the regulations harmonize U.S regulations with international standards which will, in important ways, place SIDCOs on a level playing field with their competitors in the global financial markets:

a. Regulation 39.29(a): Cover Two

The cover two requirement increases the financial stability of certain SIDCOs which, in turn, increases the overall stability of the US financial markets. This is so because enhancing a SIDCO's financial resources requirements from the minimum of cover one to a more stringent cover two standard helps to ensure the affected SIDCO will have greater financial resources to meet its obligations to market participants, including in the case of defaults by multiple clearing members. These added financial resources lessen the likelihood of the SIDCO's failure which, given the designation of systemically important, could threaten the stability of the US financial system.[200] By bolstering certain SIDCOs' resources, regulation 39.29(a) contributes to the financial integrity of the financial markets and reduces the likelihood of systemic risk from spreading through the financial markets due to one of those SIDCOs' failure or disruption.

According to commenters, existing SIDCOs already fund their default resources using a cover two standard for products with a more complex risk profile.[201] Although the benefit associated with regulation 39.29(a) is somewhat lessened by the already established practice of cover two by the relevant SIDCOs, there is a long-term benefit of setting the cover two standard as the new regulatory minimum to ensure that even in periods of apparent stability and low market volatility, these SIDCOs will continue to have increased financial resource requirements and, ultimately, greater financial stability. This approach of obtaining resources in such low-stress periods avoids the need to call for additional resources from clearing members during less stable, more volatile times, which would have pro-cyclical effects on the U.S. financial markets.[202] In addition, the cover two requirement will apply to SIDCOs deemed systemically important in multiple jurisdictions.

b. Regulation 39.29(b): Prohibited Use of Assessments To Meet Regulation 39.29(a) Obligations

As discussed below and throughout this release, the Commission believes that prohibiting the use of assessments by a SIDCO in meeting its default resource obligations (*i.e.* those under regulations 39.11(a)(1) and 39.29(a)) increases the financial stability of the SIDCO, which in turn, increases the overall stability of the U.S. financial markets.

Assessment powers are more likely to be exercised during periods of financial market stress. If during such a period, a clearing member defaults and the loss to the SIDCO is sufficiently large to deplete (1) the collateral posted by the defaulting entity, (2) the defaulting entity's default fund contribution, and (3) the remaining pre-funded default fund contributions, a SIDCO's exercise of assessment powers over the non-defaulting clearing members may exacerbate a presumably already weakened financial market. The demand by a SIDCO for more capital from its clearing members could force one or more additional clearing members into default because they cannot meet the assessment. The inability to meet the assessment could lead clearing members and/or their customers to de-leverage (*i.e.,* sell off their positions) in falling asset markets, which further drives down asset prices and may result in clearing members and/or their customers defaulting on their obligations to each other and/or to the SIDCO. In such extreme circumstances, assessments could trigger a downward spiral and lead to the destabilization of the financial markets. Prohibiting the use of assessments by a SIDCO in meeting default resources obligations is intended to require the SIDCO to retain more financial resources upfront, *i.e.* to prefund its financial resources requirement to cover its potential exposure.

The increase in prefunding of financial resources by a SIDCO may increase costs to clearing members of that SIDCO (*e.g.* requiring clearing members to post additional funds with the SIDCO),[203] but it also reduces the likelihood that the SIDCO will require additional capital infusions during a time of financial stress when raising such additional capital is expensive relative to market norms. By increasing prefunded financial resources, a SIDCO becomes less reliant on the ability of its clearing members to pay an assessment, more secure in its ability to meets its obligations, and more viable in any given situation, even in the case of multiple defaults of clearing members. Accordingly, regulation 39.29(b) increases the financial security and reliability of the SIDCO which will thereby further increase the overall the stability of the U.S. financial markets.

c. Regulation 39.30: Two-Hour RTO

A two-hour RTO in a SIDCO's BC–DR plan increases the soundness and operating resiliency of the SIDCO, which in turn, increases the overall stability of the U.S. financial markets.

Given the significant role SIDCOs play within the financial market infrastructure and the need to preserve, to the greatest extent practicable, their near-continuous operation, regulation 39.30 prescribes an enhanced RTO of two hours. The two-hour RTO ensures that even in the event of a wide-scale disruption, the potential negative effects upon U.S. financial markets be minimized because the affected SIDCO will recover rapidly and resume its critical market functions, thereby allowing other market participants to process their transactions, even those participants in locations not directly affected by the disruption. The two-hour RTO increases a SIDCO's operational resiliency by requiring the SIDCO to have the resources and technology necessary to resume operations promptly. This resiliency, in turn, increases the overall stability of the U.S. financial markets.

[200] *See supra* section I.B.

[201] *See* ICC Letter at 1. *See also* CME 2013 Letter at 2–3.

[202] *See supra* section II.B. for discussion on the pro-cyclical impact of assessments.

[203] *Id.*

d. Benefits of QCCP Status

As discussed above,[204] the international Basel CCP Capital Requirements provide incentives for banks to clear derivatives through CCPs that are qualified CCPs or ''QCCPs'' by setting lower capital charges for exposures arising from derivatives cleared through a QCCP and setting significantly higher capital charges for exposures arising from derivatives cleared through non-qualifying CCPs.[205] The enhanced risk management standards for SIDCOs adopted in this final rulemaking are consistent with the international standards set forth in the PFMIs and address part of the remaining divergences between part 39 of the Commission's regulations and the PFMIs, which will provide an opportunity for SIDCOs to gain QCCP status. The Commission believes there is a benefit for a SIDCO if it is able to offer to its clearing members and their customers the favorable capital treatment under the Basel CCP Capital Requirements.

2. Costs

The Commission requested but did not receive any quantitative data or specific cost estimates associated with the proposed regulations. However, in qualitative terms, the Commission recognizes that this final rule may impose important costs on SIDCOs depending on the financial resources requirements and system safeguards procedures the SIDCOs currently implement. In other words, the costs range from minimal (to the extent SIDCOs are already operating, or planning to operate, consistent with the final rules) to significant (for those who are not).[206]

To the extent costs increase, the Commission has considered that higher trading costs for market participants (*i.e.* increased clearing fees, guaranty fund contributions, and margin fees, etc.) may discourage market participation and result in decreased liquidity and reduced price discovery. However, the Commission has also considered the costs to market participants and the public if these regulations are not adopted. Significantly, without these regulations to ensure that SIDCOs operate under certain enhanced risk management standards, in a manner that is consistent with internationally accepted standards, the financial integrity and security of the U.S. financial markets would be at a greater risk relative to international markets. This, too, could adversely affect the attractiveness of the U.S. financial markets subject to the Commission's jurisdiction as compared to foreign competitors. In addition, without the final rule, SIDCOs would not have the opportunity to gain QCCP status, thereby putting them at a significant competitive disadvantage in the global financial markets which, again, would be to the detriment of their clearing members and their customers. The Commission notes that to the extent it addresses the remaining divergences between part 39 of the Commission's regulations and the PFMIs through future rulemakings, and these rulemakings, along with the regulations adopted herein, do not provide an opportunity for non-SIDCO DCOs to obtain QCCP status, this would place such non-SIDCO DCOs at a competitive disadvantage to SIDCOs. Moreover, the resulting cost to the DCOs would be the inability to offer the favorable capital treatment under the Basel CCP Capital Requirements to their customers and clearing members.

a. Regulation 39.29(a): Cover Two

The cost of the cover two requirement for certain SIDCOs includes the opportunity cost of the additional financial resources needed to satisfy the guaranty fund requirements for the risk of loss resulting from the default of the second largest clearing member.[207]

As discussed above in more detail, the Commission received comments from market participants addressing the costs associated with a cover two standard.[208] OCC argued that if heightened risk management standards are imposed on a DCO in such a way as to substantially increase the costs for clearing members and their customers to clear transactions through a SIDCO rather than a non-SIDCO, there is risk of undermining the goals of both Titles VII and VIII of the Dodd-Frank Act by driving clearing volume to less-regulated clearinghouses.[209] FIA commented that the cover two requirement would put SIDCOs at a competitive disadvantage to other DCOs to the extent that they need to increase margin or guaranty fund requirements to cover the default of the second largest clearing member.[210] FIA recommended that the Commission adopt an alternative approach by extending the cover two requirement to all DCOs, not just SIDCOs, and allow ample time for DCOs to come into compliance.[211] CME stated that a cover two requirement would allow some DCOs to offer lower guaranty fund and margin requirements, which would attract additional volume to that DCO and make it a *de facto* SIDCO. SIDCOs would then be at a competitive disadvantage relative to the *de facto* SIDCO until such time as the *de facto* SIDCO was designated as a SIDCO.[212] ICC, one of the two existing SIDCOs, on the other hand, is in compliance with the cover two requirement and therefore, would not incur additional costs to meet the cover two requirement.[213]

As noted above, and in comment letters from CME and ICC,[214] SIDCOs already implement the cover two standard for products with a more complex risk profile, and therefore, the costs of compliance with cover two should be mitigated given these existing practices.[215]

However, there are likely to be costs associated with the uncertainty as to whether a SIDCO is deemed systemically important in multiple jurisdictions and what constitutes a product with a more complex risk profile. These costs are associated with business planning, *i.e.* how to fund a cover two requirement. In addition, the possibility exists that some market participants will port their positions from a SIDCO that either (1) is deemed systemically important in multiple jurisdictions or (2) clears products of a more complex risk profile to another SIDCO for which neither (1) nor (2) applies or to another DCO that is not

[204] *See supra* section I. D. 4. for a discussion of the Basel CCP Capital Requirements.

[205] *Id.*

[206] For example, ICC, one of the two existing SIDCOs, stated that it already implements the ''cover two'' requirement, that it does not rely upon its right of assessment in meeting that requirement, and that it is unlikely to incur significant costs in implementing the two hour RTO. *See* ICC Letter at 1–2. In addition, CME Clearing, the other existing SIDCO, implements the ''cover two'' requirement for two of its three guaranty funds, has each of its guaranty funds pre-funded by the respective clearing members, and, though the cost will be significant, has already ''obtained budget approval and allocated resources towards a two hour RTO.'' *See* CME 2013 Letter at 2–4.

[207] In the event that these additional resources need to be raised by the SIDCO, as opposed to reallocated, this cost is the funding cost for raising these additional resources. In addition, to the extent that there is uncertainty over whether cover two applies (for example, as in the case of whether a DCO gets deemed to be systemically important in multiple jurisdictions or whether a given product is, indeed, of a more complex risk profile), the cost of cover two is the opportunity cost (funding cost) of the additional financial resources weighted by the likelihood that cover two will apply.

[208] *See* section II. for a discussion on comments received on the proposed regulation 39.29(a).

[209] *Id.*

[210] *Id.*

[211] *Id.*

[212] *Id.*

[213] ICC Letter at 2.

[214] *See supra* n. 23 (designation of CME and ICC as SIDCOs).

[215] *See* ICC Letter at 1–2. *See also* CME 2013 Letter at 2–3.

systemically important because the value of the cover two protection to these market participants is less than the price at which that protection is being offered. These market participants will transact with DCOs that operate under cover one, which is a lower financial resources requirement, and thus, get the benefit of lower transactional fees and forego the enhanced protections associated with the SIDCOs. Such an event adversely impacts the reduction in systemic risk that the cover two standard affords. However, the potential cost to the SIDCO and to the goal of systemic risk reduction is likely mitigated because (a) not every product offered by the SIDCO is available at other DCOs and (b) a SIDCO may offer benefits not available to a DCO that is not designated as systemically important,[216] thereby reducing the likelihood that market participants will port their positions to other DCOs.

b. Regulation 39.29(b): Prohibition on the Use of Assessments in Calculation of Default Resources To Meet Obligations Under Regulation 39.29(a)

The costs associated with the prohibited use of assessments by SIDCOs in calculating the SIDCO's obligations under regulation 39.29(a) include the opportunity cost of the additional financial resources needed to replace the value of such assessments. This may require an infusion of additional capital. The cost of this regulation should be mitigated for SIDCOs because neither CME Clearing nor ICC, the two existing SIDCOs, rely on assessments to meet their default fund obligations for products with a more complex risk profile.[217] Additionally, analogous to the case with the cover two standard, market participant demand may shift from a SIDCO to a DCO with a lower capitalization requirement.

c. Regulation 39.30: Two-Hour RTO

The Commission recognizes that a two-hour RTO may increase operational costs for SIDCOs by requiring additional resources, including personnel, technological and geographically dispersed resources, in order to comply with the final rule. Moreover, the implementation of a two-hour RTO is expected to impose one-time costs to set up the enhanced resources as well as recurring costs to operate the additional resources. However, as noted above, the Commission requested but did not receive quantitative data from which to estimate the dollar costs associated with implementing a two-hour RTO, and in particular the costs of moving from a next day RTO, the minimum standard established by the DCO core principles and regulation 39.18, to a two-hour RTO as required by regulation 39.30. The Commission did, however, receive qualitative comments regarding the costs associated with the two-hour RTO, which are discussed in more detail above. For example, CME, ICE and OCC all initially opposed the enhanced RTO, citing to the increase of costs associated with the proposed regulation 39.30. However, more recently, the Commission received comments from CME and ICC acknowledging the importance of the two-hour RTO and their intent to implement a two-hour RTO.[218]

D. Section 15(a) Factors

1. Protection of Market Participants and the Public

The enhanced financial resources requirements and system safeguard requirements for SIDCOs, as set forth in this final rulemaking, will further the protection of market participants and the public by increasing the financial stability and operational security of SIDCOs, and more broadly, increase the stability of the U.S. financial markets. A designation of systemic importance under Title VIII means the failure of a SIDCO or the disruption of its clearing and settlement activities could create or increase the risk of significant liquidity or credit problems spreading among financial institutions or markets, thereby threatening the stability of the U.S. financial markets. The regulations contained in this final rule are designed to help ensure that SIDCOs continue to function even in extreme circumstances, including multiple defaults by clearing members and wide-scale disruptions. While there may be increased costs associated with the implementation of the final rules, these costs are mitigated by the countervailing benefits of the increased safety and soundness of the SIDCOs and the reduction of systemic risk, which protect market participants and the public form the adverse consequences that would result from a SIDCO failure or a disruption in its functioning.

2. Efficiency, Competitiveness, and Financial Integrity

The regulations set forth in this final rulemaking will promote financial strength and stability of SIDCOs, as well as, more broadly, efficiency and greater competition in the global markets. The regulations promote efficiency insofar as SIDCOs that operate with enhanced financial resources as well as increased system safeguards are more secure and are less likely to fail. The regulations promote competition because they are consistent with the international standards set forth in the PFMIs and will help to ensure that SIDCOs are afforded the opportunity to gain QCCP status and thus avoid an important competitive disadvantage relative to similarly situated foreign CCPs that are QCCPs. Additionally, by increasing the stability and strength of the SIDCOs, the regulations in the final rule help to ensure that SIDCOs can meet their obligations in the most extreme circumstances and can resume operations even in the face of wide-scale disruption, which contributes to the financial integrity of the financial markets. In requiring more SIDCO financial resources to be pre-funded by (1) expanding the potential losses those resources are intended to cover and (2) restricting the means for satisfying those resource requirements, *i.e.* through prohibiting the use of assessments in determining guarantee fund contributions, the requirements of this final rule seek to lessen the incidence of pro-cyclical demands for additional funding resources and, in so doing, promote both financial integrity and market stability.[219]

3. Price Discovery

The regulations in the final rulemaking enhance risk management standards for SIDCOs which may result in increased public confidence, which, in turn, might lead to expanded participation in the affected markets, *i.e.* products with a more complex risk profile. The expanded participation in these markets (*i.e.* greater transactional

[216] For example under Title VIII, a SIDCO may establish and maintain an account with the Federal Reserve Bank if permitted to do so by such Federal Reserve Bank and by the Board. *See* section 806(a) of the Dodd-Frank Act.

[217] *See* ICC Letter at 2 (stating that ICC "does not rely upon (count) [its] right of assessment to meet the ["cover two" requirement]"). *See also* CME 2013 Letter at 3, n.7.

[218] *See* ICC Letter at 2 (noting that the two-hour RTO is consistent with Principle 17 of the PFMIs, and stating that it is unlikely to incur "any significant additional personnel training cost associated with the CFTC's proposed RTO of two hours" or "any additional backup technology costs related to the CFTC's proposed RTO."). *See also* CME 2013 Letter at 4 (noting that "in light of the systemic importance of CME [Clearing]'s clearing functions and the intended benefits, including compliance with the PFMI requirements for critical information technology, CME [Clearing] has obtained budget approval and allocated resources towards a two hour RTO and will be working throughout 2013 towards achieving a two hour RTO.").

[219] *See supra* n. 139 and accompanying text for a discussion of pro-cyclicality.

volume) may have a positive impact on price discovery. Conversely, the Commission notes that these enhanced risk management standards are also associated with additional costs and to the extent that SIDCOs pass along the additional costs to their clearing members and customers, participation in the affected markets may decrease and have a negative impact on price discovery. However, it is the Commission's belief that such higher transactional costs should be greatly offset by the lower capital charges granted to clearing members and customers clearing derivative transactions through SIDCOs that are deemed QCCPs.

4. Sound Risk Management Practices

The regulations in the final rulemaking contribute to the sound risk management practices of SIDCOs because the requirements promote the safety and soundness of the SIDCOs by (1) enhancing the financial resources requirements, which provide greater certainty for market participants that all obligations will be honored by the SIDCOs and (2) enhancing system safeguards to facilitate the continuous operation and rapid recovery of activities, which provide certainty and security to market participants that potential disruptions will be reduced and, by extension, the risk of loss of capital and liquidity will be reduced.

5. Other Public Interest Considerations

The Commission notes the strong public interest for jurisdictions to either adopt the PFMIs or establish standards consistent with the PFMIs in order to allow CCPs licensed in the relevant jurisdiction to gain QCCP status. As emphasized throughout this rulemaking, SIDCOs that gain QCCP status will avoid a competitive disadvantage in the financial markets by avoiding the much higher capital charges imposed by the Basel CCP Capital Requirements. Moreover, because ''enhancements to the regulation and supervision of systemically important financial market utilities . . . are necessary . . . to support the stability of the broader financial system,'' [220] adopting these rules promotes the public interest in a more stable broader financial system.

VII. Related Matters

A. Paperwork Reduction Act

The Commission may not conduct or sponsor, and a registered entity is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The Commission's adoption of §§ 39.28, 39.29, 39.30, and 39.31 (DCO) imposes no new information collection requirements on registered entities within the meaning of the Paperwork Reduction Act.[221] The OMB has previously assigned control numbers for the required collections of information under a prior related final rulemaking to which this rulemaking relates.[222] The titles for the previous collections of information are ''Part 40, Provisions Common to Registered Entities'', OMB control number 3038–0093, ''Financial Resources Requirements for Derivatives Clearing Organizations, OMB control number 3038–0066,'' ''Information Management Requirements for Derivatives Clearing Organizations, OMB control number 3038–0069,'' ''General Regulations and Derivatives Clearing Organizations, OMB control number 3038–0081,'' and ''Risk Management Requirements for Derivatives Clearing Organizations, OMB control number 3038–0076.'' This rulemaking is applicable to a subset of DCOs designated as SIDCOs, who must comply with existing information collection requirements for DCOs.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that agencies consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact. The rules proposed by the Commission will affect only DCOs designated as SIDCOs. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its regulations on small entities in accordance with the RFA. The Commission has previously determined that DCOs are not small entities for the purpose of the RFA.[223] Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 39

Commodity futures, Consumer protection, Enforcement authority, Financial resources, Reporting and recordkeeping requirements, Risk management.

For the reasons stated in the preamble, amend 17 CFR part 39 as follows:

PART 39—DERIVATIVES CLEARING ORGANIZATIONS

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

Authority: 7 U.S.C. 2 and 7a–1 as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376; Subpart C also issued under 12 U.S.C. 5464.

■ 2. Add subpart C to read as follows:

Subpart C—Provisions Applicable to Systemically Important Derivatives Clearing Organizations

Sec.
39.28 Scope.
39.29 Financial resources requirements.
39.30 System safeguards.
39.31 Special enforcement authority.

Subpart C—Provisions Applicable to Systemically Important Derivatives Clearing Organizations

§ 39.28 Scope.

(a) The provisions of this subpart C apply to any derivatives clearing organization, as defined in section 1a(15) of the Act and § 1.3(d) of this chapter,

(1) Which is registered or deemed to be registered with the Commission as a derivatives clearing organization, is required to register as such with the Commission pursuant to section 5b(a) of the Act, or which voluntarily registers as such with the Commission pursuant to section 5b(b) or otherwise; and

(2) Which is a systemically important derivatives clearing organization as defined in § 39.2.

(b) A systemically important derivatives clearing organization is subject to the provisions of subparts A and B of this part 39 except to the extent different requirements are imposed by provisions of this subpart C.

(c) A systemically important derivatives clearing organization shall provide notice to the Commission in advance of any proposed change to its rules, procedures, or operations that could materially affect the nature or level of risks presented by the systemically important derivatives clearing organization, in accordance with the requirements of § 40.10 of this chapter.

[220] *See* section 804(a)(4) of the Dodd-Frank Act (Congressional findings).

[221] 44 U.S.C. 3501 et seq.

[222] 76 FR 69334 at 69428.

[223] *See* ''A New Regulatory Framework for Clearing Organizations,'' 66 FR 45604, 45609 (Aug. 29, 2001), ''17 CFR part 40 Provisions Common to Registered Entities,'' 75 FR 67282 (November 2, 2010), and ''Provisions Common to Registered Entities,'' 76 FR 44776, 44789 (July 27, 2011).

§ 39.29 Financial resources requirements.

(a) *General rule.* Notwithstanding the requirements of § 39.11(a)(1), a systemically important derivatives clearing organization that is systemically important in multiple jurisdictions or that is involved in activities with a more complex risk profile shall maintain financial resources sufficient to enable it to meet its financial obligations to its clearing members notwithstanding a default by the two clearing members creating the largest combined financial exposure for the systemically important derivatives clearing organization in extreme but plausible market conditions; Provided that if a clearing member controls another clearing member or is under common control with another clearing member, affiliated clearing members shall be deemed to be a single clearing member for the purposes of this provision.

(b) *Valuation of financial resources.* Notwithstanding the requirements of § 39.11(d)(2), assessments for additional guaranty fund contributions (*i.e.,* guarantee fund contributions that are not pre-funded) shall not be included in calculating the financial resources available to meet a systemically important derivatives clearing organization's obligations under paragraph (a) of this section.

§ 39.30 System safeguards.

(a) Notwithstanding § 39.18(e)(3), the business continuity and disaster recovery plan described in § 39.18(e)(1) for each systemically important derivatives clearing organization shall have the objective of enabling, and the physical, technological, and personnel resources described in § 39.18(e)(1) shall be sufficient to enable, the derivatives clearing organization to recover its operations and resume daily processing, clearing, and settlement no later than two hours following the disruption, for any disruption including a wide-scale disruption.

(b) To ensure its ability to achieve the recovery time objective specified in paragraph (a) of this section in the event of a wide-scale disruption, each systemically important derivatives clearing organization must maintain a degree of geographic dispersal of physical, technological and personnel resources consistent with the following:

(1) For each activity necessary to the clearance and settlement of existing and new contracts, physical and technological resources, sufficient to enable the entity to meet the recovery time objective after interruption of normal clearing by a wide-scale disruption, must be located outside the relevant area of the infrastructure the entity normally relies upon to conduct that activity, and must not rely on the same critical transportation, telecommunications, power, water, or other critical infrastructure components the entity normally relies upon for such activities;

(2) Personnel, sufficient to enable the entity to meet the recovery time objective after interruption of normal clearing by a wide-scale disruption affecting the relevant area in which the personnel the entity normally relies upon to engage in such activities are located, must live and work outside that relevant area;

(3) The provisions of § 39.18(f) shall apply to these resource requirements.

(c) Each systemically important derivatives clearing organization must conduct regular, periodic tests of its business continuity and disaster recovery plans and resources and its capacity to achieve the required recovery time objective in the event of a wide-scale disruption. The provisions of § 39.18(j) apply to such testing.

(d) The requirements of this section shall apply to a derivatives clearing organization not earlier than one year after such derivatives clearing organization is designated as systemically important.

§ 39.31 Special enforcement authority.

For purposes of enforcing the provisions of Title VIII of the Dodd-Frank Act, a systemically important derivatives clearing organization shall be subject to, and the Commission has authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the systemically important derivatives clearing organization were an insured depository institution and the Commission were the appropriate Federal banking agency for such insured depository institution.

Issued in Washington, DC, on August 9, 2013, by the Commission.

Melissa D. Jurgens,

Secretary of the Commission.

Appendix to Final Rule on Enhanced Risk Management Standards for Systemically Important Derivatives Clearing Organizations—Commission Voting Summary

Note: The following appendix will not appear in the Code of Federal Regulations

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Chilton, O'Malia, and Wetjen voted in the affirmative.

[FR Doc. 2013–19791 Filed 8–14–13; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 891

[Docket No. FR–5167–C–03]

RIN 2502–AI67

Streamlining Requirements Governing the Use of Funding for Supportive Housing for the Elderly and Persons With Disabilities Programs; Correction

AGENCY: Office of the Assistant Secretary of Housing—Federal Housing Commissioner, HUD.

ACTION: Correcting amendment.

SUMMARY: On June 20, 2013, HUD published a final rule that amended regulations for the purpose of streamlining the requirements applicable to mixed finance developments in the Section 202 Supportive Housing for the Elderly (Section 202) and the Section 811 Supportive Housing for Persons with Disabilities (Section 811) programs and amending certain regulations governing all Section 202 and Section 811 developments. This publication corrects an error in the final rule regarding the duration of the fund reservations for capital advances.

DATES: *Effective:* August 15, 2013, and applicable beginning July 22, 2013.

FOR FURTHER INFORMATION CONTACT: Aretha Williams, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 6136, Washington, DC 20410–8000; telephone number 202–708–3000 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On June 20, 2013 (78 FR 37106), HUD published a final rule amending regulations governing the Section 202 and Section 811 programs to streamline requirements for mixed finance developments and to amend other regulations for these programs. One amendment the rule made was to extend the duration of availability of fund reservations for capital advances from 18 months to 24 months, with the option of extending this period to 36 months, as approved by HUD on a case-by-case basis. This final rule followed a March 28, 2012 (77 FR 18723) proposed rule. The final rule became effective on July 22, 2013.

II. Technical Corrections

After publication of the final rule, it came to HUD's attention that there was an error in the regulatory text. The final rule amended 24 CFR 891.165(a) so that ''the duration of the fund reservation for a capital advance with construction advances is 24 months *from the date of initial closing* . . .'' (Emphasis added). However, the language in 24 CFR 891.165(a) should read that the duration of the fund reservation is 24 months *from the date of issuance of the award letter to the date of initial closing.*

The preamble to the proposed rule (77 FR 18723) noted that the regulations then governing the duration of the availability of capital advance funds limited the duration of the fund reservations for the capital advances to 18 months from the date of issuance of the fund reservation award (77 FR at 18726). The preamble went on to note that the purpose of extending this duration was to enable owners to focus on projects to ensure that they reach initial closing and start construction within 24 months (77 FR at 18726). This makes it clear that the intent of the rule is to extend the duration of the fund reservation for a capital advance from the date of issuance of the award letter so that owners could reach initial closing, and not to extend the time after the date of initial closing. This rule makes a technical correction to the final rule to fulfill that intent.

List of Subjects in 24 CFR Part 891

Aged, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, HUD amends 24 CFR part 891 as follows:

PART 891—SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES

■ 1. The authority citation for part 891 continues to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437f, 3535(d), and 8013.

§ 891.165 [Amended]

■ 2. Amend § 891.165 as follows:

In paragraph (a), revise the phrase ''24 months from the date of initial closing'' to read ''24 months from the date of issuance of the award letter to the date of initial closing''.

Dated: August 9, 2013.

Carol J. Galante,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2013–19856 Filed 8–14–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE TREASURY

26 CFR Part 53

[TD 9629]

RIN 1545–BL58

Requirement of a Section 4959 Excise Tax Return and Time for Filing the Return

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations that provide guidance to charitable hospital organizations regarding the requirement of a return to accompany payment of the excise tax, enacted as part of the Patient Protection and Affordable Care Act of 2010, for failure to meet the community health needs assessment (CHNA) requirements for any taxable year. The regulations affect charitable hospital organizations. This action is necessary to implement section 9007(b) of the Patient Protection and Affordable Care Act of 2010. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on August 15, 2013.

Applicability Date: For dates of applicability, see §§ 53.6011–1T(g) and 53.6071–1T(i) of these regulations.

FOR FURTHER INFORMATION CONTACT: Amy F. Giuliano at (202) 622–6070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The Patient Protection and Affordable Care Act, Public Law 111–148 (124 Stat. 119 (2010)), added sections 501(r) and 4959 to the Internal Revenue Code (Code). A hospital organization seeking to obtain or maintain tax-exempt status as a charitable organization described in section 501(c)(3) must comply with the requirements of section 501(r), including the requirement to conduct a CHNA under section 501(r)(3).

Section 501(r)(2)(A)(i) defines a hospital organization to which section 501(r) applies as including any organization that operates a facility that is required by a state to be licensed, registered, or similarly recognized as a hospital. Section 501(r)(2)(B)(i) requires a hospital organization that operates more than one hospital facility to meet the requirements of section 501(r) separately with respect to each hospital facility.

Section 501(r)(3) requires hospital organizations to conduct a CHNA at least once every three years and adopt an implementation strategy to meet the community health needs identified through the CHNA. The requirements of section 501(r)(3) are effective for taxable years beginning after March 23, 2012.

Section 4959 imposes a tax equal to $50,000 if a hospital organization to which section 501(r) applies fails to meet the requirements of section 501(r)(3) for any taxable year. A hospital organization fails to meet the requirements of section 501(r)(3) for any taxable year if the hospital organization fails to conduct a CHNA and adopt an implementation strategy during the three-year period ending on the last day of any taxable year of the hospital organization. For example, a hospital organization reporting on a calendar year basis that operates only one hospital facility and that fails to conduct a CHNA by the last day of 2013, and that also did not conduct a CHNA in 2011 or 2012, will be subject to the tax under section 4959 with respect to that facility for its 2013 taxable year. The same hospital organization that fails to conduct a CHNA in 2014 also will be subject to a tax under section 4959 with respect to that facility for its 2014 taxable year (for failure to meet the CHNA requirements during the three-year period ending on the last day of 2014). *See* Joint Committee on Taxation, Technical Explanation of the Revenue Provisions of the ''Reconciliation Act of 2010'' As Amended, in Combination With the ''Patient Protection and Affordable Care Act'' (JCX–18–10) (March 21, 2010), at 83 fn. 192 (and accompanying text).

Section 6011 generally requires any person liable for tax imposed by the Code to make a return or statement according to the forms and regulations prescribed by the Secretary of the Treasury. Section 6071 generally provides that return filing dates are prescribed by regulation. Section 6151 generally provides that a tax must be paid when the return reporting the tax is due, without regard to extensions of time to file the return. Treas. Reg. §§ 53.6011–1 and 53.6071–1 require persons subject to certain excise taxes under Chapters 41 and 42 of the Code to file a Form 4720, ''Return of Certain Excise Taxes under Chapters 41 and 42 of the Internal Revenue Code,'' to accompany payment of those excise taxes and provide the time for filing the return. Section 4959 was added to Chapter 42 of the Code.

On April 5, 2013, the Treasury Department and the IRS published a notice of proposed rulemaking in the **Federal Register** (REG–130266–11; 78 FR 20523) containing proposed regulations providing guidance to hospital organizations on the CHNA requirements of section 501(r)(3) and the related excise tax of section 4959. That notice of proposed rulemaking did not include amendments to the regulations under section 6011 and section 6071 regarding the return to accompany the payment of the excise tax under section 4959 and the time for filing such a return.

Explanation of Provisions

Under § 53.6011–1(c) of these temporary regulations, a charitable hospital organization that is liable for the section 4959 excise tax must file a return on Form 4720. Under § 53.6071–1(h) of these temporary regulations, a hospital organization liable for the section 4959 excise tax must file a Form 4720 by the 15th day of the fifth month after the end of the organization's taxable year during which the liability under section 4959 was incurred. Thus, for example, a hospital organization reporting on a calendar year basis that failed to meet the requirements of section 501(r)(3) by December 31, 2013, would have to file a Form 4720 and pay the section 4959 tax due by May 15, 2014.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business, and no comments were received.

Drafting Information

The principal author of these regulations is Amy F. Giuliano, Office of Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 53 is amended as follows:

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

■ **Paragraph 1.** The authority citation for part 53 continues to read in part as follows:

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

■ **Par. 2.** Section 53.6011–1 is amended by:

■ 1. Redesignating paragraphs (c) through (e) as (d) through (f).

■ 2. Adding new paragraphs (c) and (g).

The addition reads as follows:

§ 53.6011–1 General requirement of return, statement or list.

* * * * *

(c) [Reserved]. For further guidance, see § 53.6011–1T(c).

* * * * *

(g) [Reserved]. For further guidance, see § 53.6011–1T(g).

■ **Par. 3.** Section 53.6011–1T is added to read as follows:

§ 53.6011–1T General requirement of return, statement or list (temporary).

(a) and (b) [Reserved]. For further guidance, see § 53.6011–1(a) and (b).

(c) A hospital organization described in section 501(r)(2)(A) that is liable for tax imposed by section 4959 must file an annual return on Form 4720 and include the information required by the form and instructions. The annual return filed by a hospital organization must include the required information for each of the organization's hospital facilities that failed to meet the requirements of section 501(r)(3) for the taxable year.

(d) through (f) [Reserved]. For further guidance, see § 53.6011–1(d) through (f).

(g) Paragraph (c) of this section applies on and after August 15, 2013. The applicability of paragraph (c) of this section expires on or before August 12, 2016.

■ **Par. 4.** Section 53.6071–1 is amended by:

■ 1. Revising paragraph (h).

■ 2. Adding paragraph (i).

The revision and addition read as follows:

§ 53.6071–1 Time for filing returns.

* * * * *

(h) [Reserved]. For further guidance, see § 53.6071–1T(h).

(i) *Effective/applicability date*—(1) Paragraph (g) of this section applies on and after July 6, 2007.

(2) [Reserved]. For further guidance, see § 53.6071–1T(i)(2).

Par. 5. Section 53.6071–1T is revised to read as follows:

§ 53.6071–1T Time for filing returns (temporary).

(a) through (g) [Reserved]. For further guidance, see § 53.6071–1(a) through (g).

(h) *Taxes on failures by charitable hospital organizations to satisfy the community health needs assessment requirements of section 501(r)(3).* A hospital organization liable for tax imposed by section 4959 must file a Form 4720, ''Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code,'' as required by § 53.6011–1(c), on or before the 15th day of the fifth month after the end of the hospital organization's taxable year.

(i) *Effective/applicability date*—(1) [Reserved]. For further guidance, see § 53.6071–1(i)(1).

(2) Paragraph (h) of this section applies on and after August 15, 2013.

(3) The applicability of paragraph (h) of this section expires on or before August 12, 2016.

Heather C. Maloy,

Acting Deputy Commissioner for Services and Enforcement.

Approved: August 9, 2013.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2013–19931 Filed 8–14–13; 8:45 am]

BILLING CODE 4830–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans to prescribe interest assumptions under the regulation for valuation dates in September 2013. The interest assumptions are used for paying benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC.

DATES: Effective September 1, 2013.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion (*Klion.Catherine@pbgc.gov*), Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR Part 4022) prescribes actuarial assumptions—including interest assumptions—for paying plan benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions in the regulation are also published on PBGC's Web site (*http://www.pbgc.gov*).

PBGC uses the interest assumptions in Appendix B to Part 4022 to determine whether a benefit is payable as a lump sum and to determine the amount to pay. Appendix C to Part 4022 contains interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology. Currently, the rates in Appendices B and C of the benefit payment regulation are the same.

The interest assumptions are intended to reflect current conditions in the financial and annuity markets. Assumptions under the benefit payments regulation are updated monthly. This final rule updates the benefit payments interest assumptions for September 2013.[1]

The September 2013 interest assumptions under the benefit payments regulation will be 1.50 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for August 2013, these interest assumptions represent a decrease of 0.25 percent in the immediate annuity rate and are otherwise unchanged.

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the payment of benefits under plans with valuation dates during September 2013, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

In consideration of the foregoing, 29 CFR part 4022 is amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 239, as set forth below, is added to the table.

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*		*		*	*	*	*	*
239	9–1–13	10–1–13	1.50	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 239, as set forth below, is added to the table.

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*		*		*	*	*	*	*
239	9–1–13	10–1–13	1.50	4.00	4.00	4.00	7	8

[1] Appendix B to PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR Part 4044) prescribes interest assumptions for valuing benefits under terminating covered single-employer plans for purposes of allocation of assets under ERISA section 4044. Those assumptions are updated quarterly.

Issued in Washington, DC, on this 9th day of August 2013.

Judith Starr,

General Counsel, Pension Benefit Guaranty Corporation.

[FR Doc. 2013–19842 Filed 8–14–13; 8:45 am]

BILLING CODE 7702–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0228]

RIN 1625–AA00

Safety Zone, Brandon Road Lock and Dam to Lake Michigan Including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, and Calumet-Saganashkee Channel, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a segment of the Safety Zone; Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, Calumet-Saganashkee Channel on all waters of the Chicago Sanitary and Ship Canal from Mile Marker 296.1 to Mile Marker 296.7 at specified times on each day from August 12 through August 16, 2013. This action is necessary to protect the waterways, waterway users, and vessels from the hazards associated with the U.S. Army Corps of Engineers dispersal barriers performance testing.

During any of the enforcement periods listed below, entry into, transiting, mooring, laying-up or anchoring within the enforced area of this safety zone by any person or vessel is prohibited unless authorized by the Captain of the Port, Lake Michigan, or his designated representative.

DATES: The regulations in 33 CFR 165.930 will be enforced from 8 a.m. to 1 p.m. on each day from August 12 through August 16, 2013.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email MST1 Joseph McCollum, Prevention Department, Coast Guard Sector Lake Michigan, telephone 414–747–7148, email address *joseph.p.mccollum@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a segment of the Safety Zone; Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, Calumet-Saganashkee Channel, Chicago, IL, listed in 33 CFR 165.930. Specifically, the Coast Guard will enforce this safety zone between Mile Marker 296.1 to Mile Marker 296.7 on all waters of the Chicago Sanitary and Ship Canal. Enforcement will occur from 8 a.m. until 1 p.m. on each day of August 12 through August 16, 2013.

This enforcement action is necessary because the Captain of the Port, Lake Michigan has determined that the U.S. Army Corps of Engineers dispersal barriers performance testing poses risks to life and property. Because of these risks, it is necessary to control vessel movement during the operation to prevent injury and property loss.

In accordance with the general regulations in § 165.23 of this part, entry into, transiting, mooring, laying up or anchoring within the enforced area of this safety zone by any person or vessel is prohibited unless authorized by the Captain of the Port, Lake Michigan, or his or her designated representative.

Vessels that wish to transit through the safety zone may request permission from the Captain of the Port, Lake Michigan. Requests must be made in advance and approved by the Captain of the Port before transits will be authorized. Approvals will be granted on a case by case basis. The Captain of the Port may be contacted via U.S. Coast Guard Sector Lake Michigan on VHF channel 16.

This notice is issued under authority of 33 CFR 165.930 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Captain of the Port, Lake Michigan, will also provide notice through other means, which may include, but are not limited to, Broadcast Notice to Mariners, Local Notice to Mariners, local news media, distribution in leaflet form, and on-scene oral notice. Additionally, the Captain of the Port, Lake Michigan, may notify representatives from the maritime industry through telephonic and email notifications.

Dated: August 3, 2013.

M.W. Sibley,

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

[FR Doc. 2013–19782 Filed 8–14–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0904, FRL–9846–5]

Approval and Disapproval of Air Quality State Implementation Plans; Arizona; Regional Haze and Interstate Transport Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA is correcting the preamble to the final rule that appeared in the **Federal Register** on July 30, 2013. This final rule partially approved and partially disapproved a portion of Arizona's State Implementation Plan (SIP) to implement the regional haze program for the first planning period through 2018. The final rule preamble inadvertently misstated the effective date of the rule under the Congressional Review Act and the deadline for filing of petitions for judicial review of the rule under section 307(b)(1) of the Clean Air Act. This document corrects those errors and clarifies that the rule was signed by the Acting Regional Administrator for EPA Region 9.

DATES: This rule is effective on August 29, 2013.

FOR FURTHER INFORMATION CONTACT: Gregory Nudd, U.S. EPA, Region 9, Planning Office, Air Division, Air-2, 75 Hawthorne Street, San Francisco, CA 94105. Gregory Nudd can be reached at telephone number (415) 947–4107 and via electronic mail at *r9azreghaze@epa.gov.*

SUPPLEMENTARY INFORMATION: In **Federal Register** document 2013–18022 published in the **Federal Register** on July 30, 2013 (78 FR 46142), the following corrections are made:

1. On page 46174, in the third column, in section VI. Statutory and Executive Order Reviews, paragraph K. Congressional Review Act, the last sentence is corrected to read as follows: ''This rule will be effective on August 29, 2013.''

2. On page 46174, in the third column, in section VI. Statutory and Executive Order Reviews, paragraph L. Petitions for Judicial Review, the first sentence is corrected to read as follows: ''Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 28, 2013.''

3. On page 46174, in the third column, the title of Jane Diamond is

corrected to read as follows: ''Acting Regional Administrator, Region 9.''

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401 et seq.

Dated: August 2, 2013.

Jared Blumenfeld,

Regional Administrator, Region 9.

[FR Doc. 2013–19618 Filed 8–14–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2013–0059; FRL–9846–8]

Approval and Promulgation of Air Quality Implementation Plans; State of Wyoming; Revised General Conformity Requirements and an Associated Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan revision submitted by the State of Wyoming. On December 21, 2012, the Governor of Wyoming's designee submitted to EPA revisions to Wyoming's Air Quality Standards and Regulations Chapter 8, Nonattainment Area Regulations, involving Section 3 of Chapter 8 that addresses general conformity requirements and a new Section 5 to Chapter 8 that involves incorporation by reference. The SIP submission addresses revisions and additions to Wyoming's general conformity requirements in order to align them with the current federal general conformity regulation requirements and incorporates by reference those sections of the Code of Federal Regulations that are referred to in the State's general conformity requirements. EPA is approving the submission in accordance with the requirements of section 110 of the Clean Air Act.

DATES: *Effective Date:* This final rule is effective September 16, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2013–0059. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (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 through *www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air Program, EPA, Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129, (303) 312–6479, *russ.tim@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *NAAQS* mean national ambient air quality standard.

(iv) The initials *SIP* mean or refer to State Implementation Plan.

(v) The words *Wyoming* and *State* mean the State of Wyoming.

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VII. Statutory and Executive Order Reviews

I. Background Information

On May 7, 2013, EPA published a proposed rule in the **Federal Register** in which we proposed approval of a State Implementation Plan (SIP) revision that was submitted by the State of Wyoming on December 21, 2012. Our proposed rule provided an opportunity for public comment through June 6, 2013 (see 78 FR 26563). The SIP submission addressed revisions and additions to the State's general conformity requirements in order to align them with the current federal general conformity regulation requirements and incorporated by reference those sections of the Code of Federal Regulations that are referred to in the State's general conformity requirements. In response to our May 7, 2013 proposed rule, we received six comment letters in support of our proposed rule and we did not receive any adverse comments.

As background, we note the intent of the general conformity requirement is to prevent the air quality impacts of federal actions from causing or contributing to a violation of a National Ambient Air Quality Standard (NAAQS) or interfering with the purpose of a SIP. Under the Clean Air Act (CAA) as amended in 1990, Congress recognized that actions taken by federal agencies could affect state and local agencies' abilities to attain and maintain the NAAQS. Section 176(c) of the CAA, as codified in Title 42 of the United States Code (42 U.S.C. 7506), requires federal agencies to assure that their actions conform to the applicable SIP for attaining and maintaining compliance with the NAAQS. General conformity is defined to apply to NAAQS established pursuant to section 109 of the CAA, including the NAAQS for carbon monoxide (CO), nitrogen dioxide (NO_2), ozone, particulate matter (PM), and sulfur dioxide (SO_2). Because certain provisions of section 176(c) of the CAA apply only to highway and mass transit funding and approval actions, EPA published two sets of regulations to implement section 176(c) of the CAA—one set for transportation conformity and one set for general conformity. The federal general conformity regulations were published on November 30, 1993 (58 FR 63214) and codified in the Code of Federal Regulations (CFR) at 40 CFR part 93 Subpart B.

On July 17, 2006, EPA revised the federal general conformity regulations via a final rule (71 FR 40420). EPA had promulgated a new NAAQS on July 18, 1997 (62 FR 38652) that established a separate NAAQS for fine particulate matter smaller than 2.5 micrometers in diameter ($PM_{2.5}$). The prior coarse particulate matter NAAQS promulgated in 1997 pertains to particulate matter under 10 micrometers in diameter (PM_{10}). EPA's July 17, 2006 revision to the federal general conformity regulations (71 FR 40420) added requirements for $PM_{2.5}$ for the first time, including annual emission limits of $PM_{2.5}$ above which covered federal actions in NAAQS nonattainment or maintenance areas would be subject to general conformity applicability.

On April 5, 2010, EPA revised the federal general conformity regulations to clarify the conformity process, authorize innovative and flexible compliance approaches, remove outdated or unnecessary requirements, reduce the paperwork burden, provide transition tools for implementing new standards, address issues raised by federal agencies affected by the rules, and provide a better explanation of conformity regulations and policies (75 FR 17254, April 5, 2010). EPA's April 2010 revisions simplified state SIP requirements for general conformity, eliminating duplicative general conformity provisions codified at 40 CFR Part 93 Subpart B and 40 CFR Part 51 Subpart W. Finally, the April 2010 revision updated federal general conformity regulations to reflect changes to governing laws passed by Congress since EPA's 1993 rule. The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) passed by Congress in 1995 contains a provision eliminating the CAA requirement for states to adopt general conformity SIPs. As a result of SAFETEA–LU, EPA's April 2010 rule eliminated the federal regulatory requirement for states to adopt and submit general conformity SIPs, instead making submission of a general conformity SIP a state option.

With respect to a chronology of Wyoming's general conformity requirements, EPA originally approved Wyoming's ''Conformity of general federal actions to state implementation plans'' into Section 32 of Wyoming's Air Quality Standards Regulations (WAQSR) with our direct final rule of November 19, 1999 (64 FR 63206). That version of Wyoming's ''Conformity of general federal actions to state implementation plans'' requirements was developed by the State to address the federal general conformity requirements that were promulgated on November 30, 1993 (58 FR 63214). On July 28, 2004, we approved Wyoming's restructuring and renumbering SIP submittal which then located Wyoming's ''Conformity of General Federal Actions to State Implementation Plans'' into WAQSR Chapter 8, Section 3 (69 FR 44965).

II. What was the State's process?

Section 110(a)(2) of the CAA requires that a state provide reasonable notice and public hearing before adopting a SIP revision and submitting it to us.

On October 5, 2012, the Environmental Quality Council of the Wyoming Department of Environmental Quality conducted a public hearing to consider the adoption of revisions and additions to the WAQSR. The revisions affecting the SIP involved Chapter 8, ''Nonattainment Area Regulations'', Section 3, ''Conformity of general federal actions to state implementation plans'', and Section 5, ''Incorporation by reference''. After reviewing and responding to comments received before and during the public hearing, the Wyoming Environmental Quality Council approved the proposed revisions on October 5, 2012. The SIP revisions became State effective on December 19, 2012 and the Governor's designee submitted the SIP revisions to EPA on December 21, 2012.

We have evaluated Wyoming's SIP revision submittal and have determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA. By a letter dated March 20, 2013, we advised the Governor's designee that the SIP revision submittal was deemed to have met the minimum ''completeness'' criteria found in 40 CFR part 51, Appendix V.

III. EPA's Evaluation of the State's Revisions to Chapter 8, Sections 3 and 5

On December 21, 2012, the State of Wyoming submitted revisions to its SIP. The SIP revision consisted of changes and additions to Wyoming's WAQSR Chapter 8, Section 3, ''Conformity of general Federal actions to state implementation plans'', and a new Section 5, ''Incorporation by reference''. The purpose of Wyoming's SIP revision was to update its general conformity requirements to address and align the State's requirements with the federal general conformity requirements promulgated on July 17, 2006 (71 FR 40420) and on April 5, 2010 (75 FR 17254), as described above. The revisions to Wyoming's general conformity regulation, adopted on October 5, 2012 and State effective on December 19, 2012, were described in our May 7, 2013, proposed rule and for the reader's convenience, are again provided below. The State's revisions make numerous changes to the prior, EPA-approved version of Wyoming's general conformity requirements (State effective October 29, 1999 and EPA effective on January 18, 2000). In addition, Wyoming added a new section 5 which incorporates by reference certain provisions of the federal regulations.

A. Revisions to WAQSR Chapter 8, Section 3

1. Section 3(a), ''Prohibition'', was modified to remove obsolete provisions in (a)(iii) and now makes this section reserved.

2. Section 3(a), ''Prohibition'', was modified to define NEPA in (a)(iv) and to add a new section (v) that indicates if an action in one nonattainment or maintenance area would affect another nonattainment or maintenance area, both areas must be evaluated.

3. Section 3(b), ''Definitions'', was modified to revise, add or delete the definitions for: ''Applicability analysis'', ''Applicable implementation plan or applicable SIP'', ''Areawide air quality modeling analysis'', ''Cause or contribute to a new violation'', ''Confidential business information (CBI)'', ''Conformity determination'', ''Conformity evaluation'', ''Continuing program responsibility'', ''Continuous program to implement'', ''Direct emissions'', ''Emission inventory'', ''Emissions offsets'', ''Emissions that a Federal agency has a continuing program responsibility for'', ''EPA'', ''Federal agency'', ''Indirect emissions'', ''Local air quality modeling analysis'', ''Maintenance area'', ''Maintenance plan'', ''Metropolitan Planning Organization (MPO)'', ''Milestone'', ''Mitigation measure'', ''National ambient air quality standards (NAAQS)'', Nonattainment area (NAA)'', ''Precursors of a criteria pollutant'', ''Reasonably foreseeable emissions'', ''Regionally significant action'', ''Restricted information'', and ''Take or start the Federal action''.

4. Section 3(c), ''Applicability'', was revised as follows:

a. Section 3(c)(ii) was modified to provide clarification of emissions to include ''criteria'' and ''precursors''.

b. Section 3(c)(ii)(A) was modified to update the language to state ''Other ozone NAAs inside an ozone transport region'' and emissions thresholds were added for $PM_{2.5}$ and its precursors.

c. Section 3(c)(ii)(B) was modified to add emissions thresholds for $PM_{2.5}$ and its precursors.

d. Section 3(c)(iii) was modified by adding language to indicate the requirements of this section do not apply to certain federal actions.

e. Section 3(c)(iii)(B)(XXII) was added to address air traffic control activities.

f. Section 3(c)(iv)(A) was modified to include the portion of an action that includes, in addition to major, minor new or modified stationary sources that require a permit under the New Source Review (NSR) program (Section 110(a)(2)(C) and section 173 of the CAA)), and therefore, a conformity determination is not required for sources so permitted.

g. Section 3(c)(iv)(B) was modified to remove specific examples of natural disasters and keep the provisions to address emergencies.

h. Section 3(c)(v)(B)(I) adds language that a federal agency must provide a draft copy of the written determinations required to affected EPA Regional Office(s), the affected state(s) and/or air pollution control agencies, and any federally recognized Indian tribal government in the nonattainment or maintenance area. Those organizations must be allowed 15 days from the beginning of the extension period to comment on the draft determination.

i. Section 3(c)(v)(B)(II) adds language that within 30 days after making the determination, federal agencies must publish a notice of the determination by placing a prominent advertisement in a daily newspaper of general circulation in the area affected by the action.

j. Section 3(c)(v)(C) adds language that if additional actions are necessary in response to an emergency or disaster under this subsection beyond the specified time period in paragraph (v)(B) of this subsection, a federal agency can make a new written determination for as many 6-month periods as needed, but in no case does this exemption extend beyond three 6-month periods. An exception is where an agency provides information to EPA and the state stating that the conditions that gave rise to the emergency exemption continue to exist and how such conditions effectively prevent the agency from conducting a conformity evaluation.

k. Section 3(c)(vi) adds language which states that actions specified by individual federal agencies as ''presumed to conform'' may not be used in combination with one another when the total direct and indirect emissions from the combination of actions would equal or exceed any of the rates specified in Section 3 paragraphs (c)(ii)(A) or (c)(ii)(B).

l. Section 3(c)(vii) adds language that the federal agency must meet the criteria for establishing activities that are presumed to conform by fulfilling the requirements set forth in Section 3 paragraphs (c)(vii)(A), or (c)(vii)(B), or (c)(vii)(C).

m. Section 3(c)(vii)(C) adds language that the federal agency must clearly demonstrate that the emissions from the type or category of actions and the amount of emissions from the action are included in the applicable SIP and the state, local, or tribal air quality agencies responsible for the SIP(s) provide written concurrence that the emissions from the actions along with all other expected emissions in the area will not exceed the emission budget in the SIP.

n. Section 3(c)(viii) states that in addition to meeting the criteria for establishing exemptions as set forth in paragraphs (vii)(A) or (vii)(B) of the subsection, the new paragraph (vii)(C) is also included.

o. Section 3(c)(viii)(A) adds language that the referenced **Federal Register** action must clearly identify the type and size of the action that would be ''presumed to conform'' and provide criteria for determining if the type and size of action qualifies it for the presumption.

p. Section 3(c)(viii)(B) adds language that if the ''presumed to conform'' action has regional or national application (e.g., the action will cause emission increases in excess of the *de minimis* levels of this subsection) in more than one of EPA's Regions, the federal agency, as an alternative to sending it to EPA Regional Offices, can send the draft conformity determination to EPA's Office of Air Quality Planning and Standards.

q. Section 3(c)(ix) removed previous language and added language that emissions from actions are ''presumed to conform'' from: (1) Installations with facility-wide emission budgets meeting the necessary requirements and that the State has included the emission budget in the EPA-approved SIP and the emissions from the action along with all other emissions from the installation will not exceed the facility-wide emission budget; (2) prescribed fires conducted in accordance with a smoke management program which meets the requirements of EPA's Interim Air Quality Policy on Wildland and Prescribed Fires or an equivalent replacement EPA policy; or (3) emissions for actions that the State identifies in the EPA-approved SIP as ''presumed to conform''.

r. Section 3(c)(x) removed previous language and added language which states that even though an action would otherwise be ''presumed to conform'' under Section 3 paragraphs (vi) or (ix) of this subsection, an action shall not be ''presumed to conform'' and the requirements of 40 CFR 93.151, subsection (a), subsections (d) through (j) and subsections (l) through (n) shall apply to the action if EPA or a third party shows that the action would: (1) Cause or contribute to any new violation of any standard in any area; (2) interfere with provisions in the applicable SIP for maintenance of any standard; (3) increase the frequency or severity of any existing violation of any standard in any area; or (4) delay timely attainment of any standard or any required interim emissions reductions or other milestones in any area including, where applicable, emission levels specified in the applicable SIP for purposes of a demonstration of reasonable further progress, a demonstration of attainment, or a maintenance plan.

s. Section 3(c)(xi)(d) was modified to add language that the provisions of Section 3 shall apply except in the case of newly designated nonattainment areas where the requirements are not applicable until 1 year after the effective date of the final nonattainment designation for each NAAQS pollutant in accordance with section 176(c)(6) of the CAA.

t. Section 3(c)(xi)(e), ''Reporting requirements'', was modified to add language that any federal agency must notify the appropriate EPA Regional Office(s), state and local air quality agencies, any federally-recognized Indian tribal government in the nonattainment or maintenance area. In addition, the added language stated that the draft and final conformity determination shall exclude any restricted information or confidential business information. The disclosure of restricted information and confidential business information shall be controlled by the applicable laws, regulations, security manuals, or executive orders concerning the use, access, and release of such materials. Subject to applicable procedures to protect restricted information from public disclosure, any information or materials excluded from the draft or final conformity determination or supporting materials may be made available in a restricted information annex to the determination for review by federal and state representatives who have received appropriate clearances to review the information.

u. Section 3(c)(xi)(f)(ii), (iii), and (iv) under ''public participation'' was modified to add language that if the action has multi-regional or national impacts (e.g., the action will cause emission increases in excess of the *de minimis* levels identified in subsection (c)(ii) in three or more of EPA's Regions)), the federal agency, as an alternative to publishing separate notices, can publish a notice in the **Federal Register**.

v. Section 3(c)(xi)(f)(v) under ''public participation'' was modified to add language that the draft and final conformity determination shall exclude any restricted information or confidential business information. This section also notes that the disclosure of restricted information and confidential business information shall be controlled by the applicable laws, regulations, or executive orders concerning the release of such materials.

w. Section 3(c)(xi)(g) was renamed ''Reevaluation of conformity'' and included new language in sections (c)(xi)(g)(i) and (iv) addressing when a federal action has commenced and that once a conformity determination is completed by a federal agency, that determination is not required to be reevaluated if the agency has maintained a continuous program to implement the action; the determination has not lapsed; or any modification to the action does not result in an increase in emissions above the levels specified in Section 3. The additional language continues that if a conformity determination is not required for the action at the time the NEPA analysis is completed, the date of the finding of no significant impact (FONSI) for an Environmental Assessment, a record of decision (ROD) for an Environmental Impact Statement, or a categorical exclusion determination can be used as a substitute date for the conformity determination date.

x. Section 3(c)(xi)(g)(iv) also notes that if the federal agency originally determined through the applicability analysis that a conformity determination was not necessary because the emissions for the action were below the limits in subsection (c)(ii) of this section and changes to the action would result in the total emissions from the action being above the limits in subsection (c)(ii) of this section, then the federal agency must make a conformity determination.

y. Section 3(c)(xi)(h), ''Criteria Determining Conformity of General Federal Actions'', had several revisions addressing: (1) Addition of ''precursor'' for emissions; (2) offsets coming from a nearby area of equal or higher classification provided the emissions from that area contribute to the violations, or have contributed to violations in the past, in the area with the federal action; (3) where a federal agency made a conformity determination based on a state's commitment and the state has submitted a SIP to EPA covering the time period during which the emissions will occur or is scheduled to submit such a SIP within 18 months of the conformity determination; (4) where a federal agency made a conformity determination based on a state commitment and the state has not submitted a SIP covering the time period when the emissions will occur or is not scheduled to submit such a SIP within 18 months of the conformity determination, the state must, within 18 months, submit to EPA a revision to the existing SIP committing to include the emissions in the future SIP revision; (5) offset emissions may come from within the same nonattainment or maintenance area or from a nearby area of equal or higher classification provided the emissions from that area contribute to the violations, or have contributed to violations in the past, in the area with the federal action; (6) baseline emissions from the most current calendar year with a complete emission inventory available before an area is designated unless EPA sets another year or the emission budget in the applicable SIP; (7) the motor vehicle emissions model previously specified by EPA as the most current version may be used unless EPA announces a longer grace period in the **Federal Register**; (8) ''Guideline on Air Quality Models'' as noted in Appendix W to 40 CFR part 51; and (9) the attainment year specified in the SIP, or if the SIP does not specify an attainment year, the latest attainment year possible under the CAA as specified in three options.

z. Section 3(c)(xi)(h)(i)(D), ''For CO or directly emitted PM_{10}''. EPA notes that although the State updated other sections of WAQSR Chapter 8, Section 3 to address our general conformity provisions for $PM_{2.5}$, it inadvertently did not include the EPA revision to 40 CFR 93.158(a)(4). In our April 5, 2010 **Federal Register** action (75 FR 17254) we changed the language at 40 CFR 93.158(a)(4) from ''For CO or directly emitted PM_{10}'' to ''For CO or directly emitted PM''. The reason for this change to only ''PM'' was to address both $PM_{2.5}$ and PM_{10}. EPA does not view this inadvertent omission by the State as being an approvability issue. Currently, all of Wyoming is designated as ''attainment/unclassifiable'' for both the 1997 annual $PM_{2.5}$ NAAQS and the 2006 24-hour $PM_{2.5}$ NAAQS (70 FR 944, January 5, 2005 and 74 FR 58688, November 13, 2009, respectively, and 40 CFR 81.351). Therefore, general conformity for $PM_{2.5}$ does not apply in Wyoming. If in the future any area in Wyoming is designated as nonattainment for either the annual or 24-hour $PM_{2.5}$ NAAQS, general conformity will not apply until 1 year after the effective date of the nonattainment designation (CAA section 176(c)(6)). Within that 1 year ''grace period'' before general conformity would apply, EPA will require Wyoming to update Chapter 8, Section 3(c)(xi)(h)(i)(D) to correctly reflect ''For CO or directly emitted PM'' and submit this update to EPA as a revision to the SIP.

aa. Section 3(c)(xi)(k), ''Conformity Evaluation for Federal Installations With Facility-Wide Emission Budgets'', revised and added new language that included requirements and provisions addressing: (1) Time periods; (2) the pollutants or precursors of the pollutants for which the area is designated nonattainment or maintenance; (3) specific quantities allowed to be emitted on an annual or seasonal basis; (4) that the emissions from the facility along with all other emissions in the area will not exceed the emission budget for the area; (5) specific measures to ensure compliance with the budget; (6) the submittal to EPA as a SIP revision and the SIP revision must be approved by EPA; (7) that the facility-wide budget developed and adopted in accordance with paragraph (i) of this subsection; (8) that total direct and indirect emissions from federal actions in conjunction with all other emissions subject to general conformity from the facility that do not exceed the facility budget are ''presumed to conform'' to the SIP and do not require a conformity analysis; (9) that if the total direct and indirect emissions from the federal actions in conjunction with the other emissions subject to general conformity from the facility exceed the budget adopted the action must be evaluated for conformity; (10) that if the SIP for the area includes a category for construction emissions, the negotiated budget can exempt construction emissions from further conformity analysis; and (11) that for emissions beyond the time period covered by the SIP the federal agency can demonstrate conformity with the last emission budget in the SIP, or request the state to adopt an emissions budget for the action for inclusion in the SIP.

bb. In addition to those items noted in section III(A)(4)(aa) of this action, Section 3(c)(xi)(k), ''Conformity Evaluation for Federal Installations With Facility-Wide Emission Budgets'', also revised and added new language that included requirements and provisions addressing: (1) Timing of offsets and mitigation measures; (2) inter-precursor mitigation measures and offsets; and (3) early emission reduction credit programs at federal facilities and installations subject to federal oversight.

B. Revisions to WAQSR Chapter 8, Section 5

Wyoming added a new Section 5 to WAQSR Chapter 8 entitled ''Incorporation by reference''. This new section states that all CFR citations in Chapter 8, including their Appendices, revised and published as of July 1, 2011, not including any later amendments, are incorporated by reference. The section continues with noting where copies of the applicable CFRs are available for public inspection or may be obtained, at cost, from the State.

EPA has reviewed Wyoming's revisions to WAQSR Chapter 8, Section 3, ''Conformity of general federal actions to state implementation plans'', and the new Section 5, ''Incorporation by reference'', and has concluded that our approval is warranted. Based on our review, we determined that the revisions to Section 3 incorporate and address the additional federal general conformity requirements that we promulgated in July 2006 and April 2010. In addition, the new Section 5 that incorporates relevant sections of the CFR is also acceptable. EPA is approving Wyoming's December 21, 2012 SIP revision submittal in order to update the State's general conformity requirements for federal agencies, with applicable federal actions, and to align the State's general conformity requirements with the federal general conformity rule's requirements.

IV. Response to Comments

On May 7, 2013, EPA published a proposed rule in the **Federal Register** in which we proposed approval of Wyoming's general conformity requirements SIP revision that was submitted by the State of Wyoming on December 21, 2012. Our proposed rule provided an opportunity for public comment through June 6, 2013 (see 78 FR 26563). In response to our May 7, 2013 proposed rule, we received six comment letters in support of our proposed rule and we did not receive any adverse comments. EPA notes and appreciates these comments. Copies of these comment letters are provided in the docket for this final rule.

V. Consideration of Section 110(l) of the Clean Air Act

Section 110(l) of the CAA states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of a NAAQS or any other applicable requirement of the CAA. As described in section III.A.4.f. of this action, the changes to the Wyoming SIP would not require a conformity determination for minor new or modified stationary sources that require a permit under the NSR permitting program (section 110(a)(2)(C) and section 173 of the CAA)). The State of Wyoming indicates that SIP permitting regulations prevent the State from issuing a permit if the facility would prevent the attainment or maintenance of any ambient air quality standard (''the proposed facility will not prevent the attainment or maintenance of any ambient air quality standard'', WAQSR Chapter 6, Section 2(c)(ii)). With this final rule, EPA is finding that these Wyoming SIP general conformity minor stationary source permit provisions are adequate to ensure that this SIP revision will not interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of a NAAQS or any other applicable requirement of the CAA.

VI. Final Action

EPA is approving the December 21, 2012 submitted SIP revisions to Wyoming's WAQSR Chapter 8, Section 3, ''Conformity of general federal actions to state implementation plans'', and Section 5, ''Incorporation by reference''. These revisions incorporate and address the federal general conformity rule requirements that were promulgated on July 17, 2006 and April 5, 2010. EPA is approving this Wyoming SIP revision submittal in order to update the State's general conformity requirements for federal agencies, with applicable federal actions, and to align the State's general conformity requirements with the federal general conformity rule's requirements.

VII. 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 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 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.

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. EPA will submit a report containing this action 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 action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 15, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, and Volatile organic compounds.

Dated: July 16, 2013.

Judith Wong,

Acting Regional Administrator, Region 8.

40 CFR part 52 is amended to read as follows:

PART 52—[AMENDED]

■ 1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart ZZ—Wyoming

■ 2. Section 52.2620, the table in paragraph (c)(1) is amended under Chapter 8 by revising the entry for Section 3 and by adding a new entry for Section 5 to read as follows:

§ 52.2620 Identification of plan.

* * * * *

(c) * * *

(1) * * *

State citation	Title/subject	State adopted and effective date	EPA approval date and citation [1]	Explanations
*	*	*	*	*
		Chapter 8		
*	*	*	*	*
Section 3	Conformity of general federal actions to state implementation plans..	10/5/12, 12/19/12	8/15/13 [insert FR page number where document begins].	
Section 5	Incorporation by reference.	10/5/12, 12/19/12	8/15/13 [insert FR page number where document begins].	
*	*	*	*	*

[1] In order to determine the EPA effective date for a specific provision that is listed in the table, consult the **Federal Register** cited in this column for that particular provision.

* * * * *

[FR Doc. 2013–19603 Filed 8–14–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 312

[EPA–HQ–SFUND–2013–0513; FRL–9845–9]

Amendment to Standards and Practices for All Appropriate Inquiries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to amend the Standards and Practices for All Appropriate Inquiries to reference a standard practice recently made available by ASTM International, a widely recognized standards development organization. Specifically, this direct final rule amends the All Appropriate Inquiries Rule to reference ASTM International's E1527–13 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process'' and allow for its use to satisfy the requirements for conducting all appropriate inquiries under the Comprehensive Environmental Response, Compensation and Liability Act.

DATES: This rule is effective on November 13, 2013, without further notice, unless EPA receives adverse comment by September 16, 2013. If EPA receives such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–2013–0513 by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: superfund.docket@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* Superfund Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- *Hand Delivery:* EPA Headquarters West Building, Room 3334, located at 1301 Constitution Ave. NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The EPA Headquarters Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time, Monday through Friday, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–HQ–SFUND–2013–0513. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Certain types of information claimed as CBI, and other information whose disclosure is restricted by statute, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material, such as ASTM International's E1527–13 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process'' will not be placed in EPA's electronic public docket but will be publicly available only in printed form in the official public docket. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the HQ EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room at this docket facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Superfund Docket is (202) 566–9744.

FOR FURTHER INFORMATION CONTACT: For general information, contact the CERCLA Call Center at 800–424–9346 or TDD 800–553–7672 (hearing impaired). In the Washington, DC metropolitan area, call 703–412–9810 or TDD 703–412–3323. For more detailed information on specific aspects of this rule, contact Rachel Lentz, Office of Brownfields and Land Revitalization (5105T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460–0002, 202–566–2745, or *lentz.rachel@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

Today's action offers certain parties the option of using an available industry standard to conduct all appropriate inquiries. Parties purchasing potentially contaminated properties may use the ASTM E1527–13 standard practice to comply with the all appropriate inquiries requirements of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Today's rule does not require any entity to use this standard. Any party who wants to claim protection from liability under one of CERCLA's landowner liability protections may follow the regulatory requirements of the All Appropriate Inquiries Final Rule at 40 CFR part 312, use the ASTM E1527–05 Standard Practice for Phase I Environmental Site Assessments to comply with the all appropriate inquiries provision of CERCLA, use the ASTM E2247–08 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property,'' or use the recognized in today's direct final rule, the ASTM E1527–13 standard.

Entities potentially affected by this action, or who may choose to use the newly referenced ASTM standard to perform all appropriate inquiries, include public and private parties who, as bona fide prospective purchasers, contiguous property owners, or innocent landowners, are purchasing potentially contaminated properties and wish to establish a limitation on CERCLA liability in conjunction with the property purchase. In addition, any entity conducting a site characterization or assessment on a property with a brownfields grant awarded under CERCLA Section104(k)(2)(B)(ii) may be affected by today's action. This includes state, local and Tribal governments that receive brownfields site assessment grants. A summary of the potentially affected industry sectors (by North American Industry Classification System (NAICS) codes) is displayed in the table below.

Industry category	NAICS code
Real Estate	531
Insurance	52412
Banking/Real Estate Credit.	52292
Environmental Consulting Services.	54162
State, Local and Tribal Government.	926110, 925120
Federal Government.	925120, 921190, 924120

The list of potentially affected entities in the above table may not be exhaustive. Our aim is to provide a guide for readers regarding those entities that EPA is aware potentially could be affected by this action. However, this action may affect other entities not listed in the table. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section entitled **FOR FURTHER INFORMATION CONTACT**.

II. Statutory Authority

This direct final rule amends the All Appropriate Inquiries Final Rule setting federal standards for the conduct of ''all appropriate inquiries'' at 40 CFR part 312. The All Appropriate Inquiries Final Rule sets forth standards and practices necessary for fulfilling the requirements of CERCLA section 101(35)(B) as required to obtain CERCLA liability protection and for conducting site characterizations and assessments with the use of brownfields grants per CERCLA section 104(k)(2)(B)(ii).

III. Background

On January 11, 2002, President Bush signed the Small Business Liability Relief and Brownfields Revitalization Act (''the Brownfields Amendments''). In general, the Brownfields Amendments to CERCLA provide funds to assess and clean up brownfields sites; clarifies existing and establishes new CERCLA liability provisions related to certain types of owners contaminated properties; and provides funding to establish or enhance State and Tribal cleanup programs. The Brownfields Amendments revised some of the provisions of CERCLA Section 101(35) and limit liability under Section 107 for bona fide prospective purchasers and contiguous property owners, in addition to clarifying the requirements necessary to establish the innocent landowner liability protection under CERCLA. The Brownfields Amendments clarified the requirement that parties purchasing potentially contaminated property undertake ''all appropriate inquiry'' into prior ownership and use of property prior to purchasing the property in order to qualify for protection from CERCLA liability.

The Brownfields Amendments required EPA to develop regulations establishing standards and practices for how to conduct all appropriate inquiries. EPA promulgated regulations that set standards and practices for all appropriate inquiries on November 1, 2005 (70 FR 66070). In the final regulation, EPA referenced, and recognized as compliant with the final rule, the ASTM E1527–05 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.'' In December 2008, EPA amended the final rule to recognize another ASTM standard as compliant with the final rule, ASTM E2247–08 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural

Property.'' Therefore, the final rule (40 CFR part 312) allows for the use of the ASTM E1527–05 standard or the ASTM E2247–08 standard to conduct all appropriate inquiries, in lieu of following requirements included in the final rule.

Since EPA promulgated the All Appropriate Inquiries Final Rule setting standards and practices for the conduct of all appropriate inquiries, ASTM International published a revised standard for conducting Phase I environmental site assessments. This standard, ASTM E1527–13, ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process,'' was reviewed by EPA, in response to a request for its review by ASTM International, and determined by EPA to be compliant with the requirements of the All Appropriate Inquiries Final Rule.

Today's direct final rule amends the All Appropriate Inquiries Final Rule to allow the use of the recently revised ASTM standard, E1527–13, for conducting all appropriate inquiries, as required under CERCLA for establishing the bona fide prospective purchaser, contiguous property owner, and innocent landowner liability protections.

With today's action, parties seeking liability relief under CERCLA's landowner liability protections, as well as recipients of brownfields grants for conducting site assessments, will be considered to be in compliance with the requirements for all appropriate inquiries, if such parties comply with the procedures provided in the ASTM E1527–13, ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.'' EPA determined that it is reasonable to promulgate this clarification as a direct final rule that is effective immediately, rather than delay promulgation of the clarification until after receipt and consideration of public comments. EPA made this determination based upon the Agency's finding that the ASTM E1527–13 standard is compliant with the All Appropriate Inquiries Final Rule and the Agency sees no reason to delay allowing for its use in conducting all appropriate inquiries.

The Agency notes that today's action does not require any party to use the ASTM E1527–13 standard. Any party conducting all appropriate inquiries to comply with the CERCLA's bona fide prospective purchaser, contiguous property owner, and innocent landowner liability protections may continue to follow the provisions of the All Appropriate Inquiries Final Rule at 40 CFR part 312, use the ASTM E1527–05 Standard or use the ASTM E2247–08 standard.

In taking today's action, the Agency is allowing for the use of an additional recognized standard or customary business practice, in complying with a federal regulation. Today's action does not require any person to use the newly revised standard. Today's action merely allows for the use of ASTM International's E1527–13 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process'' for those parties purchasing potentially contaminated properties who want to use the ASTM E1527–13 standard in lieu of the following specific requirements of the all appropriate inquiries final rule.

The Agency notes that there are no legally significant differences between the regulatory requirements and the two ASTM E1527 standards. To facilitate an understanding of the slight differences between the All Appropriate Inquiries Final Rule, the ASTM E1527–05 Phase I Environmental Site Assessment Standard and the revised ASTM E1527–13 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process,'' as well as the applicability of the E1527–13 standard to certain types of properties, EPA developed, and placed in the docket for today's action, the document ''Summary of Updates and Revisions to ASTM E1527 Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process: How E1527–13 Differs from E1527–05.'' The document provides a comparison of the two ASTM E1527 standards.

By taking today's action, EPA is fulfilling the intent and requirements of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113.

Today's action includes no changes to the All Appropriate Inquiries Rule other than to add an additional reference to the new ASTM E1527–13 standard. EPA is not seeking comments on the standards and practices included in the final rule published at 40 CFR part 312. Also, EPA is not seeking comments on the ASTM E1527–13 standard. EPA's only action with today's direct final rule is recognition of the ASTM E1527–13 standard as compliant with the final rule and, therefore it is only this action on which the Agency is seeking comment.

IV. This Action

EPA is publishing this direct final rule without prior proposal because the Agency wants to provide additional flexibility for grant recipients or other entities that may benefit from the use of the ASTM E1527–13 standard. In addition, the Agency views this as a noncontroversial action and anticipates no adverse comment. We believe that today's action is reasonable and can be promulgated without consideration of public comment because it allows for the use of a tailored standard developed by a recognized standards developing organization and that was reviewed by EPA and determined to be equivalent to the Agency's final rule. Today's action does not disallow the use of the previously recognized standards (ASTM E1527–05 or ASTM E2247–08) and it does not alter the requirements of the previously promulgated final rule. In addition, today's action will potentially increase flexibility for some parties who may make use of the new standard, without placing any additional burden on those parties who prefer to use either the ASTM E1527–05 standard, the ASTM E2247–08 standard, or follow the requirements of the All Appropriate Inquiries Final Rule when conducting all appropriate inquiries.

Although we view today's action as noncontroversial, in the ''Proposed Rules'' section of today's **Federal Register**, we are publishing a separate proposed rule containing the clarification summarized above. That proposed rule will serve as the proposal to be revised if adverse comments are received. If EPA does not receive adverse comment in response to this direct final rule prior to September 16, 2013, this rule will become effective on November 13, 2013, without further notice. If EPA receives adverse comment, we will publish a timely withdrawal of this direct final rule in the **Federal Register**, informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time and before September 16, 2013.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011), this action is not a ''significant regulatory action'' and is therefore not subject to OMB review. This action merely amends the All Appropriate Inquiries Rule to reference ASTM International's E1527–13 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process'' and allow for its use to satisfy the requirements for conducting all appropriate inquiries under CERCLA. This action does not impose any requirements on any entity, including small entities. Therefore, pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), after considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action does not contain any unfunded mandates or significantly or uniquely affect small governments as described in Sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub. L. 104–4). This action does not create new binding legal requirements that substantially and directly affect Tribes under Executive Order 13175 (63 FR 67249, November 9, 2000). This action does not have significant Federalism implications under Executive Order 13132 (64 FR 43255, August 10, 1999). Because this action has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., nor does it require any special considerations under Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994).

This action does involve technical standards; thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) does apply. The NTTAA was signed into law on March 7, 1996 and, among other things, directs the National Institute of Standards and Technology (NIST) to bring together federal agencies as well as state and local governments to achieve greater reliance on voluntary standards and decreased dependence on in-house standards. It states that use of such standards, whenever practicable and appropriate, is intended to achieve the following goals: (a) Eliminate the cost to the government of developing its own standards and decrease the cost of goods procured and the burden of complying with agency regulation; (b) provide incentives and opportunities to establish standards that serve national needs; (c) encourage long-term growth for U.S. enterprises and promote efficiency and economic competition through harmonization of standards; and (d) further the policy of reliance upon the private sector to supply Government needs for goods and services. The Act requires that federal agencies adopt private sector standards, particularly those developed by standards developing organizations (SDOs), whenever possible in lieu of creating proprietary, non-consensus standards.

Today's action is compliant with the spirit and requirements of the NTTAA. Today's action allows for the use of the ASTM International standard known as Standard E1527–13 and entitled ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.''

The Congressional Review Act, 5 U.S.C. 801 et seq., generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. EPA 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**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule is effective on November 13, 2013, unless EPA receives adverse comment by September 16, 2013.

List of Subjects in 40 CFR Part 312

Administrative practice and procedure, Hazardous substances.

Dated: August 5, 2013.

Mathy Stanislaus,

Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set out in the preamble, title 40 CFR chapter I is amended as follows:

PART 312—[AMENDED]

■ 1. The authority citation for part 312 continues to read as follows:

Authority: Section 101(35)(B) of CERCLA, as amended, 42 U.S.C. 9601(3)(B).

Subpart B—Definitions and References

■ 2. Section 312.11 is amended by adding paragraph (c) to read as follows:

§ 312.11 References.

* * * * *

(c) The procedures of ASTM International Standard E1527–13 entitled ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.'' This standard is available from ASTM International at *www.astm.org,* 1–610–832–9585.

[FR Doc. 2013–19764 Filed 8–14–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 08–15 and 03–123; FCC 13–101]

Speech-to-Speech and Internet Protocol (IP) Speech-to-Speech Telecommunications Relay Services; Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission amends telecommunications relay services (TRS) mandatory minimum standards applicable to Speech-to-Speech (STS) relay service. This action is necessary to ensure that persons with speech disabilities have access to relay services that address their unique needs, in furtherance of the objectives of section 225 of the Communications Act of 1934, as amended (the Act), to provide relay services in a manner that is functionally equivalent to conventional telephone voice services.

DATES: Effective October 15, 2013.

FOR FURTHER INFORMATION CONTACT: Gregory Hlibok, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 559–5158 or email *Gregory.Hlibok@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Speech-to-Speech and Internet Protocol (IP) Speech-to-Speech Telecommunications Relay Services; Telecommunications Relay Services and Speech-to-Speech Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* Report and Order (*Order*), document FCC 13–101, adopted on July 19, 2013, and released on July 19, 2013, in CG Docket Nos. 08–15 and 03–123. In document FCC 13–101, the Commission also seeks comment in an accompanying

Further Notice of Proposed Rulemaking (*Notice*), which is summarized in a separate **Federal Register** Publication. The full text of document FCC 13–101 will be available for public inspection and copying via the Commission's Electronic Comment Filing System (ECFS), and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. It also may 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: (800) 378–3160, fax: (202) 488–5563, Internet: *www.bcpiweb.com.* Document FCC 13–101 can also be downloaded in Word or Portable Document Format (PDF) at *http://www.fcc.gov/encyclopedia/telecommunications-relay-services-trs.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Synopsis

1. Title IV of the Americans with Disabilities Act (ADA) requires the Commission to ensure that TRS is available to all individuals with hearing and speech disabilities in the United States and to increase the utility of the telephone system by enabling these persons to access the telephone system to make calls to, and receive calls from, other individuals. Under Title IV, the Commission must ensure that, ''to the extent possible and in the most efficient manner,'' relay services are made available that provide access to the telephone system that is ''functionally equivalent'' to voice telephone services.

2. When Congress first enacted section 225 of the Act, relay calls were placed using a text telephone device (TTY) connected to the public switched telephone network (PSTN). Since then, the Commission has determined that several new forms of relay fall within the definition of TRS and decided to include PSTN-based STS, captioned telephone service (CTS), video relay service (VRS), Internet Protocol Relay (IP Relay), and IP captioned telephone service (IP CTS) as compensable forms of TRS.

3. In March 2000, the Commission mandated that carriers obligated to provide TRS also provide STS so that persons with speech disabilities can access the telephone system. STS utilizes specially trained communications assistants (CAs) who understand the speech patterns of persons with speech disabilities and can repeat the words spoken by such individuals to the other parties to a relayed call. A person with a speech disability can initiate an STS call by dialing 711 (the nationwide access code for state relay providers) and giving the CA the number of the person he or she wishes to call. The CA then makes the outbound call, and re-voices what the STS user says to the called party. Persons desiring to call a person with a speech disability via STS can also dial 711 to reach a CA who can handle the call. At present, states are responsible for compensating providers for the costs of providing intrastate STS, while the Interstate Telecommunications Relay Services Fund (Fund) compensates providers for the costs of providing interstate STS.

4. On June 26, 2006, Bob Segalman and Rebecca Ladew filed a petition requesting that the Commission amend its rules to require an STS CA to stay with the call for a minimum of 20 minutes, rather than 15 minutes because ''STS calls often last much longer than text-to-voice calls[,] changing CAs on these calls prior to 20 minutes can seriously disrupt their flow and impair functionally equivalent telephone service.'' Bob Segalman and Rebecca Ladew, *Petition for Amendment to TRS Rule on Speech-to-Speech Relay Service,* CG Docket No. 03–123 (*2006 STS Petition*).

5. On December 21, 2007, Hawk Relay filed a Request for Clarification that IP STS is a form of TRS eligible for compensation from the Fund. Hawk Relay, *Request for Expedited Clarification for the Provision and Cost Recovery of Internet Protocol Speech-to-Speech Relay Service,* CG Docket No. 08–15 (*IP STS Request*). The *IP STS Request* describes IP STS as a type of STS that uses the Internet to connect the consumer to the relay provider. According to the *IP STS Request,* an IP STS call is initiated by the relay user clicking an icon on his or her computer or device. The user is connected to a CA over the Internet and tells the CA the number to be dialed; the CA then connects the IP STS user with the called party and relays the call between the two parties.

6. On June 24, 2008, the Commission released the *2008 STS NPRM* in response to the *2006 STS Petition* and the *IP STS Request. Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Speech-to-Speech and Internet Protocol (IP) Speech-to-Speech Telecommunications Relay Service,* CG Docket Nos. 03–123 and 08–15, Notice of Proposed Rulemaking, published at 73 FR 47120, August 13, 2008 (*2008 STS NPRM*). The Commission sought comment on whether to amend the TRS rules to require STS CAs to stay with a call for a minimum of 20 minutes (rather than 15 minutes), and whether the Commission should more specifically define the point at which the minimum period of time begins to run. The Commission also sought comment on whether to amend the TRS rules to require that STS providers offer the STS user the option of having his or her voice muted so that the other party to the call will hear only the STS CA re-voicing the call, and not the voice of the STS user, as well as on whether there are ways to ensure that STS users calling 711, the nationwide dialing access code for TRS, will promptly reach an STS CA to handle their calls. With respect to IP STS, the *2008 STS NPRM* sought comment on its tentative conclusions that IP STS is a form of TRS compensable from the Fund, that it should be compensated at the same rate as STS, and that an entity desiring to offer IP STS could become eligible to do so by being accepted into a certified state TRS program, subcontracting with an entity that is part of a certified state program, or by seeking Commission certification.

7. On October 20, 2011, Speech Communications Assistance by Telephone, together with eight other national disability organizations, filed a petition requesting the Commission to open a proceeding on modernizing STS to allow people with speech disabilities to benefit from modern IP technologies through the use of video-assisted STS, or VA–STS. Speech Communications Assistance by Telephone (SCT), *Petition for Rulemaking for Video Assisted STS (VID–STS) to Facilitate Phone Communication for People with Severe Speech Disabilities,* CG Docket No. 03–123 (*2011 VA–STS Petition*). VA–STS connects the caller and the CA via a broadband video link, which allows the CA to see STS users as they are speaking. Petitioners claim that giving the CA the ability to see the STS caller's mouth movements, facial expressions, and gestures, and possibly even cue cards, can enable the CA to better understand and re-voice for the caller. In this manner, Petitioners assert, VA–STS provides functional equivalence to many individuals with speech disabilities who are not able to utilize traditional STS successfully.

8. As the Commission has recognized in the past, given the nature of the interaction between an STS user and an STS CA, requiring a longer minimum

period of time that an STS CA must stay with a call than is required for other forms of TRS furthers section 225 of the Act's functional equivalency objective. Based upon the record concerning past experience with the preexisting 15 minute period of time that an STS CA must stay with a call, the Commission now concludes that an incremental increase to 20 minutes would better ensure functional equivalency, and the Commission amends its rule accordingly. The record confirms that transferring an ongoing call to a new CA is often disruptive because the new STS CA must adjust to the speech patterns of the STS user. Further, persons with speech disabilities often require a greater amount of time and concentration to perform the tasks of listening to the other party, thinking, forming a response, and then speaking.

9. The Commission concludes that the 20 minute time period should begin when the CA reaches the called party, and amends its rules accordingly. The Commission emphasizes that, for calls initiated by persons with speech disabilities, the CA should initiate an outbound call to the voice telephone user only when he or she is effectively communicating with the STS user. Moreover, especially for STS calls initiated by persons without a speech disability, the Commission concludes that if, once the called party has been reached, the STS user and the CA are at any point unable to communicate effectively, the STS provider may switch the call to a different CA before the 20 minute period has expired without violating the 20 minute in-call replacement rule.

10. The Commission concludes that STS providers must offer STS users the option to have their voices muted so that the other party to the call will hear only the CA, not the user's voice, and it amends its rules accordingly. This option will likely give more persons with speech disabilities the confidence to use STS because many such individuals are hesitant to allow the called party to hear their speech.

11. In 2000, the Commission adopted nationwide 711 dialing access to allow both persons with disabilities and voice telephone users to initiate a TRS call from any telephone, anywhere in the United States, and be connected to the TRS facility serving that calling area. In 2008, the Commission sought comment on a number of 711 issues specific to STS users and noted that the Commission was in receipt of complaints from STS users who reported being disconnected upon dialing 711 during the transfer to an STS CA, indicating perhaps a lack of proper training on the part of some CAs, or the lack of proper equipment to receive and transfer STS calls to an STS CA. The Commission asked whether there are means by which it could ensure that STS users can reach an STS CA promptly and without disconnection after dialing 711, for example through the use of a prompt or menu.

12. Rather than mandating any particular technical solution, the Commission concludes that STS providers must, at a minimum, employ the same means of enabling their STS users to connect to a CA when dialing 711 that they use for all other forms of TRS. For example, where a provider requires its CAs to directly answer incoming 711 calls (*i.e.,* they do not use an interactive voice response (IVR) menu system for incoming TRS calls), it must ensure that its CAs are trained to discern the specific needs of STS users and promptly transfer these incoming calls to STS CAs, so that these callers have the same timely access to communications that other TRS callers have. Additionally, the provider may not require that the caller hang up and dial a different number (*e.g.,* a toll free number) to reach an STS CA because this, too, would defeat the purpose of requiring easy dialing access as established in the *711 TRS Dialing Order,* and impose a particular hardship on STS users, many of whom have limitations in their motor dexterity due to stroke, cerebral palsy or other muscular limitations that have caused their speech disabilities. *Use of N11 Codes and Other Abbreviated Dialing Arrangements,* CC Docket No. 92–105, Report and Order, published at 65 FR 54799, September 11, 2000 (*711 TRS Dialing Order*).

13. To the extent that a provider uses an IVR menu system that allows a direct connection to a CA for TTY-based and other forms of TRS on the first level of menu prompts, it must allow STS users to connect directly to an STS CA from that first level of prompts. Ensuring that STS users are not required to navigate through extra dialing menus will enable such users to communicate by telephone in a manner that is functionally equivalent to the ability of an individual who does not have a speech disability. The Commission notes, however, that the mandate for 711 dialing does not preclude STS providers from offering a single nationwide toll free number as a supplement to 711 dialing access. However, a dedicated toll-free number for STS calls cannot take the place of 711 STS dialing access, as this would be inconsistent with the intent of the *711 TRS Dialing Order,* which was to ensure that easy dialing access be available to all persons with hearing and speech disabilities seeking to use TRS across the country, as well as to voice telephone users seeking to call such persons.

14. In the *2008 STS NPRM,* the Commission tentatively concluded that IP STS meets the definition of TRS under section 225(a)(3) of the Act, and thus may be eligible for compensation from the Fund. The Commission now concludes, however, that it needs additional information in order to determine whether an additional form of STS that utilizes Internet-based transmissions is necessary to achieve functional equivalence for Americans with speech disabilities, and, if so, to establish the parameters for such form of STS. It appears that STS users already can obtain the claimed advantages of IP STS, such as the ability to make calls on a mobile or Internet-enabled device, by simply using an interconnected VoIP service to access a state STS relay center. Additionally, the Commission received the *2011 VA–STS Petition,* requesting the Commission to open a proceeding on VA–STS, which employs IP video technologies to enhance relayed communication by people with speech disabilities. Petitioners in the *2011 VA–STS Petition* claim that allowing the CA the ability to see and get cues from ''the user's face and any available seen body parts or indicators,'' such as facial expressions and the orientation and movement of the body, enables the CA to more effectively re-voice what a person with a speech disability says during a call. In the coming months, the Commission will open a proceeding to seek comment on whether an additional form of STS that utilizes Internet-based transmissions is necessary to achieve functional equivalence for Americans with speech disabilities, and, if so, how such service should be structured and provided under the Commission's TRS program.

15. Consumer groups propose other initiatives to further enhance the use and quality of STS. A consumer group asserts that STS providers should be required to inform STS users of the TRS confidentiality rules so that prospective STS users would be reassured that their privacy is being preserved. The Commission declines to adopt this proposal because it is concerned that adding this requirement to the start of every STS call may be unduly burdensome for both the CA and other users, many of whom may already be familiar with this mandatory minimum standard. Instead, the Commission believes that informing potential users of their right to TRS confidentiality is

best incorporated into any outreach efforts that are required by its current or future rules. A second recommendation is to require STS users' profiles to be immediately available to the STS CA each time an STS user places an STS call so that providers can provide a better and more ''consistent STS relay experience'' for users. The Commission believes that this proposal deserves consideration, but defers its resolution until after the Commission seeks and obtains further input on the proposal's merits in response to the *Notice.*

Final Paperwork Reduction Act of 1995 Analysis

Document FCC 13–101 does not contain any new or revised information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any new or revised information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Final Regulatory Flexibility Certification

1. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that ''the rule will not have a significant economic impact on a substantial number of small entities.'' The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 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).

2. STS relay service is a form of TRS that utilizes specially trained CAs who understand the speech patterns of persons with speech disabilities and can repeat the words spoken by such individuals to the other parties to a relayed call. In the *Order,* the Commission concludes that requiring an STS CA to stay with the call for a minimum of 20 minutes is best served to ensure the effective and efficient relaying of STS calls. The Commission also finds that requiring that STS providers offer the STS user the option of having her or his voice muted so that the other party to the call would hear only the STS CA re-voicing the call, and not the voice of the STS user as well, will give potential STS users the confidence necessary to use STS. In document FCC 13–101, the Commission further requires that STS providers must, at a minimum, employ the same means of enabling their STS users to connect to a CA when dialing 711 that they use for all other forms of TRS. For example, when a CA directly answers an incoming 711 call, the CA must transfer the STS user to an STS CA without requiring the STS user to take any additional steps. When an interactive voice response (IVR) system answers an incoming 711 call, the IVR system must allow for an STS user to connect directly to an STS CA using the same level of prompts as the IVR system uses for all other forms of PSTN-based TRS.

3. The Commission concludes that these new requirements are necessary to improve the effectiveness and quality of STS so that individuals with speech disabilities may receive functionally equivalent telephone service, as mandated by Title IV of the Americans with Disabilities Act. The Commission believes that none of these requirements would impose a significant burden on providers, including small businesses. Specifically, each of the three new requirements entail only minor operational changes that can be accomplished at minimal cost to each provider of STS, including small businesses.

4. In analyzing whether a substantial number of small entities will be affected by the requirements adopted in document FCC 13–101, the Commission notes that the SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such firms having 1,500 or fewer employees. Five providers currently receive compensation from the Interstate TRS Fund for providing STS: AT&T Corporation; Hamilton Relay, Inc.; Kansas Relay Service, Inc.; Purple Communications, Inc. and Sprint Nextel Corporation. The Commission notes that only one of these five providers is a small entity under the SBA's small business size standard. Because each of the three new requirements adopted in the *Order* entail only minor operational changes that can be accomplished at minimal cost to each provider of STS, the Commission concludes that the number of small entities affected by its requirements in document FCC 13–101 is not substantial.

5. Therefore, for all of the reasons stated above, the Commission certifies that the requirements of document FCC 13–101 will not have a significant economic impact on a substantial number of small entities.

Congressional Review Act

1. The Commission will send a copy of document FCC 13–101 in a report to be sent to Congress and the Governmental Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

Pursuant to sections 1, 4(i), (j), and (o), 225, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), (j), and (o), 225, and 403, document FCC 13–101 is adopted.

The *2006 STS Petition* is granted to the extent indicated herein.

The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of document FCC 13–101, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Individuals with disabilities, Telecommunications.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k); 403 (b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 227, 228, 254(k), 616, 620, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, unless otherwise noted.

■ 2. Amend § 64.604 by revising paragraph (a)(1)(v) and by adding paragraphs (a)(1)(viii) and (b)(7) to read as follows:

§ 64.604 Mandatory minimum standards.

* * * * *

(a) * * *

(1) * * *

(v) CAs answering and placing a TTY-based TRS or VRS call shall stay with the call for a minimum of ten minutes. CAs answering and placing an STS call shall stay with the call for a minimum of twenty minutes. The minimum time period shall begin to run when the CA reaches the called party. The obligation of the CA to stay with the call shall terminate upon the earlier of:

(A) The termination of the call by one of the parties to the call; or

(B) The completion of the minimum time period.

* * * * *

(viii) STS providers shall offer STS users the option to have their voices muted so that the other party to the call will hear only the CA and will not hear the STS user's voice.

* * * * *

(b) * * *

(7) *STS 711 Calls.* An STS provider shall, at a minimum, employ the same means of enabling an STS user to connect to a CA when dialing 711 that the provider uses for all other forms of TRS. When a CA directly answers an incoming 711 call, the CA shall transfer the STS user to an STS CA without requiring the STS user to take any additional steps. When an interactive voice response (IVR) system answers an incoming 711 call, the IVR system shall allow for an STS user to connect directly to an STS CA using the same level of prompts as the IVR system uses for all other forms of TRS.

* * * * *

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2013–19786 Filed 8–14–13; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

48 CFR Part 2409

[Docket No FR–5571–F–03]

RIN 2501–AD56

HUD Acquisition Regulations (HUDAR): Correcting Amendment

AGENCY: Office of the Chief Procurement Officer, HUD.

ACTION: Final rule; Correcting amendment.

SUMMARY: On December 10, 2012, HUD published a final rule that amended the HUDAR to implement miscellaneous changes, which included, for example, removing obsolete and redundant provisions, updating provisions that address the organizational structure of HUD, and adding provisions on contractor record retention. In making the organizational changes specified in the preamble of the December 10, 2012, final rule and the March 16, 2012, proposed rule, HUD inadvertently omitted moving to the new regulatory structure the clause that clarifies that policies and procedures concerning debarment and suspension for nonprocurement contracts also apply to procurement contracts. This final rule corrects that amendment.

DATES: *Effective:* August 15, 2013, and is applicable beginning January 9, 2013.

FOR FURTHER INFORMATION CONTACT: For information about this technical correction, please contact Camille E. Acevedo, Associate General Counsel for Legislation and Regulations, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; telephone number 202–708–1793 (this is not a toll-free number). Persons with hearing or speech impairments may access Mr. Blocker's telephone number via TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The uniform regulation for the procurement of supplies and services by federal departments and agencies, the Federal Acquisition Regulation (FAR), was promulgated on September 19, 1983 (48 FR 42102). The FAR is codified in title 48, chapter 1, of the Code of Federal Regulations. HUD promulgated its regulation to implement the FAR on March 1, 1984 (49 FR 7696). The HUDAR (title 48, chapter 24 of the Code of Federal Regulations) is prescribed under section 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)); section 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 121(c)); and the general authorization in FAR 1.301.

II. 2012 HUD Amendments

HUDAR was last revised by final rule published on December 10, 2012 (77 FR 73524). The December 10, 2012, final rule was preceded by a March 16, 2012 (77 FR 15681), proposed rule that announced that the purpose of the 2012 rulemaking was to implement various miscellaneous and nonsubstantive amendments to the HUDAR. The preamble to the March 16, 2012, proposed rule described amendments that would correct the location of various HUDAR provisions through redesignation and corrected citations.

One of the amendments described in the March 16, 2012, proposed rule was to move 48 CFR 2409.7001 to its new location, 48 CFR 2409.470. Section 2409.7001, entitled ''HUD's Regulations on Debarment and Suspension, and Ineligibility'', read as follows: ''HUD's policies and procedures concerning debarment and suspension are contained in 2 CFR parts 180 and 2424 and, notwithstanding 2 CFR 180.220(a)(1), apply to procurement contracts.'' The preamble to the March 16, 2012, proposed rule stated that: ''The content of current 2409.7001 is proposed to be moved to the new 2409.470 with the same title, to more accurately correspond to the FAR and would be revised to correct the Code of Federal Regulations citation. Current subpart 2409.70 would be accordingly removed, as 2409.7001 was the only section in that subpart.'' (See 77 FR 15683.) The correction of the citation was to remove the references to 2 CFR part 180, which is now unnecessary as it is included by cross-reference in 2 CFR 2424.10 and elsewhere. Other than relocation and correction of the citation, no substantive change was proposed to section 2409.7001. However, in the published rule text, the portion after the legal citation to 2 CFR part 2424 was inadvertently dropped.

The preamble to the December 10, 2012, final rule advised that it was implementing without change the amendments proposed by the March 16, 2012, rule, and described a few nonsubstantive amendments made that were inadvertently omitted in the March 16, 2012, proposed rule. Unfortunately, the March 16, 2012 proposed rule also inadvertently omitted the full content of prior regulatory section 2409.7001 that was supposed to be moved, without substantive change, to 2409.470, and the December 10, 2012 final rule repeated that error.

III. This Correcting Amendment Rule

This final rule corrects this error and restores the full content of § 2409.7001 to new § 2409.470 with a corrected legal citation. The 2012 rulemaking makes clear that no significant substantive changes were being made to the HUDAR. The error did not change the applicability of debarment and suspension rules to procurements. To remove the applicability of HUD's debarment and suspension policies and procedures to procurement contracts, which policies and procedures have been applied to procurement contracts to date and for many years previously, would have made the 2012 rulemaking a highly significant rule, and HUD would have been required to provide advance notice and solicit comment on this change. Additionally, however, and of equal or more importance is that HUD has no authority to exempt procurement contracts from debarment and suspension policies and procedures. The Federal Acquisition Regulation (FAR) requires debarment and suspension policies and procedures to be applied to procurement contracts. In the absence of an agency specifying its own debarment and suspension policies and procedures, those of the FAR apply. (See 48 CFR 1.1 and 48 CFR part 9, subpart 9.4). The language in HUD's HUDAR regulations previously in 48 CFR 2409.7001 has always only been a clarification that HUD's debarment and suspension policies and procedures apply both to procurement and nonprocurement contracts. Indeed, HUD's 2007 debarment and suspension rule noted that § 2409.7001 did not impose any additional requirements but was a regulatory clarification of longstanding HUD policy of many years (72 FR 61270, October 29, 2007).

List of Subjects in 48 CFR Part 2409

Government procurement.

Accordingly, for the reasons described in the preamble, 48 CFR part 2409 is amended as follows:

PART 2409—CONTRACTOR QUALIFICATIONS

■ 1. The authority citation for part 2409 continues to read as follows:

Authority: 40 U.S.C. 121(c); 42 U.S.C. 3535(d).

■ 2. Revise § 2409.470 to read as follows:

§ 2409.470 HUD regulations on debarment, suspension, and ineligibility.

HUD's policies and procedures concerning debarment and suspension are contained in 2 CFR part 2424, and, notwithstanding any language to the contrary, apply to procurement contracts.

Dated: August 9, 2013.

Jemine A. Bryon,

Chief Procurement Officer.

[FR Doc. 2013–19855 Filed 8–14–13; 8:45 am]

BILLING CODE 4210–67–P

Proposed Rules

Federal Register
Vol. 78, No. 158
Thursday, August 15, 2013

DEPARTMENT OF ENERGY

10 CFR Part 429

[Docket No. EERE–2013–BT–NOC–0023]

Appliance Standards and Rulemaking Federal Advisory Committee: Notice of Open Meetings for the Commercial HVAC, WH, and Refrigeration Certification Working Group and Announcement of Working Group Members to Negotiate Commercial Certification Requirements for Commercial HVAC, WH, and Refrigeration Equipment

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of open meetings.

SUMMARY: This notice announces the open meetings of the Commercial Heating, Ventilation, and Air-conditioning (HVAC), Water Heating (WH), and Refrigeration Certification Working Group (Commercial Certification Group). The purpose of the Commercial Certification Group is to undertake a negotiated rulemaking to discuss and, if possible, reach consensus on proposed certification requirements for commercial HVAC, WH, and refrigeration equipment, as authorized by the Energy Policy and Conservation Act of 1975, as amended.

DATES: For dates of meetings, see Public Participation in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: The location for the Wednesday, August 28, meeting is the Building Technologies Office at 950 L'Enfant Plaza, 6th floor, rooms 6099–6097, SW. Washington, DC 20024. The Wednesday, September 11, and Thursday September 12 meetings will be held at the Department of Energy's main building, 1000 Independence Avenue, room GH–019, SW. Washington, DC 20585. Individuals will also have the opportunity to participate by webinar. To register for the webinar and receive call-in information, please register at *http://www1.eere.energy.gov/buildings/appliance_standards/asrac.html.*

FOR FURTHER INFORMATION CONTACT: John Cymbalsky, ASRAC Designated Federal Officer, Supervisory Operations Research Analyst, U.S. Department of Energy (DOE), Office of Energy Efficiency and Renewable Energy, 950 L'Enfant Plaza, SW., Washington, DC 20024. Email: *asrac@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

Membership: The members of the Certification Working Group were chosen from nominations submitted in response to the DOE's call for nominations published in the **Federal Register** on Tuesday, March 12, 2013. 78 FR 15653. The selections are designed to ensure a broad and balanced array of stakeholder interests and expertise on the negotiating working group for the purpose of developing a rule that is legally and economically justified, technically sound, fair to all parties, and in the public interest. All meetings are open to all stakeholders and the public, and participation by all is welcome within boundaries as required by the orderly conduct of business. The members of the Certification Group are as follows:

DOE and ASRAC Representatives

- Laura Barhydt (U.S. Department of Energy)
- John Mandyck (UTC Climate, Controls & Security)
- Kent Peterson (P2S Engineering, Inc.)

Other Selected Members

- Karim Amrane (Air-Conditioning, Heating and Refrigeration Institute)
- Timothy Ballo (EarthJustice)
- Jeff Bauman (National Refrigeration & Air-Conditioning)
- Brice Bowley (GE Appliances)
- Mary Dane (Traulsen)
- Paul Doppel (Mitsubishi Electric US, Inc.)
- Geoffrey Halley (SJI Consultants, Inc.)
- Pantelis Hatzikazakis (Lennox International, Inc.)
- Charles Hon (True Manufacturing)
- Jill Hootman (Trane)
- Marshall Hunt (Pacific Gas and Electric Company)
- Michael Kojak (Underwriters Laboratories LLC)
- Karen Meyers (Rheem Manufacturing Co.)
- Peter Molvie (Cleaver-Brooks Product Development)
- Neil Rolph (Lochinvar, LLC)
- Harvey Sachs (American Council for an Energy-Efficient Economy)
- Ronald Shebik (Hussmann Corporation)
- Judd Smith (CSA)
- Louis Starr (Northwest Energy Efficiency Alliance)
- Phillip Stephens (Heat Transfer Products)
- Russell Tharp (Goodman Manufacturing)
- Eric Truskoski (Bradford White Corp.)

Purpose of Meeting: To provide advice and recommendations to the U.S. Department of Energy on certification requirements of commercial HVAC, WH, and refrigeration equipment under the authority of the Negotiated Rulemaking Act (5 U.S.C. 561–570, Pub. L. 104–320).

Public Participation: Open meetings will be held on: Wednesday, August 28, Wednesday, September 11, and Thursday September 12 from 8:30 am to 6:00 pm EDT.

Members of the public are welcome to observe the business of the meetings and, if time allows, may make oral statements during the specified period for public comment. To attend the meetings and/or to make oral statements regarding any of the items on the agenda, email *asrac@ee.doe.gov.* In the email, please indicate your name, organization (if appropriate), citizenship, and contact information. Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the meetings should advise ASRAC staff as soon as possible by emailing *asrac@ee.doe.gov* to initiate the necessary procedures, no later than two weeks before each meeting. Anyone attending the meetings will be required to present a government photo identification, such as a passport, driver's license, or government identification. Due to the required security screening upon entry, individuals attending should arrive early to allow for the extra time needed.

Members of the public will be heard in the order in which they sign up for the Public Comment Period. Time allotted per speaker will depend on the number of individuals who wish to speak but will not exceed five minutes. Reasonable provision will be made to include the scheduled oral statements on the agenda. A third-party neutral facilitator will make every effort to allow the presentations of views of all interested parties and to facilitate the orderly conduct of business.

Participation in the meetings is not a prerequisite for submission of written comments. Written comments are welcome from all interested parties. Any comments submitted must identify the Commercial HVAC, WH, and Refrigeration Certification Working Group, and provide docket number EERE–2013–BT–NOC–0023. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email: ASRACworkgroup2013 NOC0023@ee.doe.gov.* Include docket number EERE–2013–BT–NOC–0023 in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted.

Docket: The docket is available for review at *www.regulations.gov,* including **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The Secretary of Energy has approved publication of today's notice of proposed rulemaking.

Issued in Washington, DC, on August 9, 2013.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2013–19778 Filed 8–14–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 130403324–3376–01]

RIN 0648–BC94

Boundary Expansion of Thunder Bay National Marine Sanctuary

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Reopening of public comment period.

SUMMARY: On June 14, 2013, NOAA published a proposed rule in the **Federal Register** to revise the regulations for the boundary of the Thunder Bay National Marine Sanctuary (78 FR 35776). This notice reopens the public comment period stated in that proposed rule until October 18, 2013.

DATES: NOAA will accept public comments on the proposed rule published at 78 FR 35776 (June 14, 2013) through October 18, 2013.

ADDRESSES: You may submit comments on this document, identified by NOAA–NOS–2012–0077, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NOS-2012-0077,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Thunder Bay National Marine Sanctuary, 500 W. Fletcher, Alpena, Michigan 49707, Attn: Jeff Gray, Superintendent.

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 NOAA. 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. NOAA 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

FOR FURTHER INFORMATION CONTACT: Jeff Gray, Superintendent, Thunder Bay National Marine Sanctuary at 989–356–8805 ext. 12 or *jeff.gray@noaa.gov.*

SUPPLEMENTARY INFORMATION: On June 14, 2013, NOAA published a proposed rule in the **Federal Register** to revise the regulations for the boundary of the Thunder Bay National Marine Sanctuary (78 FR 35776). An accompanying draft environmental impact statement (DEIS) was also published (78 FR 35928). Public comments on the proposed rule and DEIS were solicited. Three public meetings on the proposed action were held on July 15–17, 2013 in Michigan. While the proposed action has received considerable support, several commenters have raised concerns regarding the applicability of U.S. Coast Guard and U.S. EPA regulations governing discharge of ballast water to the proposed expanded area.

While the public is free to comment on any issue related to the proposed action, NOAA is particularly interested in receiving input on the following topics:

1. Please explain current ballast management practices. Identify, with specificity, all areas where ballast management occurs and under what circumstances.

2. Please explain how the proposed boundary expansion is expected to impact existing ballast management practices.

Dated: August 12, 2013.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries.

[FR Doc. 2013–19940 Filed 8–14–13; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF THE TREASURY

26 CFR Part 53

[REG–115300–13]

RIN 1545–BL57

Requirement of a Section 4959 Excise Tax Return and Time for Filing the Return

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing regulations requiring hospital organizations liable

for the excise tax for failure to meet the community health needs assessment requirements for any taxable year to file Form 4720, ''Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code.'' The regulations also specify the due date for such returns. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by November 13, 2013.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–115300–13), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–115300–13), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–115300–13).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Amy F. Giuliano at (202) 622–6070; concerning submission of comments and request for hearing, Oluwafunmilayo Taylor at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the existing regulations under sections 6011 and 6071 to (1) specify the form that must be used to accompany payment of the excise tax imposed by section 4959 for failure to meet the community health needs assessment requirements of section 501(r)(3), and (2) provide the due date for filing the form. Section 501(r) and section 4959 were enacted by section 9007 of the Patient Protection and Affordable Care Act, Public Law 111–148 (124 Stat. 119 (2010)).

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that this rule merely provides guidance as to the timing and filing of Form 4720 for charitable hospital organizations liable for the section 4959 excise tax, and completing the applicable portion (Schedule M) of the Form 4720 for this purpose imposes little incremental burden in time or expense. The liability for the section 4959 excise tax is imposed by statute, and not these regulations. In addition, a charitable hospital organization may already be required to file the Form 4720 under the existing final regulations in sections 53.6011–1 and 53.6071–1 if it is liable for another Chapter 41 or 42 excise tax. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. Chapter 6) is not required. Pursuant to section 7805(f) of the Code, these proposed regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business, and no comments were received.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available at *www.regulations.gov* or upon request.

A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Amy F. Giuliano, Office of Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 53 is proposed to be amended as follows:

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

■ **Paragraph 1.** The authority citation for part 53 continues to read in part as follows:

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

■ **Par. 2.** Section 53.6011–1 is amended by:

■ 1. Redesignating paragraphs (c) through (e) as (d) through (f).

■ 2. Adding new paragraphs (c) and (g).

The addition reads as follows:

§ 53.6011–1 General requirement of return, statement or list.

* * * * *

(c) [The text of paragraph (c) of this section is the same as the text of § 53.6011–1T(c) published elsewhere in this issue of the **Federal Register**].

* * * * *

(g) [The text of paragraph (g) of this section is the same as the text of § 53.6011–1T(g) published elsewhere in this issue of the **Federal Register**].

■ **Par. 3.** Section 53.6071–1 is amended by:

■ 1. Revising paragraph (h).

■ 2. Adding paragraph (i).

The revision and addition read as follows:

§ 53.6071–1 Time for filing returns.

* * * * *

[The text of paragraphs (h) and (i) of this section is the same as the text of §§ 53.6071–1T(h) and (i)(1) and (2) published elsewhere in this issue of the **Federal Register**].

Heather C. Maloy,

Acting Deputy Commissioner for Services and Enforcement.

[FR Doc. 2013–19930 Filed 8–14–13; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2009–0469; A–1–FRL–9846–7]

Approval and Promulgation of Implementation Plans; Connecticut; Control of Visible Emissions, Record Keeping and Monitoring

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Connecticut on December 1, 2004. Specifically, EPA is proposing to approve revisions to Connecticut's visible and particulate-matter (PM) emissions, record keeping and monitoring regulations. These revised rules establish and require limitations on visible and PM emissions for stationary sources, and clarify reporting requirements for operation of air-pollution-control and monitoring equipment. EPA is proposing approval of this SIP revision because the state has adequately demonstrated that it will not interfere with attainment or maintenance of the national ambient air quality standards (NAAQS) in Connecticut or any other applicable requirements of the Clean Air Act.

This action is being taken in accordance with the Clean Air Act (CAA).

DATES: Written comments must be received on or before September 16, 2013.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R01–OAR–2009–0469 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–2009–0469,'' Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, 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, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, 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–2009–0469. 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'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the 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 Air Quality Planning Unit, 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 person 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.

FOR FURTHER INFORMATION CONTACT: Alison C. Simcox, 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, telephone number (617) 918–1684, fax number (617) 918–0684, email *simcox.alison@epa.gov*.

In addition to the publicly available docket materials available for inspection electronically in the Federal Docket Management System at *www.regulations.gov,* and the hard copy available at the Regional Office, which are identified in the **ADDRESSES** section of this **Federal Register**, copies of the state submittal are also available for public inspection during normal business hours, by appointment at the State Air Agency: Bureau of Air Management, Department of Energy and Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

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

When submitting comments, remember to:

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

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

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

II. What is the background for the proposal?

Visible emissions, also known as ''opacity,'' provide a measure of the degree to which stack emissions from a stationary source (such as a power plant) reduce the transmission of light and obscure the view of an object in the background. See 40 CFR 60.2. In general, the more opaque the particles that pass through an emissions point, the more light that will be blocked, thus increasing the opacity percentage. Although opacity is not a criteria pollutant and there can be uncertainty in the relationship between opacity and the mass of particulate matter from a stack emission at any given source, opacity standards continue to be used as an indicator of the effectiveness of emission controls for PM emissions and to help implement and enforce emission standards for purposes of attaining the PM NAAQS. Connecticut, like many other states, has rules that limit opacity levels of emissions from certain sources to reduce pollutant releases.

Connecticut first adopted regulations to limit visible and PM emissions from stationary sources, including electric generating units (EGUs) and boilers, in the early 1980s. In 1981, EPA approved Regulations of Connecticut State Agencies (RCSA) Section 19–508–18, ''Control of particulate emissions,'' into the Connecticut SIP (47 FR 41958). Section 19–508–18 has since been recodified as RCSA Section 22a–174–18.

In 2003, the Connecticut Department of Environmental Protection (now the Connecticut Department of Energy and Environmental Protection or CT DEEP) proposed revisions to Section 22a–174–18 ''Control of particulate matter and visible emissions'' (herein called the ''visible emissions regulation'') to address short-term excursions from maximum allowed opacity levels that may occur and be measured at some stationary sources with continuous opacity monitoring systems (COMS) [1] during periods of startup, shutdown, stack testing, soot-blowing, fuel switching or sudden load changes. Facilities covered under the new exceptions in Section 22a–174–18(j) include only those facilities that operate COMS.

In 2003, CT DEEP also proposed revisions to several other RCSA Sections, including 22a–174–4, ''Source Monitoring, record keeping, reporting and authorization of inspection of air pollution sources'' (codified as RCSA Section 19–508–4 in the Connecticut SIP, and herein called the ''record keeping regulation''), and 22a–174–7, ''Air pollution control equipment and monitoring equipment operation'' (codified as RCSA Section 19–508–7 in the Connecticut SIP, and herein called the ''monitoring regulation''). CT DEEP held a public hearing on revisions to these three (as well as several other) regulations, on April 29, 2003. Subsequently, CT DEEP amended its visible emissions, record keeping, and monitoring regulations based on comments received from EPA and others, with an effective date of April 1, 2004.

On December 1, 2004, CT DEEP submitted the revised regulations to EPA for inclusion in the Connecticut SIP. This submittal included a provision providing exceptions from maximum opacity levels for startup, shutdown, stack testing, soot-blowing, fuel switching or sudden load changes, and malfunctions of stationary sources with COMs (Section 22a–174–18(j)(1)). However, on July 8, 2013, CT DEEP sent a letter to EPA withdrawing Section 22a–174–18(j)(1) to the extent that it applies to malfunctions.

Today's action addresses RCSA Sections 22a–174–4, 22a–174–7, and 22a–174–18. CT DEEP's December 1, 2004 SIP submittal also included three additional regulations. EPA has already taken action on these rules. Specifically, Section 22a–174–3b ''Exemptions from permitting for construction and operation of external combustion units, automotive refinishing operations, emergency engines, nonmetallic mineral processing equipment and surface coating operations,'' Section 22a–174–30 ''Dispensing of gasoline/Stage I and Stage II vapor recovery,'' and Section 22a–174–43 ''Portable fuel container spillage control'' were approved into the Connecticut SIP on August 31, 2006 (71 FR 51761).

After reviewing CT DEEP's December 1, 2004 SIP submittal for Sections 22a–174–4, 22a–174–7, and 22a–174–18 (including clarifying letters demonstrating consistency with 110(l) of the CAA and withdrawal of an exception provision for malfunctions), EPA is proposing to approve the Connecticut SIP revision for RCSA Sections 22a–174–4, 22a–174–7, and 22a–174–18 without the withdrawn portion, and is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking 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**.

III. Summary of Connecticut's SIP Revision

On December 1, 2004, CT DEEP submitted to EPA amendments to 22a–174–4 (record keeping), 22a–174–7 (monitoring) and 22a–174–18 (visible and PM emissions). Revisions to the record keeping and monitoring regulations clarify and improve enforceability of requirements currently in the Connecticut SIP. For example, revised 22a–174–4 includes specific data availability requirements and revised 22a–174–7 includes explicit, specific time frames for various notifications (such as ''no later than two business days''), as compared to prior requirements to notify the state ''promptly.''

Connecticut's revised visible and PM emissions regulation also contains new provisions concerning the emission limits applicable to sources, including alternative emission limits applicable to some sources during certain modes of source operation.

The state's pre-2004 regulation, which is currently in the Connecticut SIP (Section 19–508–18), prohibits stationary sources from emitting pollutants with more than 20 percent opacity at all times, except for up to five (5) aggregate minutes in a 60-minute period, during which emissions can have up to 40 percent opacity. The current regulation contains no impermissible exemptions for excess emissions during startup, shutdown, malfunction or other periods. The state's revised rule (Section 22a–174–18) includes new time-averaged opacity standards with specified compliance determination methods for sources both with and without COMs, and an alternative compliance option for sources that use COMs. The alternative compliance option provides an alternative emission limit applicable during certain modes of source operation.

For sources both with and without COMs, the revised regulation limits opacity to 20 percent during any 6-minute block average or to 40 percent during any one-minute block average (Section 22a–174–18(b)(1) and (2)). For sources without COMs, compliance

[1] CT regulations use the term ''opacity continuous emissions monitoring systems'' or ''Opacity CEMS.'' However, EPA and others commonly refer to these monitors as ''continuous opacity monitoring systems'' or ''COMS.'' Throughout this notice, we use the more common term ''COMS.''

with these limits is determined using EPA's Reference Method 9, which is a standardized EPA method for visual determination of the opacity of emissions from stationary sources.

For sources with COMs, the revised regulation includes an alternative emission limit during periods of startup, shutdown, stack testing, soot-blowing, fuel switching or sudden load change (Section 22a–174–18(j)(1)). During these periods, emissions can have up to 60 percent opacity during any 6-minute block average. However, the period of time that the alternative emission limit can be used by the source cannot exceed one-half of one percent (0.5 percent) of a facility's total operating hours during any calendar quarter. In other words, the maximum time that the alternative emission limit can be used is slightly less than 11 hours under the scenario of a facility operating continuously for a three-month period. RCSA Section 22a–174–4, which is also proposed for approval herein, contains recordkeeping and reporting requirements that serve to ensure that records are available to provide evidence that elevated opacity occurs during specified modes of source operation, and that elevated opacity is restricted on a calendar quarter basis.

Connecticut's revised regulation also includes a new provision (Section 22a–174–18(j)(2)) that excludes emission sources that are separately subject to additional visible emissions standards under existing federal New Source Performance Standards (NSPS) set forth in 40 CFR part 60 from the Section 22a–174–18 visible emissions standards. We considered the various NSPS applicable to these types of sources. The most relevant for today's discussion are the NSPS for boilers. In Connecticut, boilers subject to NSPS are mainly boilers subject to Subparts Db and Dc.[2] During normal operating conditions, these NSPSs provide visible emission standards generally more stringent than Section 22a–174–18, limiting opacity to 20 percent (6-minute average), except for one 6-minute period per hour of not more than 27 percent opacity. See 40 CFR 60.43b(f) and 60.43c(c). However, these existing NSPSs include exemptions for emissions during periods of startup, shutdown, or malfunction. See 40 CFR 60.43b(g) and 60.43c(d). It should be noted that these existing exemptions do not include other modes of source operation, such as stack testing, soot blowing, fuel switching, or sudden load change. Accordingly, the opacity limits of these NSPS continue to apply during such periods.

PM emission standards currently in the Connecticut SIP (Section 19–508–18(d)) include limits of 0.10 pounds per million British thermal unit (lb/MMBtu) of heat input for stationary sources requiring a permit. Sources requiring permits are those with potential emissions of 15 tons per year (tpy) or more of any individual air pollutant. For smaller boilers that are required to register under Connecticut General Statute Chapter 540 Sec. 29–241 (''registration sources''), PM emission standards were 0.14 lb/MMBtu for sources burning residual oil and 0.20 lb/MMBtu for all other registration sources. The state's revised rule (Section 22a–174–18) retains the PM standard of 0.10 lb/MMBtu for sources requiring a permit, but tightens the PM standards from 0.20 to 0.12 lb/MMBtu for registration sources that burn distillate oil (no. 2 oil), and from 0.20 to 0.10 lb/MMBtu for registration sources that burn natural gas.

EPA's review of the SIP submittal indicates that all concerns that EPA has thus far expressed to CT DEEP about revisions to the state's visible and PM emissions, record keeping, and monitoring regulations have been adequately addressed. Most of the concerns that EPA expressed were in regard to the visible emissions regulation, especially Section 22a–174–18(j), which provides exceptions from maximum opacity levels for stationary sources with COMS. To address these concerns, CT DEEP submitted a clarifying letter to its SIP submittal, which is discussed below, demonstrating that revisions to its visible emissions regulation are consistent with section 110(l) of the CAA, and withdrew Section 22a–174–18(j)(1) to the extent that it applies to malfunctions. See letter to EPA dated July 8, 2013, available in the docket for today's action.

In the process of reviewing Connecticut's SIP revision and the addenda, EPA also considered other issues pertaining to the visible emissions regulation, including its relationship to EPA's recently proposed revisions to its policy regarding limits applicable during startup, shutdown, and malfunction.

IV. What is EPA's analysis of Connecticut's submittal?

On December 1, 2004, CT DEEP submitted revisions to its visible and PM emissions (Section 22a–174–18), record keeping (22a–174–4), and monitoring (22a–174–7) regulations. As previously noted, the record keeping and monitoring revisions clarify and improve enforceability of requirements currently in the Connecticut SIP. However, revisions to the visible and PM emissions regulation include new provisions that provide an alternative emission limit for maximum opacity levels for stationary sources with COMs during certain modes of source operation, and also excludes certain existing sources that are subject to NSPS visible-emissions standards from the SIP's visible-emissions standards. CT DEEP submitted a clarifying letter to its SIP submittal to demonstrate that these provisions are consistent with section 110(l) of the CAA. As described below, EPA reviewed the SIP submittal, which includes the letter, and is proposing to find that it is consistent with section 110(l) of the CAA.[3]

The analysis below discusses the anti-backsliding provisions of CAA Section 110(l), since, as mentioned above, a previous version of the visible and PM emissions rule has already been approved into the Connecticut SIP. Section 193 of the CAA is not discussed because the entire State of Connecticut is attaining the 1997 and 2006 NAAQS for particulate matter.[4] On July 19, 2013, EPA proposed to redesignate New Haven and Fairfield Counties to attainment for the 1997 annual and 2006 24-hour fine particle ($PM_{2.5}$) NAAQS (78 FR 43096). EPA intends to finalize the redesignation action prior to taking final action on this proposal.

Section 110(l) of the CAA states: ''The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act.'' EPA interprets section 110(l) to apply to all requirements of the CAA and to all areas of the country, whether attainment, nonattainment, unclassifiable, or maintenance for one or more of the six criteria pollutants. EPA interprets section 110(l) to require a basis for concluding that the SIP revision will not interfere with attainment or maintenance of the NAAQS for all criteria pollutants whose emissions and/or ambient concentrations may change as a result of the SIP revision. For areas designated as attainment for the relevant

[2] EPA is unaware of any boilers in Connecticut that meet the applicability criteria for Subpart Da, nor any incinerators subject to Subparts Ea, Eb, or Ec.

[3] Please note that our Section 110(l) analysis draws upon, but is not identical to, the analysis presented in CT DEEP's letter.

[4] Connecticut is designated as nonattainment under the 2008 ozone NAAQS, but additional periods of higher opacity as a result of the SIP revision are not expected to result in increases of ozone precursors.

criteria pollutants, EPA believes it is appropriate to allow states to demonstrate that a SIP will not interfere with maintenance of the NAAQS by showing that, taking into consideration the change in emissions levels allowed under the SIP revision, there is a substantial margin of safety (i.e., ''headroom'' or ''cushion of compliance'') between ambient concentrations and the applicable NAAQS.

Alternatively, a state can show that a SIP revision will not interfere with attainment or maintenance of the NAAQS by demonstrating that the revision will not allow for an increase in emissions into the air over what is allowed under the existing EPA-approved SIP, taking into consideration SIP-approved measures that represent new emissions reductions achieved in a contemporaneous time frame to the change represented by the SIP revision. In addition to being contemporaneous, the emissions reductions must also be permanent and enforceable. States may also be able to demonstrate noninterference through alternative approaches, such as air quality analyses. For example, a maintenance plan may demonstrate that a control measure is no longer needed to maintain compliance with the NAAQS.

We evaluated CT DEEP's Section 110(l) demonstration to ensure that revisions to the state's visible and PM emissions regulation (Section 22a–174–18) will not interfere with attainment or maintenance of PM air quality standards, or any other applicable requirements of the CAA, as required by section 110(l) of the CAA. Our analysis, as set forth below, consists of several parts.

First, we consider (although we do not quantify precisely) potential emissions increases that could result from CT DEEP's revised regulation. These increases represent, very roughly, potential increases attributable to the relaxed alternative opacity limit, plus potential increases attributable to removing NSPS-subject sources from SIP opacity standards, minus other reductions within the rule itself (e.g., the tighter PM standards in some circumstances).

Second, we discuss recent data regarding emissions inventories and ambient air quality to demonstrate that Connecticut's emissions have declined substantially in recent years, and that its present air quality is well below the federal primary and secondary PM NAAQS. As part of this discussion, we describe certain regulations that EPA has approved into the Connecticut SIP and, therefore, result in permanent, federally enforceable emissions reductions. Our purpose in discussing these regulations is to support our analysis regarding current statewide inventories and air quality.

Our analysis demonstrates that the current, relatively low emissions inventories are not solely attributable to non-regulatory factors (e.g., economic changes), but rather are, in significant part, attributable to the permanent, enforceable reductions achieved by Connecticut's SIP and other federal CAA programs. The combination of these three facts—that Connecticut's direct and precursor $PM_{2.5}$ emissions have been reduced, that these reductions are largely permanent reductions attributable to federally enforceable CAA measures (including SIP requirements), and that the measured ambient $PM_{2.5}$ concentrations are well below the NAAQS—persuade us that the weight of evidence shows that Connecticut's SIP has a sufficient margin of safety. In other words, even if overall emissions do increase as a result of this revision, this increase will not interfere with maintenance of the PM NAAQS.

Third, we discuss CAA Section 110(a)(2)(A)'s requirement for ''enforceable emission limitations'' in SIP provisions, which Section 302(k) defines as limiting emissions ''on a continuous basis.'' EPA has longstanding guidance for SIP provisions that pertain generally to emissions during startup, shutdown, and malfunction. CT DEEP's revision raises three subcategories of issues potentially relevant here. First, we discuss each of the seven criteria EPA recommends for the SIP provision that provides for an alternative emission limit during specific modes of source operation, such as startup and shutdown, to meet CAA SIP requirements, and why we believe that CT DEEP's revision is consistent with these criteria. Second, we very briefly discuss an alternate limit for malfunction that was contained in CT DEEP's original submission, that has since been withdrawn from consideration. Third, we discuss some unique issues regarding Section 22a–174–18(j)(2), and why our approval of this provision—which exempts sources subject to NSPS opacity standards from the current EPA-approved SIP-based opacity standard—is not inconsistent with CAA requirements applicable to SIP provisions.

Fourth, we discuss why CT DEEP's revision will not interfere with Regional Haze requirements. Our analysis here is very similar to that in the first and second sections. We discuss Connecticut's Regional Haze plan and its modeled reductions and the ''compliance cushion'' available, and explain why, overall, potential increases from the alternative emission limit and the exclusion of certain sources from the current SIP opacity standards in CT DEEP's revised regulation will not interfere with Regional Haze requirements.

A. Potential Emissions Increases Attributable CT DEEP's Revised Regulation

In this section, we discuss (although we do not quantify precisely) potential emissions increases that could result from CT DEEP's revised regulation. These increases represent potential increases attributable to the relaxed alternative emission limit, plus potential increases attributable to removing NSPS-subject sources from SIP opacity standards, minus other reductions within the rule itself (e.g., the tighter PM standards in some circumstances).

Emissions From Sources With COMS

CT DEEP looked at the current operating status of 20 units for which the alternative emission limit during certain modes of source operation (Section 22a–174–18(j)(1)) was developed.[5] As shown in Table 1 below, since adoption of the revised regulation, eight of the 20 units have been permanently removed from service. CT DEEP revoked registrations for the five Pratt and Whitney Units at the Andrew Willgoos Turbine Lab in East Hartford in 2004 and 2005. The status of these units as inoperable was verified by a field inspector. Pfizer rendered Boiler No. 8 inoperable and CT DEEP revoked the New Source Review (NSR) permit (No. 070–0001) on October 7, 2008. The shutdown of Boiler No. 8 is also included on Consent Order No. 8314. At Devon Station, CT DEEP revoked registrations for two utility boilers (Nos. 7 and 8) in 2008. An inspection of the premises conducted by CT DEEP on May 13, 2008 verified that the units were inoperable.

[5] These units are not subject to NSPSs with opacity standards, and are therefore not eligible for the exemption in Section 22a–174–18(j)(2).

TABLE 1—ORIGINAL 20 UNITS WITH COMS. OPERATIONS BEFORE 2004 COMPARED WITH CURRENT CONDITIONS

Source/unit	Town/county	Pre-2004 fuel	Current operating status & fuel	Air pollution control
Devon Station #7	Milford/New Haven	Residual Oil/Natural Gas (NG).	Unit retired	N/A.
Devon Station #8	Milford/New Haven	Residual Oil/NG	Unit retired	N/A.
Norwalk Station #1	Norwalk/Fairfield	Residual Oil	Operating Residual Oil	Electrostatic Precipitator, Selective Non-catalytic Reduction.
Norwalk Station #2	Norwalk/Fairfield	Residual Oil	Operating Residual Oil	Electrostatic Precipitator, Selective Non-catalytic Reduction.
Middletown Station #2	Middletown/Middlesex	Residual Oil/NG	Operating NG/Residual Oil	Electrostatic Precipitator, Overfire Air.
Middletown Station #3	Middletown/Middlesex	Residual Oil/NG	Operating NG/Residual Oil	Electrostatic Precipitator, Water Injection, Selective Non-catalytic Reduction.
Middletown Station #4	Middletown/Middlesex	Residual Oil	Operating Residual Oil	Best Engineering Practices: optimizing fuel-to-air ratio.
Montville Station #5	Montville/New London	Residual Oil/NG	Operating Residual Oil/NG	Electrostatic Precipitator.
Montville Station #6	Montville/New London	Residual Oil	Operating Residual Oil	Best Engineering Practices: optimizing fuel-to-air ratio.
Bridgeport Harbor #2	Bridgeport/Fairfield	Residual Oil	Operating Residual Oil	Electrostatic Precipitator.
Bridgeport Harbor #3	Bridgeport/Fairfield	Coal/Oil	Operating Adaro Coal/Residual Oil.	Adaro Coal, Electrostatic precipitator, Activated carbon injection, Pulse jet fabric filter baghouse, Low NO_X Burner Technology w/Separated Overfire Air.
New Haven Harbor #1	New Haven/New Haven	Residual Oil/NG	Operating Residual Oil/NG	Electrostatic Precipitator, Overfire Air, Flue Gas Recirculation, Waterwall Lances, Low NO_X Burners.
Pfizer #5	Groton/New London	Residual Oil/NG	Operating by Order can only combust NG.	Low NO_X burner, Flue Gas Recirculation.
Pfizer #8	Groton/New London	Residual Oil	Unit rendered permanently inoperable.	N/A.
Fusion Paperboard PFI Boiler.	Sprague/New London	NG/Residual Oil	Operating NG/Residual Oil	Low NO_X Burner Technology (Dry Bottom only).
Pratt & Whitney Willgoos Labs Units 2–6.	E. Hartford/Hartford	Residual Oil	All 5 units removed	N/A.

Moreover, three of the units (Middletown Station no. 2 and 3 and Pfizer no. 5) have changed their primary fuel from residual oil to natural gas, resulting in a reduction in emissions of $PM_{2.5}$ and $PM_{2.5}$ precursors. On April 26, 2010, CT DEEP issued a consent order (No. 8306; included in docket for today's action) to NRG Energy, Inc., which included their Middletown facility. The order contains an ozone-season (May 1st through September 30th each year) restriction (Paragraph B.6) that, depending on fuel availability and supply, requires NRG facilities to burn the lowest NO_X-emitting fuel possible. NRG can trade to meet the seasonal limit, but to minimize use of Discrete Emission Reduction Credits (DERCs), it is typically in NRG's best interest to burn natural gas as often as possible. Each DERC is equivalent to 1 ton of NO_X emissions and may be used for emissions trading in accordance with Connecticut regulations. For the non-ozone season, SIP-approved Section 22a–172–22 (described in more detail below) sets a seasonal emission limit of 0.15 lb/MMBtu for sources in the NO_X Budget Program (described in more detail below). In sum, although use of natural gas is not a permanent and enforceable requirement for the two Middletown units, a combination of requirements make it likely that this is, and will remain, the fuel of choice.

On May 4, 2012, CT DEEP issued a consent order to Pfizer Inc. (No. 8314; included in docket for today's action), which contains an enforceable provision (paragraph B.1.) requiring Pfizer to combust only natural gas in boiler 5.

For purposes of examining potential emissions increases from Section 22a–174–18(j)(1), we focus on the remaining nine facilities. Emissions at these sources during startup and shutdown can only be roughly characterized because the time it takes to ''warm up'' a given unit depends on whether it is a single-cycle or combined-cycle unit, and on the make and model of the unit. Emissions also depend on whether the startup is a cold, warm, or hot startup, with higher emissions levels and longer startup times generally associated with cold startups. In addition, because emissions during startup periods are not steady-state emissions, they tend to be more variable than under steady-state operation. Although Section 22a–174–18(j)(1) authorizes emissions levels to be higher during startup, shutdown, stack testing, soot-blowing, fuel switching or sudden load changes, the regulation also imposes a strict limit on the amount of time that the alternative emission limit can apply (less than 11 hours during any calendar quarter). Revisions to Section 22a–174–4 provide recordkeeping and reporting requirements that serve to ensure that sources use the alternative emission limit only during appropriate modes of operation and for the requisite time per quarter. Moreover, revisions to Section 22a–174–18 reduces potential PM emissions by tightening PM standards for units that burn natural gas. These tightened PM standards apply at all times.

Additionally, Section 22a–174–18(j)(2) exempts facilities that are subject to an NSPS visible emissions standard from the Connecticut SIP's visible emissions standards. Like the non-NSPS facilities in Table 1, NSPS facilities are expected to have higher emissions during startup, shutdown, and malfunctions.[6] These higher emissions can only be roughly characterized because of differences in the make, model, and operation of the combustion units, as previously discussed. On the other hand, the SIP revision may reduce PM emissions from NSPS-subject facilities that are also subject to the PM emissions standards of Section 22a–174–18(e)(2). As noted before, the revision tightens the PM standards for registration sources that burn distillate oil from 0.20 lb to 0.12 lb/MMBtu, and the SIP's PM standards apply at all times. In contrast, for example, NSPS Subpart Db's PM emissions standard for oil-burning units is 0.10 lb/MMBtu, but with an exemption for startup, shutdown, and malfunction. While the NSPS provides a more stringent steady-state PM emissions limit, Connecticut's SIP has provided a PM emissions limit that applies at all times, including startup, shutdown, or malfunction, and this revision tightens that limit. Sources must comply with all limits that apply during a given time. Again, because of differences in the make, model, and operation of the combustion units, it is difficult to characterize the extent to which a source could increase its PM emissions due to the higher opacity limit without violating the reduced PM emissions limit.

Neither the state nor EPA has attempted to quantify the exact increase in PM emissions that could be allowed under this SIP revision. However, taking into consideration the universe of sources subject to the revised opacity standard, the fuels and emissions limits applicable to those sources (including those that are more stringent under the revision), and nature of the alternative emission limit (which only allows an increase from 40% to 60% opacity during certain modes of source operation with a limit of just under 11 hours per quarter), EPA believes that while there may be an increase in PM emissions associated with this SIP revision, any such increase would be small.

B. Emissions Inventories and Ambient Air Quality Analysis.

Connecticut's statewide emissions inventories have declined substantially in recent years. These reductions are in large part attributable to federally enforceable CAA measures, some of which we summarize. These measures have resulted in decreases in ambient pollutant concentrations that, as we explain below, provides an adequate "compliance cushion" below the NAAQS.

For example, Table 2 shows the decline in emissions of SO_2 and NO_X for point sources (and other sectors) between 2002 and 2007 for Fairfield and New Haven Counties.[7] The table appears to show an increase in point-source $PM_{2.5}$ between 2002 and 2007. However, this increase most likely reflects a change in the method used to estimate $PM_{2.5}$ emissions rather than a true increase in $PM_{2.5}$. The 2002 estimates include only primary (or filterable) $PM_{2.5}$, whereas the 2007 estimates also include condensable emissions. EPA agrees with CT DEEP that estimates for 2002 would likely be higher if the condensable portion of $PM_{2.5}$ was included.

TABLE 2—CHANGE IN ACTUAL EMISSIONS 2002 TO 2007 FOR THE CONNECTICUT PORTION OF THE NY/NJ/CT $PM_{2.5}$ NONATTAINMENT AREA

[Fairfield and New Haven Counties] *

	2002 (tons)	2007 (tons)	Change 2002–2007 (tons)
$PM_{2.5}$:			
Point	392.8	456.7	63.9
Area	4,775.7	3,891.8	−883.9
Onroad	487.2	794.0	306.8
Nonroad	949.9	970.5	20.6
Total	6,605.6	6,113.0	−492.6
SO_2:			
Point	10,582.4	4,344.3	−6,238.1
Area	5,800.5	7,625.0	1,824.5
Onroad	753.1	176.1	−577.0
Nonroad	1,363.4	1,470.7	107.3
Total	18,499.4	13,616.1	−4,883.3
NO_X:			
Point	6,196.8	5,606.2	−590.6
Area	6,070.8	6,024.9	−45.9
Onroad	31,854.4	23,391.6	−8,462.8

[6] We discuss later the fact that certain older NSPS subparts exempt visible emissions during malfunctions, and the implications of this for approval of Connecticut's SIP revision. For now, the point is only to characterize possible emissions increases that could result from approval of the revision.

[7] The focus here on Fairfield and New Haven Counties is because they are the only two counties in Connecticut that were designated nonattainment for the $PM_{2.5}$ standards. All other counties were designated attainment for the $PM_{2.5}$ standards.

TABLE 2—CHANGE IN ACTUAL EMISSIONS 2002 TO 2007 FOR THE CONNECTICUT PORTION OF THE NY/NJ/CT $PM_{2.5}$ NONATTAINMENT AREA—Continued

[Fairfield and New Haven Counties] *

	2002 (tons)	2007 (tons)	Change 2002–2007 (tons)
Nonroad	14,985.8	15,316.3	330.5
Total	59,107.8	50,339.0	−8,768.8

* 2002 emissions are from CT DEEP's November 2008 $PM_{2.5}$ NAAQS Attainment Demonstration. 2007 emissions are from CT DEEP's June 2012 Redesignation Request and Maintenance Plan SIP submission.

Monitored $PM_{2.5}$ Levels

Significantly, monitored levels of $PM_{2.5}$ have declined since April 1, 2004, when the revision of Section 22a–174–18 became effective.[8] As shown in Table 3, air quality design values (DVs) for Fairfield and New Haven Counties, the two counties proposed for redesignation to attainment and at most risk of future $PM_{2.5}$ nonattainment, are well below the 1997 annual $PM_{2.5}$ NAAQS of 15 μg/m³ and the 2006 24-hour $PM_{2.5}$ NAAQS of 35 μg/m³. (All other Connecticut counties were designated as attaining the 1997 and 2006 $PM_{2.5}$ standards.) Likewise, although EPA has not yet issued designations for the 2013 annual NAAQS, the design values in Table 3 indicate that recent (2009–2011) monitoring data are well below the 2013 annual NAAQS of 12 μg/m³.

TABLE 3—AIR-QUALITY ($PM_{2.5}$) DESIGN VALUES (μg/m³) FOR FAIRFIELD AND NEW HAVEN COUNTIES

County	1997 annual NAAQS 2007–2009	1997 annual NAAQS 2008–2010	1997 annual NAAQS 2009–2011	2006 24-hr NAAQS 2007–2009	2006 24-hr NAAQS 2008–2010	2006 24-hr NAAQS 2009–2011
Fairfield	11.3	10.0	9.4	31	28	26
New Haven	11.4	10.3	9.6	31	29	28

TABLE 4—MAXIMUM 24-HOUR PM_{10} CONCENTRATION (μg/m³) FOR FAIRFIELD, HARTFORD, LITCHFIELD, AND NEW HAVEN COUNTIES

County	Max 24-hr PM_{10} (μg/m³) 2008	Max 24-hr PM_{10} (μg/m³) 2009	Max 24-hr PM_{10} (μg/m³) 2010	Max 24-hr PM_{10} (μg/m³) 2011	Max 24-hr PM_{10} (μg/m³) 2012
Fairfield	76	45	42	33	54
Hartford	36	32	26	24	23
Litchfied			19	25	24
New Haven	63	61	56	55	39

Regarding PM_{10}, Table 4 shows the maximum 24-hour PM_{10} concentrations for all Connecticut counties with PM_{10} monitors. As shown in the table, all four counties have PM_{10} levels well below the 1997, 2006 and 2012 24-hour PM_{10} NAAQS of 150 μg/m³. Connecticut has not recorded a 24-Hr PM_{10} concentration in excess of the 150 μg/m³ since 1994.

In addition, emission projections from the maintenance plan for CT's redesignation request indicate that there is a substantial margin of safety that ensures maintenance of the NAAQS even if small increases in emissions were to occur (see Table 5).

TABLE 5—COMPARISON OF 2007, 2017, AND 2025 SO_2, NO_X, AND DIRECT $PM_{2.5}$ EMISSION TOTALS FOR THE SOUTHWESTERN CT AREA (FAIRFIELD AND NEW HAVEN COUNTIES)

[In tpy]

	SO_2	NO_X	$PM_{2.5}$
2007 (attainment)	13,615.9	50,339.1	6,113.0
2017 (interim)	7,909.0	29,501.3	5,029.1
2025 (maintenance)	7,783.7	24,192.2	4,741.7
2007 to 2025 (change)	−5,832.2 (−43%)	−26,146.9 (−55%)	−1,371.2 (−22%)

[8] This date is relevant because the state regulation's tightened PM limits became effective as a matter of state law, and it is useful to examine how it may have impacted emissions. Obviously, sources could not legally take advantage of the alternative compliance option in Section 22a–174–18(j)(1) nor the exemption for NSPS sources in Section 22a–174–18(j)(2) at this time, since these exemptions are not effective under federal law unless and until approved as a SIP revision.

Furthermore, modeling analysis conducted for the Regulatory Impact Analysis (RIA) for the 2012 $PM_{2.5}$ NAAQS [9] indicates that DVs in southwestern Connecticut are expected to continue to decline through 2020. In the RIA for the 2012 $PM_{2.5}$ NAAQS, the highest annual DV projected for 2020 is 8.79 µg/m³ for Fairfield County and 8.62 µg/m³ for New Haven County. The highest 24-hour DV projected for 2020 is 22.27 µg/m³ for Fairfield County and 21.78 µg/m³ for New Haven County. Given that precursor emissions are projected to decrease through 2025, it is reasonable to conclude that monitored $PM_{2.5}$ levels in this area will also continue to decrease through 2025.

These reductions are in large part attributable to permanent, federally enforceable requirements under the Clean Air Act. These permanent and enforceable measures, which are discussed below, include RCSA Sections 22a–174–19a (''Control of sulfur dioxide emissions from power plants and other large stationary sources of air pollution''), 22a–174–22 (''Control of Nitrogen Oxide Emissions''), and 22a–174–22c (''The Clean Air Interstate Rule (CAIR) Nitrogen Oxides (NO_X) Ozone Season Trading Program'').

RCSA Section 22a–174–19a

In 2000, CT DEEP adopted RCSA section 22a–174–19a and revised RCSA section 22a–174–22. These regulations now require large EGUs and industrial boilers to reduce SO_2 emissions by 30 to 50 percent and NO_X emissions by 20 to 30 percent.

Section 22a–174–19a, which became effective December 28, 2000 and has been approved into the Connecticut SIP,[10] includes a two-tiered timeframe for reducing SO_2 emissions from large EGUs and industrial sources (about 59 sources). Starting January 1, 2002, every industrial boiler or EGU subject to Connecticut's post-2002 NO_X Budget Program was required to:

- Combust liquid fuel, gaseous fuel or a combination of each, provided that each fuel possesses a fuel sulfur limit of equal to or less than 0.5 percent sulfur, by weight;
- Meet an average SO_2 emission rate of equal to or less than 0.55 lb/MMBtu for each calendar quarter for an affected unit; or
- Meet an average SO_2 emission rate of equal to or less than 0.5 lb/MMBtu calculated for each calendar quarter, if such owner or operator averages the emissions from two or more affected units at the premises.

Starting on January 1, 2003, all sources in Connecticut that are Acid Rain Sources under Title IV of the Clean Air Act and that are subject to Connecticut's Post-2002 NO_X Budget Program were required to:

- Combust liquid fuel, gaseous fuel or a combination of each, provided that each fuel possesses a fuel sulfur limit of equal to or less than 0.3 percent sulfur, by weight;
- Meet an average SO_2 emission rate of equal to or less than 0.33 lb/MMBtu for each calendar quarter for an affected unit at a premises; or
- Meet an average SO_2 emission rate of equal to or less than 0.3 lb/MMBtu calculated from two or more affected units at a premise.

Before January 1, 2005, Connecticut allowed sources subject to the January 1, 2003 emission rates to meet such emission rates by using SO_2 discrete emission reduction credits certified by CT DEEP or EPA's SO_2 Acid Rain Program allowances (also known as emissions credit trading). Connecticut General Statutes (CGS) section 22a–198 suspended SO_2 emission credit trading starting January 1, 2005.

The effectiveness of Section 22a–174–19a is detailed in Attachment X of CT DEEP's November 2009 Regional Haze SIP submittal (see docket EPA–R01–OAR–2009–0919). In that submittal, CT DEEP estimates that potential emissions from all sources statewide subject to RCSA 22a–174–19a were reduced from 89,537 tons in 2002 to 60,304 tons in 2006, a reduction of 29,233 tons.

RCSA Section 22a–174–22

Pursuant to the ozone reasonably available control technology (RACT) provisions of the 1990 Clean Air Act Amendments, CT DEEP adopted RCSA Section 22a–174–22 in 1995, achieving substantial reductions in NO_X emission rates from a variety of sources. For example, the maximum allowable NO_X emission rate for cyclone furnaces was reduced by 52 percent, the maximum allowable NO_X emission rate for existing coal-fired boilers was reduced by 58 percent, and the maximum allowable NO_X emission rate for No. 6 oil-fired boilers was reduced by 17 percent when compared to previously adopted NO_X limits. Section 22a–174–22 was approved into the Connecticut SIP on October 6, 1997. See 62 FR 52016.

CT DEEP also made revisions to Section 22a–174–22 that had a compliance date of October 1, 2003. New Section 22a–174–22(e)(3) required NO_X Budget Program sources subject to Section 22a–174–22 to meet a non-ozone seasonal NO_X emission rate of 0.15 lb/MMBtu.[11] In the first year of implementation, CT DEEP estimates that this non-ozone season limit resulted in NO_X emissions being reduced by 3,483 tons compared to 1999 emissions.

NO_X Budget Trading Programs

Since 1999, CT DEEP has adopted several NO_X budget trading programs which have progressively reduced allowances allocated to Connecticut's NO_X Budget Program sources (i.e., EGUs 15 MW and greater and certain large industrial sources) during the ozone season (May 1 through September 30). Section 22a–174–22a limited the ozone-season NO_X emissions budget to 5,866 tons beginning in 1999. Section 22a–174–22b reduced the ozone-season NO_X budget further to 4,466 tons beginning in 2003. Sections 22a–174–22a and 22a–174–22b were superseded by Section 22a–174–22c, the CAIR NO_X Ozone Season Trading Program (approved into the Connecticut SIP in January 2008 (73 FR 4105)). The CAIR program includes a NO_X budget for Connecticut sources of 2,691 tons that is not to be exceeded during the ozone season.[12]

The effectiveness of the state's NO_X budget trading programs is detailed in Attachment X of CT DEEP's November 2009 Regional Haze SIP submittal. In that submittal, CT DEEP noted that between 1994 and 2006, NO_X potential emissions from all Post-2002 NO_X Budget Program sources were reduced from 89,812 tons to 34,833 tons (a difference of 54,979 tons).

In addition to CT DEEP's demonstration that the revision of Section 22a–174–18, along with other regulations addressing SO_2 and NO_X emissions, will not interfere with attainment or maintenance of air quality standards as required by section 110(l)

[9] The ''Regulatory Impact Analysis for the Proposed Revisions to the National Ambient Air Quality Standards for Particulate Matter'' is available in the docket for today's rulemaking action.

[10] The final rulemaking notice approving CT's Section 22a–174–19a was signed by the Regional Administrator on April 26, 2013 but has not yet been published in the **Federal Register**. A copy of the signed notice is available in the docket for today's action.

[11] The final rulemaking notice approving CT's Section 22a–174–22(e)(3) was signed by the Regional Administrator on April 26, 2013 but has not yet been published in the **Federal Register**. A copy of the signed notice is available in the docket for today's action.

[12] The status of CAIR generally, and Connecticut Section 22a-174-22c in particular, is complex and is discussed in detail at 78 FR 5158. Because Connecticut's proposal does not critically depend on CAIR or Section 22a-174-22c, it is not necessary to repeat that analysis here. For purpose of today's proposal, it suffices to note that, while CAIR has been remanded by the Court of Appeals for the District of Columbia Circuit, EPA has been ordered to continue to administer CAIR until a replacement has been developed, and that Section 22a–174–22c will remain in effect for some time.

of the CAA, CT DEEP notes that revised Section 22a–174–18 has improved CT DEEP's ability to enforce visible-emissions requirements by identifying a standardized method for determining compliance for sources without COMS (Method 9). Notably, within six months of the effective date of the revision (April 1, 2004), CT DEEP had taken enforcement action against three sources based on submitted data from COMS. These actions were resolved by orders that required the sources to develop opacity compliance plans. Analysis by CT DEEP shows that, between 2002 and 2008, total opacity excursions and opacity excursions as a percent of operating hours dropped dramatically for these facilities.

In addition, the SIP revision requires more stringent PM emission limits for registered (i.e., non-permitted) boilers that burn distillate oil and natural gas than are required by the previously EPA-approved rule. Although NSPS boilers are specifically excluded from the opacity standards of Section 22a–174–18, they remain subject to the PM emission standards in the state's rule that apply at all times, even during periods of startup, shutdown, and malfunction.

In sum, Connecticut's monitored ambient PM concentrations are well below the NAAQS. This is attributable in large part to permanent, federally enforceable reductions of direct and precursor particulate emissions. Thus, Connecticut has a substantial ''margin of safety'' or ''compliance cushion'' such that small emissions increases would not interfere with attainment or maintenance of the NAAQS. EPA concludes that these factors, taken together, ensure that potential PM emissions increases that could result from revisions to Section 22a–174–18 will not interfere with attainment or maintenance of the PM_{10} or $PM_{2.5}$ NAAQS in Connecticut.

C. Revisions to Existing Opacity Standards

a. Alternative Emission Limitation Provisions

Section 110(a)(2)(A) requires that SIPs contain ''enforceable emission limitations and other control measures, means, or techniques . . . as may be necessary or appropriate to meet the applicable requirements of [the CAA].'' Section 302(k) defines the term ''emission limitation'' as ''a requirement that limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis.'' For this reason, EPA interprets the CAA to preclude SIP provisions that include exemptions for emissions that occur during periods such as startup, shutdown, or malfunction. While emission limitations in SIPs must be continuous to meet CAA requirements, they do not necessarily have to be continuous at the same level during all modes of source operation. Thus, for example, it may be appropriate to establish an emission limit that allows one level of emissions during ordinary day to day source operation and a different, higher level of emissions during other specific modes of source operation, such as during startup or shutdown. All such limits, however, must meet basic CAA requirements for SIP provisions.

EPA has longstanding SIP guidance that recommends criteria relevant to development of alternative emission limits or other control measures that apply during specific modes of source operation such as startup and shutdown.[13] EPA has also recently reiterated these criteria in a proposed rulemaking relevant to its interpretation of CAA requirements applicable to SIP provisions.[14] These criteria are intended to ensure that emission limitations or other control measures or techniques in SIPs that apply during specific modes of source operation, such as startup or shutdown, are designed to minimize emissions in order to provide for attainment and maintenance of the NAAQS and meet other CAA requirements (e.g., enforceability).

Therefore, EPA will analyze the alternative emission limit established by CT DEEP in Section 22a–174–18(j)(1) for facilities with COMS according to the specific criteria enumerated in EPA's guidance for such SIP provisions. Because the alternative emission limitation applies during startup, shutdown, stack testing, soot-blowing, fuel switching or sudden load changes, EPA will evaluate the revision with respect to these modes of source operation. Each of the seven (7) criteria is discussed below.

(1) The revision must be limited to specific, narrowly defined source categories using specific control strategies (e.g., cogeneration facilities burning natural gas and using selective catalytic reduction (SCR))

As described in IV.1 and as listed in Table 1 above, the specific source categories eligible to use the alternate emission limits under Section 22a–174–18(j)(1) include sources (mostly EGUs) with a capacity greater than 250 MMBtu/hr that are not subject to the federal NSPS set forth in 40 CFR part 60. The universe of existing sources affected by this revision is listed in Table 1. Most of the units in Table 1 use some combination of electrostatic precipitators, selective non-catalytic reduction, and/or low NO_X burners. Two of the affected units, (Montville Station #4 and Montville Station #6) do not have control measures comparable to the other sources, but they are subject to numerical PM emission limitations in the SIP and in their permits. Operators of these units use best engineering practices to ensure compliance with the SIP. This entails optimizing the fuel-to-air ratio in a manner that minimizes emissions. As discussed under criterion (3) below, optimization is more difficult to achieve during startup, shutdown, stack testing, soot-blowing, fuel switching or sudden load changes.

(2) Use of the control strategy for this source category must be technically infeasible during startup, shutdown, or other periods

CT DEEP established a workgroup in 1997 to recommend visible-emissions limits for a small number of sources (see Table 1). See letter to EPA dated January 14, 2013, in the docket for today's action summarizing workgroup effort. The workgroup considered technical issues that make it difficult for some facilities to consistently meet opacity limits that apply during normal steady-state operating conditions (i.e., 20 percent during any 6-minute block average or 40 percent during any one-minute block average) during periods such as startup and shutdown. For example, combustion turbines may have higher emissions during startup than during steady-state operation, and post-combustion control systems, such as Selective Catalytic Reduction (SCR) systems for reducing NO_X (a precursor of $PM_{2.5}$), work most effectively after operating temperatures are reached. In addition, the duration of an individual startup event, and the emissions levels during such an event, depend on the amount of time since a unit has operated, with cold startups (about 3 days since shutdown) resulting in higher initial emission levels than warm or hot startups. Such factual considerations are appropriate for

[13] See Memorandum entitled ''State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown,'' from Steven A, Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation, to the Regional Administrators, Regions I–X on September 20,1999.

[14] See, ''State Implementation Plans; Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction; Proposed Rule,'' 78 FR 12459 (Feb, 22, 2013).

consideration in establishing an alternative emission limit that applies during such periods in a SIP provision, as long as the limit meets other CAA requirements.

In addition to startup and shutdown operations, Section 22a–174–18(j)(1) allows for an alternative emission limit during these other types of operations: Stack testing, soot-blowing, fuel switching or sudden load changes. Sudden load changes are similar to startup and shutdown operations in that the emission unit is subject to large load swings during a short time period, which makes it difficult to optimize unit operation, and can lead to short-term higher emission rates.

Fuel switching can also result in short-term emission increases. For example, fuel switching in a combustion unit makes it difficult to optimize the oxygen/fuel ratio for efficiency as well as for minimizing emissions. The sources currently subject to 22a–174–18(j)(1) are combustion units that produce steam. These types of units operate by injecting more air than is required for stoichiometric purposes for complete combustion. However, there is a balance regarding how much excess air can be added without adversely impacting emissions and efficiency. Too much excess air generally results in increases in NO_X, whereas not enough excess air can result in unburned carbon. Sudden changes in operation due to fuel switching can make it difficult for a source to optimize its operations by changing the air-to-fuel ratio. For soot blowing, a facility injects high-pressure steam into a combustion unit in order to clean the outside of the steam tubes. The injection of steam dramatically increases water vapor in the combustion unit. Water vapor can interfere with the opacity reading in EPA's performance specifications for COMS, causing a higher opacity reading than would be obtained using EPA's Reference Method 9 for opacity.

(3) The frequency and duration of operation in startup, shutdown, or other modes must be minimized to the maximum extent practicable

The frequency and duration of periods of startup, shutdown, stack testing, soot-blowing, fuel switching or sudden load changes depend on the type, age, and operational characteristics of a given combustion unit. For example, modern combined-cycle units generally have shorter startup times than older units and can respond more quickly to load changes than older units. As noted above, the duration of operation in startup or shutdown mode depends on whether a unit is single-cycle or combined-cycle, and whether the startup is a cold, warm, or hot startup, with higher emissions levels and longer startup times generally associated with cold startups.

As discussed under criterion (2) above, other modes of operation, including stack testing, soot-blowing, fuel switching or sudden load changes can also result in short-term higher emission levels and operational difficulties. Operators of the units listed in Table 1 use best engineering practices to optimize the fuel-to-air ratio in a manner that minimizes emissions.

Based on COMS data (1-minute and 6-minute averages) for the combustion units listed in Table 1, as well as on information about the make, model, age, and operation of the units, the aforementioned workgroup recommended a 60 percent opacity limit (during any 6-minute block average) for periods of startup, shutdown, stack testing, soot-blowing, fuel switching or sudden load change.[15]

In its revised regulation, to minimize the frequency and duration of operation in a startup, shutdown, stack testing, soot-blowing, fuel switching or sudden load change mode, CT DEEP set a strict limit on the cumulative amount of time per calendar quarter (less than 11 hours) that a facility can be subject to the alternative emission limit under Section 22a–174–18(j)(1). The recordkeeping and reporting requirements in sections 22a–174–4 and 22a–174–7, which are proposed for approval herein, will serve to assure that these sources will be subject to the alternative emission limit only during the relevant periods and within the applicable time.

(4) As part of its justification of the SIP revision, the state should analyze the potential worst-case emissions that could occur during startup and shutdown

CT DEEP's workgroup (described above) determined the periods of highest opacity, which represent worst-case conditions, based on submitted COMS data from 20 combustion units in various state locations. These periods tend to occur during periods of startup, shutdown, and other specific modes of operation described in Section 22a–174–18(j)(1).

The worst-case emissions scenario that could occur during startup and shutdown would be if all twelve of the subject units (see Table 1) simultaneously emitted at the maximum allowed under Section 22a–174–18(j)(1)'s alternative emission limit by all (1) Engaging in startup, shutdown, or other listed modes of operation, (2) for the same full nearly-11-hour period, and (3) at the uppermost allowed 60% opacity. Even under this worst-case emissions scenario, however, emissions would continue to be limited by the federally applicable PM emissions standards in Section 22a–174–18(e), which apply at all modes of operation, including startup and shutdown.

In such a worst-case scenario, the applicable PM emissions standards would be 0.20 pounds of particulate matter per million BTU of heat input for the one subject unit (Bridgeport Harbor #3) authorized to burn coal, 0.14 pounds of particulate matter per million BTU for the ten subject units authorized to burn residual oil, and 0.10 pounds of particulate matter per million BTU for the subject unit (Pfizer #5) that by order can only combust natural gas. These PM emissions limits are federally enforceable under the CAA, and apply during startup, shutdown, or other modes of source operation. Thus, they represent the worst-case emissions scenario under Section 22a–174–18(j)(1)'s alternative emissions limit. In sum, the likely worst-case emissions scenario would be that, for a simultaneous period of almost 11 hours in a given calendar quarter, all twelve subject sources emit at 60% opacity, with ten units emitting 0.14 pounds of particulate matter per million BTU, one unit emitting 0.20 pounds of particulate matter per million BTU, and one unit emitting 0.10 pounds of particulate matter per million BTU.

Even under this worst-case scenario, various other federally enforceable restrictions ensure that overall PM emissions in Connecticut keep ambient PM levels well below all federal PM NAAQS. These other restrictions, the state emissions inventories, and an analysis of ambient concentration trends are explained in detail in Section IV.A of this document. In the event that these elevated emissions were to cause future violations of the PM NAAQS, EPA has additional authorities under the CAA to address any such potential problems.

[15] During CT DEEP's public comment period for Section 22a–174–18, one commenter argued that the 60 percent opacity limit over a 6-minute average was excessively stringent. The commenter noted that power boilers can be subject to malfunctions such as a boiler tube blowout, a precipitator fire or a plugged oil gun, and that in such events, equipment operators must shut the unit down as quickly as possible, but safely. The commenter argued that in certain cases, shutdown may take longer than six minutes, and that a 60% opacity limit over a 6-minute period ''could force the operators to bring the unit's load down too quickly, possibly causing additional damage to the equipment and jeopardizing personal safety.'' CT DEEP Hearing Report (Apr. 29, 2003), at 21–22. After considering this comment, CT DEEP decided to retain the 60% opacity limit in its final rule.

(5) All possible steps must be taken to minimize the impact of emissions during startup and shutdown on ambient air quality

RCSA Section 22a–174–4, which is proposed for approval herein, requires submission of all COMS data quarterly, along with a quarterly quality-assurance audit, which can occur at any time, including startup, shutdown, stack testing, soot-blowing, fuel switching or sudden load periods. This regulation also requires submission of corrective actions for a failed audit.

In addition, the exception in Section 22a–174–18(j)(1) is designed to minimize emissions during startup, shutdown, stack testing, soot-blowing, fuel switching or sudden load change. The operator must limit the time period during which the alternative emission limit applies to less than 11 hours per calendar quarter, and must limit opacity levels during such periods to no more than 60% opacity during any 6-minute block average. Furthermore, the PM emissions standards in Section 22a–174–18(e) continue to apply during startup, shutdown, stack testing, soot-blowing, fuel switching or sudden load change.

(6) At all times, the facility must be operated in a manner consistent with good practice for minimizing emissions, and the source must have used best efforts regarding planning, design, and operating procedures to meet the otherwise applicable emission limitation

The alternative emission limit in Section 22a–174–18(j)(1) is designed to minimize emissions at all times by limiting the time period during which the higher opacity limits are used on a calendar quarter basis, and by limiting opacity emissions during periods when the alternative emission limit applies to 60% opacity during any 6-minute block average. As discussed under criterion (2) above, during startup, shutdown and other modes of operation, including stack testing, soot-blowing, fuel switching or sudden load changes, operators of all the units listed in Table 1 use best engineering practices to optimize the fuel-to-air ratio in a manner that minimizes emissions.

(7) The owner or operator's actions during startup, shutdown, or other periods must be documented by properly signed, contemporaneous operating logs, or other relevant evidence

RCSA section 22a–174–4 requires all sources with COMS to submit quarterly reports to CT DEEP. These reports must contain all relevant information for determining compliance with emissions limits, including information for periods when a source claims to have been operating in one of the modes stated in 22a–174–18(j)(1) (i.e., startup, shutdown, stack testing, soot-blowing, fuel switching or sudden load change). During these periods, opacity readings may be above 40% but, for compliance, must be less than 60% (for 6-minute block averages). The COMS data from the affected sources is available to verify the opacity during the different modes of source operation during the relevant periods and, thus, provide a mechanism for compliance assurance. In addition, all of the sources that are regulated by 22a–174–18(j)(1) are also regulated by 22a–174–33 for Connecticut's title V program. This means that all of the quarterly reports must be signed by a responsible official and are subject to the due diligence clause of title V of the CAA.

b. Withdrawn Malfunction Emission Limit Provision

CT DEEP's December 1, 2004 SIP submittal included a provision that provides an alternative emission limit for sources during malfunctions. (Section 22a–174–18(j)(1)). However, on July 8, 2013, CT DEEP sent a letter to EPA withdrawing Section 22a–174–18(j)(1) to the extent that it applies to malfunction.

c. Exclusion of Sources Subject to NSPS

In addition to revising applicable emission limits, Connecticut's SIP revision also removes certain sources from coverage under existing SIP opacity standards if those sources are also separately regulated under existing EPA NSPS regulations. EPA notes that one practical effect of this revision is that these sources will now only be subject to the existing opacity limits of NSPS regulations and that within these regulations there may be exemptions from emission limits for excess emissions during certain startup, shutdown, or malfunction events. The decision of the U.S. Court of Appeals for the District of Columbia has indicated that exemptions from emission limitations during such periods are not consistent with the requirements of the CAA, in particular with the requirements of section 112 and section 302. *See Sierra Club* v. *Johnson,* 551 F.3d 1019 (D.C. Cir. 2008). EPA has concluded that such exemptions from emission limitations are also inappropriate in NSPS regulations under section 111. Accordingly, new NSPS regulations promulgated by EPA do not have such exemptions.[16]

EPA has long interpreted the CAA to prohibit exemptions for excess emissions during startup, shutdown, and malfunction in SIP provisions. Since 1982, EPA guidance has stated that such exemptions are inconsistent with CAA requirements for SIPs.[17] That guidance was reiterated in 1983, 1999, and 2001.[18] EPA has applied this guidance in numerous actions on SIP revisions and courts have upheld this interpretation of the CAA.[19] In addition, EPA recently proposed action upon a petition for rulemaking in which it reiterated this guidance for SIP provisions.[20] Because of the implications with respect to treatment of excess emissions from the sources that Connecticut is excluding from coverage under the SIP opacity standards, EPA also evaluated whether this revision is consistent with fundamental CAA requirements for purposes of SIP provisions, beyond the issue of potential impacts on attainment and maintenance of the NAAQS for purposes of section 110(l) discussed above. EPA specifically considered whether relying on existing NSPS regulations in lieu of the prior SIP emission limitation for visible emissions is inconsistent with CAA requirements governing SIP provisions.

As noted above, NSPS subparts Db and Dc apply to the sources that the state is removing from coverage under the SIP for purposes of opacity standards. These NSPS currently contain exemptions for excess emissions during startup, shutdown, and

[16] See, e.g., National Emissions Standards for Hazardous Air Pollutants from Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants, 75 FR 54970 (Sept. 9, 2010).

[17] See, Memorandum entitled ''Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions,'' from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation, to the Regional Administrators, Regions I–X on Sept. 28, 1982.

[18] EPA's 1999 guidance addressed this issue most comprehensively. See, Memorandum entitled State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown,'' from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation, to the Regional Administrators, Regions I–X on Sept. 20, 1999.

[19] See, e.g., *Michigan Dept. of Envt. Quality* v. *Browner,* 230 F.3d 181 (6th Cir, 2000).

[20] See, ''State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction; Proposed Rule,'' 78 FR 12460 (Feb. 22, 2013). EPA notes that the comment period on that proposal has closed and that it is not reopening comment on that proposal here.

malfunction. These subparts were originally promulgated in the 1980s and apply to sources that were constructed, modified, or reconstructed since 1984 or 1989, respectively. Thus, these NSPS predate the court's decision in *Sierra Club* v. *EPA,* and have not been revised, and the existing sources would likely not be affected by any future revisions to the NSPS with respect to opacity standards for new sources. Section 22a–174–18(j)(2) of CT DEEP's revised regulation exempts sources that are separately subject to NSPS visible emissions standards from any SIP-based visible emissions standards. EPA evaluated Section 22a–174–18(j)(2) to determine whether this revision to exclude these sources from coverage is consistent with CAA requirements for SIP provisions, and, in particular, if it is consistent with CAA Section 110(a)(2)(A)'s requirement for ''emission limitations,'' which Section 302(k) defines as limiting emissions ''on a continuous basis.''

In this context, we have determined that Section 22a–174–18(j)(2) is best analyzed not as an exemption for emission from sources during startup, shutdown, and malfunction for Subpart Db and Dc boilers in a SIP provision, but rather as an exclusion for a category of sources (i.e., sources subject to NSPS visibility standards) from SIP visibility standards.[21] In other words, CT DEEP's revision is best seen not as exempting these sources from Section 110 visibility limits in particular circumstances that may raise questions under Section 110(a)(2)(A) and Section 302(k), but rather as exempting these sources from Section 110 visibility limits altogether because they are regulated by Section 111 visibility limits. Section 22a–174–18(j)(2), therefore, does not interfere with Section 110(a)(2)(A)'s requirement that emission limitations must apply on a continuous basis. Our approval of CT DEEP's revision to exclude these sources from the SIP opacity standards, therefore, does not suggest that CT DEEP could add new exemptions for excess emissions from startup, shutdown, or malfunction events to its SIP. Rather, it means only that EPA has determined that it is within CT DEEP's discretion to structure its SIP and determine which sources require SIP opacity limits, and, for the reasons discussed earlier, EPA has concluded that the pre-existing opacity limits are not necessary for these sources to ensure that Connecticut meets the NAAQS and other applicable CAA requirements.

[21] Moreover, as noted above, SIP *particulate emissions* standards apply to these sources at all times.

EPA emphasizes that approval of the revision to Connecticut's SIP to exclude certain sources from coverage under a SIP emission limit when such sources are separately covered by an NSPS does not constitute approval of the NSPS, and any exemptions they may contain, into the state's SIP. Approval of new SIP provisions with such exemptions into the SIP would be inconsistent with CAA requirements for SIP. Instead, EPA believes that Connecticut has adequately addressed the requirements of section 110(l) to justify exclusion of these sources from coverage under the SIP opacity standards.

D. Regional Haze

Connecticut's Regional Haze program is based on reasonable progress goals (RPGs) for Class I areas for each (approximately) 10-year planning period, and an alternative to BART demonstration that relies on SO_2 emission reductions required by RCSA Section 22a–174–19a (Control of Sulfur Dioxide Emissions from Power Plant and Other Large Stationary Sources of Air Pollution) and on NO_X emissions reductions required by Section 22a–174–22 (Control of Nitrogen Oxide Emissions), as well as Section 22a–174–22c (Connecticut's CAIR rule). See 77 FR 17367 and 78 FR 5158. Also see descriptions of these RCSA Sections below.

As set forth in more detail at 77 FR 17367, actual emissions of SO_2 from all post-2002 NO_X Budget Program sources are estimated to have been reduced from 35,625 tpy in 2001 to 7,146 tpy in 2006, a reduction of 28,479 tpy. The significant reduction in actual SO_2 emissions started in 2002, the effective year of Tier 1 of Section 22a–174–19a, and continued in 2006 (Tier 2 of RCSA section 22a–174–19a was effective in 2003).

Potential emissions of NO_X from all post-2002 NO_X Budget Program sources are estimated to have been reduced from 46,188 tpy in 2002 to 34,833 tpy in 2006, a reduction of 11,355 tpy. CT DEEP attributes these reductions largely to implementation of RCSA Sections 22a–174–22 and 22a–174–22c.

Today's proposed approval does not modify any of the measures relied upon in Connecticut's Regional Haze program. Furthermore, the alternative emission limit (Section 22a–174–18 (j)(1)) has a sufficient margin of safety, as discussed in IV.2 above, that the potential increases attributable to CT DEEP's revised regulation would not imperil Connecticut's trend towards meeting its RPGs.

For the reasons discussed above, EPA concludes that revisions to Section 22a–174–18 ''Control of Particulate Matter and Visible Emissions,'' are approvable under section 110(l) of the CAA.

V. Proposed Action

EPA is proposing to approve and incorporate into the Connecticut SIP three regulations submitted by the State of Connecticut on December 1, 2004. Specifically, EPA is proposing to approve CT DEEP's revised RCSA Section 22a–174–18 ''Control of particulate matter and visible emissions,'' except for the phrase ''or malfunction'' in Section 22a–174–18(j)(1) which CT DEEP has withdrawn. EPA is also proposing to approve CT DEEP's revised RCSA Section 22a–174–4 ''Source monitoring, record keeping and reporting,'' and Section 22a–174–7 ''Air pollution control equipment and monitoring equipment operation.'' These latter two regulations strengthen monitoring, record keeping, and reporting requirements, which improve the state's ability to detect violations of emissions limits.

Revised Section 22a–174–18 establishes and requires limitations on visible and PM emissions from certain stationary sources, identifies a standardized method for determining compliance for sources without COMS, and establishes an alternative emission limit of up to 60 percent opacity (during any 6-minute block average) during certain modes of operation for sources with COMS. In addition, the revised regulation sets a strict limit on the amount of time (0.5 percent of a facility's total operating hours during any calendar quarter) that sources with COMS can operate under the alternative emission limit. As described above, the state has adequately demonstrated that the revision of Section 22a–174–18 will not interfere with attainment or maintenance of air quality standards or other applicable CAA requirements as required by section 110(l) of the CAA.

EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this 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 action:

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

Authority: 42 U.S.C. 7401 et seq.

Dated: July 31, 2013.

H. Curtis Spalding,

Regional Administrator, EPA New England.

[FR Doc. 2013–19606 Filed 8–14–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 312

[EPA–HQ–SFUND–2013–0513; FRL–9845–8]

Amendment to Standards and Practices for All Appropriate Inquiries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the Standards and Practices for All Appropriate Inquiries to reference a standard practice recently made available by ASTM International, a widely recognized standards development organization. Specifically, EPA is proposing to amend the All Appropriate Inquiries Final Rule to reference ASTM International's E1527–13 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process'' and allow for its use to satisfy the requirements for conducting all appropriate inquiries under the Comprehensive Environmental Response, Compensation, and Liability Act.

DATES: Written comments must be received by September 16, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–2013–0513 by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: superfund.docket@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* Superfund Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- *Hand Delivery:* EPA Headquarters West Building, Room 3334, located at 1301 Constitution Ave. NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The EPA Headquarters Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time, Monday through Friday, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–HQ–SFUND–2013–0513. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Certain types of information claimed as CBI, and other information whose disclosure is restricted by statute, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material, such as ASTM International's E1527–13 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process'' will not be placed in EPA's electronic public docket but will be publicly available only in printed form in the official public docket. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the HQ EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room at this docket facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Superfund Docket is (202) 566–9744.

FOR FURTHER INFORMATION CONTACT: For general information, contact the CERCLA Call Center at 800–424–9346 or

TDD 800–553–7672 (hearing impaired). In the Washington, DC metropolitan area, call 703–412–9810 or TDD 703–412–3323. For more detailed information on specific aspects of this rule, contact Rachel Lentz, Office of Brownfields and Land Revitalization (5105T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460–0002, 202–566–2745, or *lentz.rachel@epa.gov.*

SUPPLEMENTARY INFORMATION

I. Regulated Entities

Today's action offers certain parties the option of using an available industry standard to conduct all appropriate inquiries. Parties purchasing potentially contaminated properties may use the ASTM E1527–13 standard practice to comply with the all appropriate inquiries requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Today's proposed rule will not require any entity to use this standard. Any party who wants to claim protection from liability under one of CERCLA's landowner liability protections may follow the regulatory requirements of the All Appropriate Inquiries Final Rule at 40 CFR part 312, use the ASTM E1527–05, use the ASTM E2247–08 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property,'' or use the standard recognized in today's proposed rule, the ASTM E1527–13 standard.

Entities potentially affected by this action, or who may choose to use the newly referenced ASTM standard to perform all appropriate inquiries, include public and private parties who, as bona fide prospective purchasers, contiguous property owners, or innocent landowners, are purchasing potentially contaminated properties and wish to establish a limitation on CERCLA liability in conjunction with the property purchase. In addition, any entity conducting a site characterization or assessment on a property with a brownfields grant awarded under CERCLA Section 104(k)(2)(B)(ii) may be affected by today's action. This includes state, local and Tribal governments that receive brownfields site assessment grants. A summary of the potentially affected industry sectors (by NAICS codes) is displayed in the table below.

Industry category	NAICS Code
Real Estate	531
Insurance	52412
Banking/Real Estate Credit	52292
Environmental Consulting Services	54162
State, Local and Tribal Government	926110, 925120
Federal Government	925120, 921190, 924120

The list of potentially affected entities in the above table may not be exhaustive. Our aim is to provide a guide for readers regarding those entities that EPA is aware potentially could be affected by this action. However, this action may affect other entities not listed in the table. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section entitled ''**FOR FURTHER INFORMATION CONTACT**.''

II. Why is EPA issuing this proposed rule?

This document proposes to amend the All Appropriate Inquiries Final Rule at 40 CFR part 312 to reference ASTM International's E1527–13 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process'' and allow for its use to satisfy the requirements for conducting all appropriate inquiries under CERCLA. We have published a direct final rule amending the All Appropriate Inquiries Final Rule to reference the ASTM E1527–13 standard and allow for its use to comply with the final rule in the ''Rules and Regulations'' section of this **Federal Register** because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We will address all public comments in any subsequent final rule based on this proposed rule. We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

III. Statutory Authority

EPA is proposing to amend the All Appropriate Inquiries Final Rule that sets federal standards for the conduct of ''all appropriate inquiries'' at 40 CFR part 312. The All Appropriate Inquiries Final Rule sets forth standards and practices necessary for fulfilling the requirements of CERCLA section 101(35)(B) as required to obtain CERCLA liability protection and for conducting site characterizations and assessments with the use of brownfields grants per CERCLA section 104(k)(2)(B)(ii).

IV. Background

On January 11, 2002, President Bush signed the Small Business Liability Relief and Brownfields Revitalization Act (''the Brownfields Amendments''). In general, the Brownfields Amendments to CERCLA provide funds to assess and cleanup brownfields sites; clarifies existing and establishes new CERCLA liability provisions related to certain types of owners of contaminated properties; and provides funding to establish or enhance State and Tribal cleanup programs. The Brownfields Amendments revised some of the provisions of CERCLA Section 101(35) and limit liability under Section 107 for bona fide prospective purchasers and contiguous property owners, in addition to clarifying the requirements necessary to establish the innocent landowner liability protection under CERCLA. The Brownfields Amendments clarified the requirement that parties purchasing potentially contaminated property undertake ''all appropriate inquiries'' into prior ownership and use of property prior to purchasing the property to qualify for protection from CERCLA liability.

The Brownfields Amendments required EPA to develop regulations establishing standards and practices for how to conduct all appropriate inquiries. EPA promulgated regulations that set standards and practices for all appropriate inquiries on November 1, 2005 (70 FR 66070). In the final regulation, EPA referenced, and recognized as compliant with the final rule, the ASTM E1527–05 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Standard Process.'' In December 2008, EPA amended the final rule to recognize another ASTM standard as compliant with the direct final rule, ASTM E2247–08 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property.'' Therefore, the final rule (40 CFR part 312) allows for the use of the ASTM E1527–05 standard or the ASTM E2247–08 standard to conduct all appropriate inquiries, in lieu of following requirements included in the final rule.

Since EPA promulgated the All Appropriate Inquiries Final Rule setting standards and practices for the conduct of all appropriate inquiries, ASTM International published a revised standard for conducting Phase I environmental site assessments. This standard, ASTM E1527–13, ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process,'' was reviewed by EPA, in response to a request for its review by ASTM International, and determined by EPA to be compliant with the requirements of the All Appropriate Inquiries Final Rule.

With today's action, EPA is proposing to amend the all appropriate inquiries final rule to allow for the use of the recently revised ASTM standard, E1527–13, for conducting all appropriate inquiries, as required under CERCLA for establishing the bona fide prospective purchaser, contiguous property owner, and innocent landowner liability protections.

With today's action, parties seeking liability relief under CERCLA's landowner liability protections, as well as recipients of brownfields grants for conducting site assessments, will be considered to be in compliance with the requirements for all appropriate inquiries, if such parties comply with the procedures provided in the ASTM E1527–13, ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.'' EPA determined that it is reasonable to make this determination based upon the Agency's finding that the ASTM E1527–13 standard is compliant with the All Appropriate Inquiries Final Rule.

The Agency notes that today's action will not require any party to use the ASTM E1527–13 standard. Any party conducting all appropriate inquiries to comply with CERCLA's bona fide prospective purchaser, contiguous property owner, and innocent landowner liability protections may continue to follow the provisions of the All Appropriate Inquiries Final Rule at 40 CFR part 312 or continue to use either the ASTM E1527–05 standard or use the ASTM E2247–08 standard.

In proposing today's action, the Agency is allowing for the use of an additional recognized standard or customary business practice, to comply with a federal regulation. Today's proposed action does not require any person to use the newly revised standard. Today's proposed action merely will allow for the use of the ASTM E1527–13 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process'' for those parties purchasing potentially contaminated properties who want to use the ASTM E1527–13 standard in lieu of the following specific requirements of the all appropriate inquiries final rule.

The Agency notes that there are no legally significant differences between the regulatory requirements and the two ASTM E1527 standards. To facilitate an understanding of the slight differences between the All Appropriate Inquiries Final Rule, the ASTM E1527–05 Phase I Environmental Site Assessment Standard and the revised ASTM E1527–13 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process,'' as well as the applicability of the E1527–13 standard for certain types of properties, EPA developed, and placed in the docket for today's proposed action, the document ''Summary of Updates and Revisions to ASTM E1527 Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process: How E1527–13 Differs from E1527–05.'' The document provides a cross walk between the two ASTM E1527 standards.

By proposing today's action, EPA is fulfilling the intent and requirements of the National Technology Transfer and Advancement Act (NTTAA).

EPA's proposed action includes no changes to the All Appropriate Inquiries Rule other than to add an additional reference to the new ASTM E1527–13 standard. EPA is not seeking comments on the standards and practices included in the final rule published at 40 CFR part 312. Also, EPA is not seeking comments on the ASTM E1527–13 standard. EPA's only action with today's proposed rule is recognition of the ASTM E1527–13 standard as compliant with the final rule and, therefore, it is only this action on which the Agency is seeking comment.

V. This Action

EPA is proposing this action because the Agency wants to provide additional flexibility for brownfields grant recipients or other entities that may benefit from the use of the ASTM E1527–13 standard. We believe that today's proposed action will allow for the use of a tailored standard developed by a recognized standards developing organization and that was reviewed by EPA and determined to be equivalent to the Agency's final rule. Today's action does not disallow the use of the previously recognized standards (ASTM E1527–05 or ASTM E2247–08) and it will not alter the requirements of the previously promulgated final rule. In addition, today's proposal potentially will increase flexibility for some parties who may make use of the new standard, without placing any additional burden on those parties who prefer to use either the ASTM E1527–05 standard, the ASTM E2247–08 or follow the requirements of the All Appropriate Inquiries Final Rule when conducting all appropriate inquiries.

VI. Statutory and Executive Order Reviews

For a complete discussion of all of the administrative requirements applicable to this action, see the discussion in the ''Statutory and Executive Order Reviews'' section to the preamble for the direct final rule that is published in the Rules and Regulations section of this **Federal Register**.

Under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011), this proposed action is not a ''significant regulatory action'' and is therefore not subject to OMB review. This action merely amends the All Appropriate Inquiries Final Rule to reference ASTM International's E1527–13 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process'' and allow for its use to satisfy the requirements for conducting all appropriate inquiries under CERCLA. This action does not impose any requirements on any entity, including small entities. Therefore, pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), after considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 312

Administrative practice and procedure, Hazardous substances.

Dated: August 5, 2013.

Mathy Stanislaus,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 2013–19763 Filed 8–14–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 08–15 and 03–123; FCC 13–101]

Speech-to-Speech and Internet Protocol (IP) Speech-to-Speech Telecommunications Relay Services; Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on possible actions to enhance the knowledge and use of Speech-to-Speech (STS) relay service by persons with speech disabilities. It has been estimated by consumer advocates that only one percent of prospective users are currently using the service. Thus, amendments to the Commission's rules may be necessary to ensure that persons with speech disabilities have access to relay services that address their unique needs, in furtherance of the objectives of section 225 of the Communications Act of 1934, as amended (the Act) to provide relay services in a manner that is functionally equivalent to conventional telephone voice services.

DATES: Comments are due September 16, 2013 and reply comments are due September 30, 2013.

ADDRESSES: You may submit comments, identified by CG Docket Nos. 08–15 and 03–123, by any of the following methods:

Electronic Filers: Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS), through the Commission's Web site *http://fjallfoss.fcc.gov/ecfs2/.* Filers should follow the instructions provided on the Web site for submitting comments. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal service mailing address, and CG Docket Nos. 08–15 and 03–123.

- Paper filers: Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- 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. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial Mail sent by 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 should be addressed to 445 12th Street SW., Washington, DC 20554.

In addition, parties must serve one copy of each pleading with the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, or via email to *fcc@bcpiweb.com mailto:fcc@bcpiweb.com.* 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: Gregory Hlibok, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 559–5158, or email *Gregory.Hlibok@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Speech-to-Speech and Internet Protocol (IP) Speech-to-Speech Telecommunications Relay Services; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* Further Notice of Proposed Rulemaking (*Notice*), document FCC 13–101, adopted on July 19, 2013, and released on July 19, 2013, in CG Docket Nos. 08–15 and 03–123. In document FCC 13–101, the Commission adopted an accompanying Report and Order (Order), which is summarized in a separate **Federal Register** Publication. The full text of document FCC 13–101 will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. It also may 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: (800) 378–3160, fax: (202) 488–5563, or Internet: *www.bcpiweb.com http://www.bcpiweb.com.* Document FCC 13–101 can also be downloaded in Word or Portable Document Format (PDF) at *http://www.fcc.gov/encyclopedia/telecommunications-relay-services-trs.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov mailto:fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Initial Paperwork Reduction Act of 1995 Analysis

Document FCC 13–101 does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Synopsis

1. Although the Commission approved STS as a compensable relay service in 2000, demand for this service has remained relatively modest, and its growth has been slow compared with other forms of telecommunications relay services (TRS) notwithstanding the sizeable population of people in the United States who have speech disabilities. The *2010 STS Petition* alleges that outreach efforts over the last decade have only resulted in the use of STS by an estimated one percent of prospective users. Bob Segalman and Rebecca Ladew, *Petition for Rulemaking,* CG Docket No. 03–123 (*2010 STS Petition*).

2. To ensure that individuals with speech disabilities who need STS become aware of its availability and how to access these services, the Commission has been supplementing the STS interstate per minute rate to include additional funds for STS outreach activities for the past six years. However, this supplemental funding has not increased the number of interstate STS minutes of use by any significant amount over the past several years and, since 2009, the TRS Fund administrator has suggested in each of its annual rate filings that the Commission may wish to revisit this additional funding to determine whether there is a more effective way to inform consumers with speech disabilities about the availability of this service.

3. The Commission would like to learn more about the reasons that STS

has not been more widely utilized. Are people with speech disabilities not connected to an organized or culturally identified disability community that could provide them with information and resources about assistive technologies and services that can be of use to them? Are there other reasons why this service is not more widely utilized? The Commission seeks comment on the number of individuals with speech disabilities who are potential users of this service and what steps can be taken to ensure that individuals who could benefit from STS can use this service. The Commission specifically asks whether it would be more efficient and effective to utilize a single entity to conduct nationwide STS outreach, instead of continuing the current system of providing outreach funds to each of the individual interstate STS providers through the STS compensation formula.

4. The Commission tentatively concludes that centralizing STS outreach efforts supported by the Fund in a single, coordinated entity can result in more effectively reaching and educating a greater portion of the population of Americans who could benefit from this service, and seeks comment on this tentative conclusion. The Commission believes that the section 225 of the Act directive for the Commission to prescribe regulations that ensure relay services are ''available . . . in the most efficient manner'' makes it appropriate to take new steps to better educate the public about the purpose and functions of STS and provides the Commission with sufficient authority to direct that a national STS outreach effort be funded for this purpose from TRS contributions as a necessary cost caused by TRS. The Commission asks commenters whether they agree with this assessment. The Commission further asks commenters whether, given that the Commission has resolved to establish the Internet-based TRS National Outreach Program (iTRS–NOP) for Internet protocol relay service (IP Relay) and video relay service (VRS), the Commission should bundle national STS outreach efforts into this national outreach program. What are the costs and benefits of combining these efforts? Are there efficiencies to be gained in contracting with a single entity or a group of single entities for all types of TRS outreach? Or are there characteristics of STS or the population served by this service that necessitate a separate outreach effort? If the latter, the Commission asks commenters to describe these characteristics, as well as any criteria needed for the selection of a national STS outreach coordinator that should be different from the criteria used to select a national coordinator of VRS and IP Relay outreach. Additionally, if the Commission or the Interstate TRS Fund administrator contracts with a single entity for the handling of STS calls, and it decides on a national outreach effort that is separate from the iTRS–NOP, the Commission seek comments on whether the entity selected to provide STS also should be eligible to become the national STS outreach coordinator, or whether the outreach coordinator should be independent of any provider of STS.

5. The Commission also seeks comment on the criteria that should be used to select a nationwide outreach program coordinator, as well as the outreach activities for which such coordinator should be responsible. With respect to the latter, the Commission seeks feedback on whether the coordinator should be required to engage in the following activities, as well as any other activities not identified below:

- Consulting with consumer groups, STS providers, the TRS Fund administrator, and other STS stakeholders;
- Establishing clear and concise messaging about the purposes, functions, and benefits of STS;
- Contacting and providing direct outreach and education to relevant medical, disability and senior citizen organizations, associations and medical professionals whose constituencies, members, and patients are likely to benefit from STS;
- Determining media outlets and other appropriate avenues for providing information about STS to identified medical, disability, and senior citizen organizations, associations, and professionals, the general public and potential new-to-category subscribers;
- Preparing for and arranging for publication, press releases, announcements, digital postcards, newsletters, and media spots about STS that are directed to identified medical, disability, and senior citizen organizations, associations, and professionals, as well as retailers and other businesses, including trade associations;
- Creating electronic and media tool kits that include samples of the materials listed in the previous bullet, and which may also include templates, all of which will be for the purpose of facilitating the preparation and distribution of such materials by consumer and industry associations, governmental entities, and other STS stakeholders;
- Providing materials to local, state, and national governmental agencies on the purposes, functions, and benefits of STS; and
- Exploring opportunities to partner and collaborate with other entities to disseminate information about STS.

1. The Commission proposes that an entity selected by the Commission or the Interstate TRS Fund administrator to coordinate such outreach be required to work with and submit periodic reports to the Chief of the Consumer and Governmental Affairs Bureau and to the Managing Director, which reports measure and describe the effectiveness of the entity's outreach efforts. The Commission seeks comment on these proposals. The Commission also seeks comment on whether there should be specified levels of outreach activities that the STS national outreach coordinator should be required to meet, and how and by whom these levels should be set and evaluated. If a national outreach program is established, the Commission proposes that the additional amount currently added to the STS per minute rate for outreach is discontinued from future rates, and seeks comment on this proposal. If the Commission chooses not to continue reimbursing the cost of outreach activities on a per minute basis to providers, it seeks feedback on whether a specified amount should be set aside from the Fund on an annual basis for nationwide outreach activities, what this amount should be, and how it should be determined. Finally, should the cost of providing STS as well as STS outreach be allocated between the Interstate TRS Fund and the state program funds, and, if so, how?

2. In recent years, the Commission has undertaken significant efforts to ensure that its Internet-based TRS programs are structurally sound and are free from waste, fraud and abuse. Of particular concern to the Commission is making sure that only those individuals who are truly eligible for different forms of TRS are allowed to use these services. Accordingly, the Commission seeks comment on how to establish rules to clearly define and oversee the eligibility, registration, and verification of STS users. As an initial matter, the Commission notes that in the *VRS Reform Order,* the Commission recently directed the creation of a user registration database for VRS users. *Structure and Practices of Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CG Docket Nos.

03–123 and 10–51, Report and Order and Further Notice of Proposed Rulemaking, published at 77 FR 25609, May 1, 2012 (*VRS Structural Reform Order*). Should STS providers be required to use this database to register all individuals seeking to use STS, whether STS is provided by a single provider or if it remains with the states? As part of the registration process, should users be permitted to provide self-certification that they have a speech disability? The Commission seeks comment on the costs and benefits associated with a certification requirement, as well as whether such requirements will effectively fulfill Congress's directive to the Commission, in section 225 of the Act, to ensure that TRS is available, ''to the extent possible and in the most efficient manner,'' to persons with hearing and speech disabilities. Finally, the Commission proposes that any certification ultimately required by the Commission's rules be made under penalty of perjury as an added layer of assurance that the individual's disability satisfies the Commission's eligibility requirements and seeks comment on this proposal. Commenters who do not believe these certification proposals are appropriate should offer alternative requirements that can be used to ensure that only eligible individuals who are intended to benefit from this service (*i.e.,* who need STS to communicate in a manner that is functionally equivalent to communication by voice telephone users) are permitted to use it.

3. The Commission further asks whether it should adopt a centralized process by which the identities of STS users are verified, as the Commission has done in the *VRS Structural Reform Order.* In that Order, the Commission directed the Managing Director to ensure that a centralized user registration database has the capability of performing an identification verification check when a VRS provider or other party submits a query to the database about an existing or potential user and that the criteria for identification verification (*e.g.,* information to be submitted, acceptable level of risk, *etc.*) be established by the Managing Director in consultation with the Commission's Chief Technology Officer and the Chief of the Office of Engineering and Technology. In addition, the Commission required that VRS providers not be permitted to register individuals that do not pass the identification verification check conducted through the user registration database, and not seek compensation for calls placed by such individuals. The Commission asks whether the same requirements should now apply to STS providers.

4. In the *2008 STS NPRM,* the Commission tentatively concluded that IP STS providers would not need to meet the following TRS mandatory minimum standards to be eligible for compensation: (1) CA competency in typing and spelling; (2) ensuring that TTY calls over TRS can be transmitted in ASCII and Baudot formats; (3) call release; (4) hearing carry over (HCO) and voice carry over (VCO) services; (5) equal access to interexchange carriers; (6) pay-per-call (900) service; and (7) outbound 711 dialing. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Speech-to-Speech and Internet Protocol (IP) Speech-to-Speech Telecommunications Relay Service,* CG Docket Nos. 03–123 and 08–15, Notice of Proposed Rulemaking, published at 73 FR 47120, August 13, 2008 (*2008 STS NPRM*). The Commission now proposes to amend its rules to state that the standards for (a) CA competency in typing and spelling, (b) ensuring that TTY calls over TRS can be transmitted in ASCII and Baudot formats, (c) call release, and (d) VCO services not be applied to any form of STS because they are inapplicable to this service, and it seeks comment on this proposal.

5. The Commission also seeks comment on whether STS user profiles should be immediately available to an STS CA each time an STS user places a call, to allow the provider to provide a better and more ''consistent STS relay experience'' for users. Additionally, when an STS user is silent and does not say ''good-bye,'' should the CA not terminate the call until at least 60 seconds has passed so that the call will not be disconnected prematurely? Should the FCC establish an STS Advisory Council for the purpose of formulating an STS outreach plan? Should the Commission establish a mandatory minimum standard for training of CAs who handle STS calls or any other mandatory minimum standards that are specific to STS? Finally, the Commission seeks information about any technological advances in end user equipment since the submissions of the petitions in this proceeding that may bear on the provision of this service.

6. To what extent should providers be required to allow STS users to create caller profiles? Such profiles generally allow users to pre-submit their preferences for call handling, including their contact information (for emergencies), language preferences, and speed dial numbers, which may speed up the time needed for STS call set-up. If providers should be required to offer caller profiles, what should users be allowed to include in these profiles? What are the costs and benefits of mandating the availability of profiles?

7. Finally, are there other enhancements to STS that the Commission should know about? For example, one provider recently implemented a national wireless short code to make it easier to place or receive STS calls. The Commission seeks comment on the benefits of using such a code nationwide.

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* as amended, the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice. 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 in the Notice. The Commission will send a copy of this Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

A. Need for, and Objectives of, the Proposed Rules

1. Speech-to-speech (STS) relay service is a form of telecommunications relay service (TRS) that utilizes specially trained communications assistants (CAs) who understand the speech patterns of persons with speech disabilities and can repeat the words spoken by such individuals to the other parties to a relayed call. In the *Notice,* the Commission seeks comment on four main issues. First, the Commission seeks comment on ways to improve outreach to increase awareness and utilization for STS, and whether the Commission should contract with a single entity to educate potential users about the service's availability. Second, to ensure the integrity and long term sustainability of the service and prevent waste, fraud, and abuse, the Commission seeks comment on whether it should adopt consumer eligibility, registration, and verification requirements to ensure that only individuals with speech disabilities who need the service can use it. Third, the Commission seeks comment on whether certain mandatory minimum standards are inapplicable to STS, including CA competency in typing and spelling, transmission format of TTY

calls, call release of a CA from a call with only two TTY users, and voice carry over (VCO), where a person with a hearing disability speaks to the other party to the call, but receives the other party's spoken words as text from the CA. Fourth, the Commission seeks comment on whether to adopt requirements for STS providers to facilitate the ability of STS users to create caller profiles. The Commission tentatively concludes that these proposed rule changes may be necessary to improve the efficiency of the STS program and to ensure effective, quality STS services so that users with speech disabilities may receive functionally equivalent telephone service, as mandated by Title IV of the Americans with Disabilities Act.

B. Legal Basis

1. The legal basis for any action that may be taken pursuant to the *Notice* is contained in sections 1, 2, 4(i), 4(j), and 225 of the Communications Act of 1934, as amended.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules May Apply

1. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

2. The Commission believes that the entities that may be affected by the proposed rules are STS providers. Neither the Commission nor the SBA has developed a definition of ''small entity'' specifically directed toward STS providers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers, which consists of all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 31,996 firms in the Wired Telecommunications Carrier category which operated for the entire year. Of this total, 30,178 firms had employment of 99 or fewer employees, and an additional 1,818 firms had employment of 100 employees or more. Thus, under this size standard, the vast majority of firms can be considered small. (The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 100 employees or more.'') Five providers currently receive compensation from the Interstate TRS Fund for providing STS: AT&T Corporation; Hamilton Relay, Inc.; Kansas Relay Service, Inc.; Purple Communications, Inc.; and Sprint Nextel Corporation. The Commission notes that only one of the STS providers that would be affected by the proposed rules is deemed to be a small entity under the SBA's small business size standard.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

1. Certain rule changes, if adopted by the Commission, would modify rules or add requirements governing reporting, recordkeeping, and other compliance obligations. If the Commission were to adopt consumer eligibility, registration, and verification requirements to ensure that only individuals with speech disabilities who need the service can use it, STS providers, including small entities, would be required to collect certain information from consumers and to maintain such information.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

1. The RFA requires an agency to describe any significant alternatives, specific to small entities, that it has considered in developing its 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 and reporting requirements under the rule for such 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 such small entities.''

2. In general, alternatives to proposed rules are discussed only when those rules pose a significant adverse economic impact on small entities. In this context, however, two of the proposed rules would confer benefits as explained below.

3. If the Commission were to contract with a single outreach coordinator to educate potential users about the availability of STS, STS providers, including small entities, would benefit, because they would be relieved of the obligation to conduct outreach.

4. If the Commission were to adopt consumer eligibility, registration and verification requirements to ensure that only individuals with speech disabilities who need the service can use it, STS providers, including small entities, would be required to collect certain information from consumers and to maintain such information. The Commission is not proposing alternatives for small entities because these requirements may be needed to limit waste, fraud and abuse, and an ineligible user can potentially defraud the TRS Fund by obtaining service from large and small entities alike. Therefore, if the Commission were to adopt registration, certification and verification procedures, the same requirements would need to apply to users of small entities as well as large entities.

5. If the Commission were to find certain mandatory minimum TRS standards to be inapplicable to STS, all STS providers, including small entities, would benefit because they would not need to comply with those mandatory minimum standards.

F. Federal Rules That May Duplicate, Overlap, or Conflict With Proposed Rules

1. None.

Ordering Clauses

2. Pursuant to sections 1, 4(i), (j), and (o), 225, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), (j), and (o), 225, and 403, the Further Notice of Proposed Rulemaking is hereby adopted.

3. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of the Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2013–19787 Filed 8–14–13; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Chapter X

[Docket No. EP 711]

Petition for Rulemaking To Adopt Revised Competitive Switching Rules

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of public hearing.

SUMMARY: The Surface Transportation Board (the Board) will hold a public hearing to explore further the issues surrounding the petition by The National Industrial Transportation League (NITL) and the related comments filed in this proceeding.

DATES: The hearing will be held on October 22, 2013, beginning at 9:30 a.m., in the Hearing Room at the Board's headquarters located at 395 E Street SW., Washington, DC. The hearing will be open for public observation. Any person wishing to speak at the hearing shall file with the Board a notice of intent to participate (identifying the party, the proposed speaker, and the time requested), and a summary of the intended testimony (not to exceed three pages), no later than September 23, 2013. The notices of intent to participate and the summaries of testimony are not required to be served on the parties of record in this proceeding; they will be posted to the Board's Web site when they are filed.

ADDRESSES: All filings may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the ''E–FILING'' link on the Board's Web site at *''www.stb.dot.gov.''* Any person submitting a filing in the traditional paper format should send an original and 10 copies of the filing to: Surface Transportation Board, Attn: Docket No. EP 711, 395 E Street SW., Washington, DC 20423–0001.

Copies of written submissions will be posted to the Board's Web site and will be available for viewing and self-copying in the Board's Public Docket Room, Suite 131. Copies of the submissions will also be available (for a fee) by contacting the Board's Chief Records Officer at (202) 245–0238 or 395 E Street SW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Valerie Quinn at (202) 245–0382. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION: By decision served on July 25, 2012, the Board began a proceeding to consider a proposal submitted by NITL to modify the Board's standards for mandatory competitive switching. Under its proposal, certain captive shippers located in terminal areas would be granted access to a competing railroad if there is a working interchange within a reasonable distance (30 miles under NITL's proposal). In its decision, the Board sought empirical information about the impact of the proposal if it were to be adopted. The Board received numerous comments in response to its decision. In order to explore further NITL's proposal and the issues raised in the submitted comments, the Board will hold a public hearing.

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

It is ordered:

1. A public hearing in this proceeding will be held on October 22, 2013, at 9:30 a.m., in the Board's Hearing Room, at 395 E Street SW., Washington, DC, as described above.

2. By September 23, 2013, any person wishing to speak at the hearing shall file with the Board a notice of intent to participate (identifying the party, the proposed speaker, and the time requested), and a summary of the intended testimony (not to exceed three pages). The notices of intent to participate and the summaries of testimony are not required to be served on the parties of record in this proceeding; they will be posted to the Board's Web site when they are filed.

3. This decision is effective on its service date.

Decided: August 12, 2013.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Derrick A. Gardner,

Clearance Clerk.

[FR Doc. 2013–19828 Filed 8–14–13; 8:45 am]

BILLING CODE 4915–01–P

Notices

Federal Register

Vol. 78, No. 158

Thursday, August 15, 2013

DEPARTMENT OF AGRICULTURE

Forest Service

Tongass National Forest Wrangell Ranger District; Alaska; Wrangell Island Project Environmental Impact Statement; Correction

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement; Correction.

SUMMARY: A Notice of Intent (NOI) was first published for this proposal in the **Federal Register** on December 27, 2010 (75 FR 81210). A corrected NOI was published in the **Federal Register** on March 13, 2012 (77 FR 14727). This corrected NOI is being published because the project will now fall under the new 36 CFR 218 pre-decisional administrative review process, it has an updated timeline, and the purpose and need and the proposed action have been modified.

DATES: All comments received during the previous scoping periods in 2010–2011 will be considered in the preparation of this EIS. The draft environmental impact statement is expected to be published in December 2013 and the final environmental impact statement is expected to be published July 2014.

ADDRESSES: Send written comments to: Tongass National Forest, c/o Tim Piazza, 648 Mission Street, Ketchikan, AK 99901, Attn: Wrangell Island Project EIS. Comments may be hand-delivered to: Wrangell Ranger District, 525 Bennett Drive, Wrangell, AK 99929, Attn: Wrangell Island Project EIS. Comments may be submitted via facsimile to: 907–228–6215, Attn: Wrangell Island Project EIS. Comments may also be sent electronically to: 'Comment on Project' link under 'Get Connected' via the Wrangell Island Project EIS Web page at *http://www.fs.fed.us/nepa/nepa_project_exp.php?project=34831.* In all correspondence, please include your name, address, and organization name if you are commenting as a representative of an organization.

FOR FURTHER INFORMATION CONTACT: Tim Piazza, Team Leader, Federal Building, Ketchikan, AK, 907–228–6318 or Austin O'Brien, Wrangell Ranger District, Wrangell, AK, 907–874–7575. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

New Federal Regulations

The United States Department of Agriculture published a final rule in the **Federal Register** (78 FR 18481–18504) on March 27, 2013 to establish a new process by which the public may file objections seeking predecisional administrative review of proposed projects and activities implementing land management plans and documented with a Record of Decision or Decision Notice (reference 36 CFR part 218). This new process replaces the administrative appeals process at 36 CFR part 215. As the Record of Decision for the Wrangell Island Project is not expected until after September 27, 2013, the Wrangell Island Project is now subject to these new predecisional administrative review procedures.

Purpose and Need for Action

The purpose and need for the Wrangell Island Project has been modified. The purpose for proposing this project is to contribute to a long-term supply of timber for the timber industry on Wrangell Island and on the Tongass National Forest in general, in a manner that is consistent with the multiple-use goals and objectives of the Tongass Land and Resource Management Plan (Forest Plan). This would contribute to the timber supply that would help sustain the current timber industry while transitioning to a sustainable forest industry based on young-growth management.

The need is to provide an economic timber supply that meets market demand annually and for the planning cycle. An additional need identified by this NOI is to develop and manage roads in the project area to support resource management activities.

Proposed Action

The Proposed Action for the Wrangell Island Project has been modified from proposing timber harvest on approximately 6,500 acres, or 80 MMBF of volume, to approximately 4,500 acres, or 60 MMBF of volume, to reflect better timber volume information gathered from additional field work. The proposed action for the Wrangell Island Project is to harvest timber using a variety of silvicultural treatments on approximately 4,500 acres of suitable and available forested lands using various sizes of timber sales offered over multiple years. Stewardship contracts may be used. An estimated 60 million board feet of sawtimber and utility wood would be made available to industry for harvest. Approximately 35 miles of National Forest System (NFS) and temporary roads would be constructed and about 7 miles of existing NFS roads would be reconstructed. Existing log transfer facilities would be used as needed. Harvest would include helicopter, ground-based, and cable yarding systems using even-aged and uneven-aged harvest treatments to achieve stand objectives. All proposed activities would meet the standards and guidelines of the Forest Plan.

Possible Alternatives

A range of reasonable alternatives, from no action to maximizing harvest will be considered. Alternatives may include Forest Plan amendments to increase the size and connectivity of medium old-growth habitat reserves (OGRs), adjust the boundaries of small and medium OGRs, change land-use designations (LUDs), and modify Visual Priority Travel Routes (VPRs) and Use Areas.

Lead and Cooperating Agencies

The Forest Service is the lead agency. The U.S. Fish and Wildlife Service, the Alaska Department of Natural Resources, and the City and Borough of Wrangell have agreed to participate as cooperating agencies.

Responsible Official

The responsible official for the decision on this project is the Forest Supervisor of the Tongass National Forest.

Nature of Decision To Be Made

The responsible official will decide whether to authorize timber harvest, associated road construction, and road management on Wrangell Island.

Preliminary Issues

Preliminary significant issues identified for this project include 1) timber supply and timber sale economics, 2) old-growth reserve designs, and 3) road access and managment.

Preliminary Permits, Licenses or Other Requirements

U.S. Environmental Protection Agency: Spill Prevention Control and Countermeasure Plan (SPCC); Facility Response Plan (FRP) required under the Clean Water Act (CWA), as revised by the Oil Pollution Act, or as required under 40 CFR part 112.

State of Alaska, Department of Environmental Conservation: Alaska Pollutant Discharge Elimination System (APDES) for point source and stormwater discharges; Certification of Compliance with Alaska Water Quality Standards (401 Certification); Storm water discharge permit/National Pollutant Discharge Elimination System review under Section 402 of the Clean Water Act (402); Solid Waste Disposal Permit.

State of Alaska, Department of Natural Resources (DNR): Authorization for occupancy and use of tidelands and submerged lands.

Scoping Process

This notice of intent reinitiates the scoping process, which guides the development of the environmental impact statement. It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. However, comments submitted anonymously will be accepted and considered.

Individuals and entities as defined in 36 CFR 218.2 who have submitted timely, specific written comments regarding this proposed action during this scoping period or any designated opportunity for written public comment may file an objection. Objections will only be accepted from those who have previously submitted timely, specific written comments regarding the proposed project during scoping or other designated opportunity for public comment in accordance with 36 CFR 218.5(a).

Maps and detailed information on the project are available on the Wrangell Island Project EIS Web page located at: (*http://www.fs.fed.us/nepa/nepa_project_exp.php?project=34831*).

Dated: August 9, 2013.

Patricia O'Connor,

Deputy Forest Supervisor.

[FR Doc. 2013–19801 Filed 8–14–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Humboldt-Toiyabe National Forests; Ely Ranger District; Ely Westside Rangeland Project

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare a Supplemental Environmental Impact Statement.

SUMMARY: The Ely Ranger District of the Humboldt-Toiyabe National Forest will prepare a Supplemental Environmental Impact Statement (SETS) on a proposal to authorize continued livestock grazing on National Forest System (NFS) lands within the boundaries administered by the Ely Ranger District. The Project Area is located in White Pine, Lincoln, and Nye counties, Nevada.

A Final Environmental Impact Statement and Record of Decision were distributed in September 2011. While considering an appeal on the Record of Decision, it became apparent that clarification of some elements in the selected alternative, Alternative 1 (Proposed Action), was warranted. On January 6, 2012, the Record of Decision was withdrawn. This SETS is being prepared to clarify several elements of Alternative 1 (Proposed Action) and to provide additional information on the development of stocking rates on the allotments in the project area.

DATES: The Draft SEIS is expected to be released for public review and comment in August of 2013 and the Final SEIS is expected to be released in November of 2013.

ADDRESSES: Send written comments to: Vernon Keller, Environmental Coordinator, Humboldt-Toiyabe National Forest, 1200 Franklin Way, Sparks, NV 89431.

FOR FURTHER INFORMATION CONTACT: For further information, mail correspondence to or contact Vernon Keller, NEPA Coordinator, Humboldt-Toiyabe National Forest, 1200 Franklin Way, Sparks, NV 89431. The telephone number is: 775–355–5356. Email address is: *vkeller@fs.fed.us.*

SUPPLEMENTARY INFORMATION:

Background

Initiation of the Ely Westside Rangeland Project began in 2006 with the original Notice of Intent published in the **Federal Register** on November 27, 2006 (Vol. 71, Number 227). The Draft EIS was released in June of 2011 for a 45 day comment period. The Final EIS and Record of Decision were released simultaneously on September 28, 2011. These documents, which include descriptions of the purpose and need, the proposed action, and two alternatives to the proposed action, can be found at *http://www.fs.usda.gov/goto/htnf/elywestrange.*

One appeal was filed against the 2011 Record of Decision. On January 6, 2012, the Forest Supervisor withdrew the Record of Decision, finding that additional clarification in the Final Environmental Impact Statement was desirable.

Purpose and Need for Action

As stated in Final EIS released in 2011, this action is being considered at this time because current and prospective permittees have expressed a desire to graze or continue grazing on allotments in the project area and the Rescissions Act of 1995 directs the Forest Service to establish and adhere to a schedule to complete environmental analyses and decisions on all allotments. The purpose of the proposed federal action is to authorize livestock grazing under terms and conditions designed to sustain and improve the health of the land and protect essential ecosystem functions and values. The need for the proposed federal action is to allow these allotments to continue to contribute to the overall desired Animal Use Month (AUM) production for the Humboldt National Forest while improving the gap between existing and desired rangeland conditions.

Proposed Action

As outlined in the Final EIS released in 2011, the Proposed Action would authorize domestic livestock grazing on the nine of the twelve allotments in the Project Area. Under this alternative, proper use criteria (forage utilization and streambank alteration) would be based on the current ecological conditions (functioning, functioning-at-risk, or non-functioning) within each allotment.

The ecological condition of the allotments would continue to be evaluated through a long-term monitoring process. If long-term monitoring indicates the ecological condition of the allotment has changed, then the set of proper use criteria associated with that ecological condition would be applied to the allotment. The Proposed Action includes a non-significant Forest Plan amendment to open the Troy Mountain Allotment to livestock grazing.

Alternatives to the Proposed Action

In addition to the Proposed Action, two additional alternatives have been identified for analysis in the SETS:

1. Current Management Alternative: Continue current grazing management.
2. No Grazing Alternative: Eliminate grazing on all the allotments in the project area immediately.

Responsible Official

The responsible official is: William Dunkelberger, Forest Supervisor, Humboldt-Toiyabe National Forest, 1200 Franklin Way, Sparks, NV 89431.

Nature of Decision To Be Made

The Responsible Official will decide whether or not to incorporate the supplemental information and analysis into the FEIS. The Responsible Official will also decide whether to authorize grazing (and if so, under what terms and conditions) on the allotments in the Ely Westside Rangeland Project area.

The objection process described in 36 CFR part 218, subparts A and B will be used as this project goes forward, instead of the appeal process described in 36 CFR part 215. After the comments on the Draft Supplement are considered, a Final Supplemental EIS and a Draft Record of Decision will be prepared and circulated. Those who commented during any designated opportunity for public comment on this project will have eligibility to file an objection on the draft Record of Decision.

Scoping Process

Scoping was conducted for the original EIS. The scoping period for this EIS was formally initiated on November 27, 2006 when the original notice of intent for this project was published in the **Federal Register** (Volume 71, Number 227). Scoping is not required for supplements to environmental impact statements (40 CFR 1502.9(c)(4)). The supplement will be subject to notice and comment. A draft supplemental EIS will be published and made available for review and comment for 45 days, following direction at 36 CFR 218.25. Comments on the draft supplemental EIS will be limited to the supplemental information to the 2011 EIS.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however, anonymous comments will not provide the Agency with the ability to provide the respondent with subsequent environmental documents.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: August 6, 2013.

William A. Dunkelberger,

Forest Supervisor.

[FR Doc. 2013–19519 Filed 8–14–13; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Risk Management Agency

[Docket No. RMA–2013–0001]

Notice To Reopen Comment Period for Federal Crop Insurance Program Delivery Cost Survey and Interviews

ACTION: Notice to reopen comment period to request comments on the script for interviews of Approved Insurance Providers, and on the survey instruments for insurance agents and insured producers.

SUMMARY: The Risk Management Agency (RMA) is issuing this notice to advise the public that we are reopening the comment period to request comments on the script for interviews of Approved Insurance Providers (AIPs), and on the survey instruments for insurance agents and insured producers, for a new information collection ''Federal Crop Insurance Program Delivery Cost Survey and Interviews'' that is currently under review by the Office of Management and Budget (OMB). The survey instruments will also serve as the scripts for the interviews of insurance agents and insured producers, respectively.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), RMA has previously sought public comment on an information collection request related to a study of Federal crop insurance program delivery costs. As part of the study RMA plans to conduct interviews with AIPs, insurance agents, and insured producers, and conduct surveys of insurance agents and insured producers. RMA will use the information collected from the interviews, surveys, and other information to construct estimates of the reasonable cost of delivery for the Federal crop insurance program.

Copies of the AIP interview scripts and survey questions may be obtained by contacting Kent Lanclos by phone at (202) 205–3933, or by email *kent.lanclos@rma.usda.gov.* To review the Farmers and Agent's surveys you can go to *http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201212-0563-001.*

DATES: Comments on this notice must be received by September 16, 2013 to be assured of consideration.

ADDRESSES: FCIC prefers that comments be submitted electronically through the Federal eRulemaking Portal. You may submit comments, identified by Docket ID No. RMA–2013–0001, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Stan Harkey, Product Analysis & Accounting Division, U.S. Department of Agriculture Risk Management Agency, Beacon Facility-Mail Stop 0811, P.O. Box 419205, Kansas City, MO 64141–6205, (816) 926–3799.

All comments received, including those received by mail, will be posted without change to *http://www.regulations.gov,* including any personal information provided, and can be accessed by the public. All comments must include the agency name and docket number for this notice. For detailed instructions on submitting comments and additional information, see *http://www.regulations.gov.* If you are submitting comments electronically through the Federal eRulemaking Portal and want to attach a document, we ask that it be in a text-based format. If you want to attach a document that is a scanned Adobe PDF file, it must be scanned as text and not as an image, thus allowing FCIC to search and copy certain portions of your submissions. For questions regarding attaching a document that is a scanned Adobe PDF file, please contact the RMA Web Content Team at (816) 823–4694 or by email at *rmaweb.content@rma.usda.gov.*

Privacy Act: Anyone is able to search the electronic form of all comments received for any 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 the complete User Notice and Privacy Notice for Regulations.gov at *http://www.regulations.gov/#!privacyNotice.*

ADDITIONAL INFORMATION OR COMMENTS: Kent Lanclos, Office of Compliance, U.S. Department of Agriculture Risk Management Agency, 1400 Independence Ave. SW., Mail Stop 0801, Washington, DC 20250–0801, (202) 205–3933.

SUPPLEMENTARY INFORMATION:

Interviews and Surveys

The purpose of the AIP interviews is to better understand the activities performed and types of costs incurred by the AIPs to deliver Federal crop insurance to producers, particularly those activities and costs that are distinct from those of insurance agents. Information collected from the interviews with AIPs include general companies' background, competitive strategies, and business operations model in selling and servicing the Federal crop insurance, agent compensation, expense structure, and financial reporting to RMA. Information obtained from the interviews with AIPs will help RMA understand the expenses AIPs incur in delivering the Federal crop insurance, their general practices in determining agent compensation, and compiling financials reported to RMA.

The purpose of the survey of the insurance agents is to collect relevant cost data incurred by the insurance agents in selling and servicing the Federal crop insurance policies. General background information on the surveyed insurance agents, e.g. geographical region, types of crop insurance sold, and number of crop insurance policies sold, will also be collected. The survey will serve as an instrument collecting information on the levels of effort required to sell and service crop insurance policies as well as levels of effort necessary to sell and service other lines. Specifically, the survey will collect data on agency geographical area (location of policy holders), insurance plan type (initial application vs. renewal policy), policy size, policy management and support related activities, nature of interaction with a policy holder, types of crops covered by Federal crop insurance, and other factors. In addition, the survey will obtain information on the time agents spend on the tasks related to selling and servicing a policy and agents' essential out of pocket costs for support staff, travel, overhead, and other out-of-pocket expenses. This information will be used to evaluate the factors measurably contributing to the costs of Federal crop insurance delivery.

A parallel survey of the insured farmers to whom the sampled insurance agents sell crop insurance will be conducted to determine the level of service (e.g. number of insurance agent visits, educational services, and other services) that is necessary for the farmers to make an informed decision. Several types of data will be collected. These will include general background of the producers and of their insurance agents. It will also include information about the interaction between producers and insurance agents. Data gathered from the survey of insured producers will serve as a consistency check to information gathered from the survey of insurance agents and will not be directly used to estimate the cost of delivery incurred by the insurance agents but will provide valuable information on the levels of services producers expect from agents.

As noted previously, the survey instruments will also serve as the scripts for the interviews of insurance agents and insured producers, respectively. The purpose of the interviews with insurance agents and insured producers is to obtain additional context and understanding for the responses provided to the surveys by agents and producers, respectively. This will assist RMA with interpreting the survey responses and results.

RMA will use the information collected from the interviews and surveys in conjunction with the financials reported by AIPs to construct estimates of the cost of delivery for the Federal crop insurance program. This information could also be used in RMA's program planning process before implementing any regulatory and programmatic changes in the future. Data collected from the interviews and surveys can also provide RMA some useful information on the Federal crop insurance program from the perspectives of different stakeholders (AIPs, insurance agents, and insured producers) and aid RMA in its program management and program planning.

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

Signed in Washington, DC, on July 18, 2013.

Brandon Willis,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 2013–19772 Filed 8–14–13; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Scientific Advisory Committee

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of the Census (U.S. Census Bureau) is giving notice of a meeting of the Census Scientific Advisory Committee (C–SAC). The C–SAC will meet in a plenary session from September 19–20, 2013. The Committee will address policy, research, and technical issues relating to a full range of Census Bureau programs and activities, including communications, decennial, demographic, economic, field operations, geographic, information technology, and statistics. Last minute changes to the agenda are possible, which could prevent giving advance public notice of schedule adjustments.

DATES: September 19 and 20, 2013. On September 19, the Census Scientific Advisory Committee meeting will begin at approximately 8:45 a.m. and adjourn at approximately 4:35 p.m. On September 20, the meeting will begin at approximately 8:45 a.m. and adjourn at approximately 12:45 p.m.

ADDRESSES: The meeting will be held at the U.S. Census Bureau Conference Center, 4600 Silver Hill Road, Suitland, Maryland 20746.

FOR FURTHER INFORMATION CONTACT: Jeri Green, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 8H182, 4600 Silver Hill Road, Washington, DC 20233, telephone 301–763–6590. For TTY callers, please use the Federal Relay Service 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Members of the C–SAC are appointed by the Director, U.S. Census Bureau. The Committee provides scientific and technical expertise, as appropriate, to address Census Bureau program needs and objectives. The Committee has been established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2, Section 10).

The meeting is open to the public, and a brief period is set aside for public comments and questions on September 20, 2013. Persons with extensive questions or statements must submit them in writing at least three days before the meeting to the Committee Liaison Officer named above. If you plan to attend the meeting, please register by Thursday, September 5,

2013. You may access the online registration form with the following link: *(http://www.regonline.com/csacsep2013).* Seating is available to the public on a first-come, first-served basis.

This meeting is physically accessible to people with disabilities. Requests for sign-language interpretation or other auxiliary aids should also be directed to the Committee Liaison Officer as soon as known, and preferably two weeks prior to the meeting.

Due to increased security and for access to the meeting, please call 301–763–9906 upon arrival at the Census Bureau on the day of the meeting. A photo ID must be presented in order to receive your visitor's badge. Visitors are not allowed beyond the first floor.

Topics to be discussed include the following items:

- Reassessment of the 2020 Census.
- American Community Survey Questionnaire Review.
- Cyberinfrastructure and Adaptive Design Working Groups.
- Data Dissemination Transformation.
- National Address Database.
- Administrative Records.
- Impact of DOMA Ruling on Census Data Collection.
- 2013 Census Test.

Dated: August 8, 2013.

Nancy A. Potok,

Deputy Director, Bureau of the Census.

[FR Doc. 2013–19843 Filed 8–14–13; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

International Framework for Nuclear Energy Cooperation Finance/Regulatory/Energy Planning Authority Workshop October 22 in Abu Dhabi, UAE

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The United States Department of Commerce, International Trade Administration.

Event Description

The U.S. Department of Commerce's International Trade Administration (ITA) is coordinating with the U.S. Department of Energy—the lead U.S. agency for the International Framework for Nuclear Energy Cooperation (IFNEC)—to organize participation by representatives of U.S. industry in the IFNEC Finance, Regulatory, and Energy Planning Authority Workshop, to be held on October 22, 2013 in Abu Dhabi, United Arab Emirates (UAE), prior to the IFNEC Steering Group and Executive Committee meetings. IFNEC is an international forum consisting of 63 countries ranging from those with emerging and existing nuclear power programs to those in the process of phasing out nuclear power programs. This workshop is designed to facilitate a more focused dialogue directed at understanding the challenges that financing presents for countries that are beginning to develop nuclear power projects, while maintaining respect for independence in sovereign decision-making. ITA is seeking the participation of a minimum of 15 U.S. companies or trade associations in the civil nuclear sector in the IFNEC Workshop. The IFNEC Workshop's scenario-based interactive dialogue will provide an opportunity for member country policymakers and other participants to benefit from the viewpoints of the U.S. civil nuclear industry and for U.S. industry to be able to learn more about the policies, regulatory landscape, and energy planning of the participating countries of IFNEC.

Event Setting

The IFNEC Workshop is an event to bring together IFNEC member country representatives and key stakeholders involved in the financing of nuclear power projects, including national energy planning authorities, nuclear regulatory institutions, energy market regulators, financial institutions, utilities and others, as well as U.S. nuclear industry representatives. The workshop will focus on enhancing IFNEC's understanding of the role and interests of, and interactions between, these key stakeholders in the financing of nuclear power projects in emerging market countries.

IFNEC is led by an Executive Committee, which is made up of ministerial-level officials or their designees from Participant Countries and Organizations that meet annually to set the agenda for the Forum for the coming year. Observer Countries and Organizations are welcome and encouraged to attend. The IFNEC Executive Committee accepted the Final Summary Report of the 2012 London IFNEC Finance Workshop at its October 2012 meeting in Morocco, and proposed that IFNEC organize a follow-on workshop in 2013. The IFNEC Finance Workshop Summary Report is available at *http://www.ifnec.org/Meetings/Workshops/FinanceWorkshop2012.aspx.* Abu Dhabi's Regulation and Supervision Bureau will host the IFNEC Workshop. The workshop builds on the outcomes of the 2012 London IFNEC Finance Workshop, which highlighted the importance of (1) An effective and independent nuclear regulator, (2) government commitment and support, and (3) a sound business plan. This workshop will be designed to facilitate a more focused dialogue directed at understanding the challenges that financing presents for countries embarking on the development of nuclear power projects, while maintaining respect for sovereign decision-making.

Participants in this IFNEC Workshop will hear the unique perspectives of the financing community, project proponents, regulatory bodies, national energy planning authorities and other stakeholders regarding the challenges and opportunities related to nuclear power project financing in an emerging market country. In particular, this IFNEC Workshop will follow-up on the key findings from the London IFNEC Finance Workshop. The IFNEC Workshop will focus on the critical, but not well understood, relationships between financing and the independence and experience base of the nuclear regulatory authorities, with responsibilities in not only nuclear safety, but security and safeguards as well. Another focal point will be the important roles that electric market regulators, and power purchase agreements, are playing today in the financing of nuclear power projects in emerging market countries. Although taking place over only one day, the workshop will cover as many of these central topics as possible, while still recognizing certain elements may emerge that require further investigation.

Event Scenario

Workshop format

The IFNEC Workshop will provide a dynamic forum in which experts representing a broad spectrum of key stakeholders will engage in a moderated exercise to address a hypothetical scenario related to the financing of a nuclear power project in a country with an emerging nuclear power program. Following the scenario exercise, key experts will lead focused, participatory dialogues among groups of IFNEC Workshop attendees to further address specific issues and responses to the scenario-based exercise. The interactions in the breakout groups will help IFNEC Workshop attendees gain a better understanding of how the financing community, project proponents, regulatory bodies, national energy planning authorities and other stakeholders affect the process of nuclear energy financing. The overall goal of the workshop is to identify practical actions that IFNEC countries, individually or collectively, could take to promote identified opportunities and to address the identified challenges to nuclear energy financing, especially in regards to emerging market countries.

Workshop topics

• Explore the importance of an effective, independent regulator for securing nuclear power plant financing. The expert panelists will address the question of: ''How can the financial community evaluate, as part of its due diligence, the independence and effectiveness of a safety regulator?''

The Characteristics to be explored include:

—Underlying framework/legislation/regulation
—Personnel qualifications and experience/organizational effectiveness
—Programs for sharing best practices and on-going peer-to-peer learning opportunities
—Role of transparency

• Explore the role that electricity market regulation, including sales/rate commitments, plays in the financing of a nuclear project. The expert panelists will address the question of: ''How can electric market regulation support the financing of a nuclear power project?''

IFNEC Workshop participants will explore:

—The evolving current trends and approaches in electric market regulation, including power purchase agreements
—The role of government and governments guarantees
—How these market commitments fit into broader energy and environmental policy development, including the role of renewable incentives/subsidies

Date and Proposed Agenda

October 22

8:00–9:00 a.m. Registration and Coffee
9:00–9:45 a.m. Welcome and Introduction
9:45–10:20 a.m. Goals and Introductions
10:20–10:50 a.m. Scenario Presentation
11:05–12:30 p.m. Interactive Moderated Scenario-Based Exercise by Expert Panel Lunch *
1:30—1:45 p.m. Introduction to Break-Out Sessions Process and Topics (by Moderator)
1:45—3:00 p.m. Break-Out Sessions
3:20—4:20 p.m. Break-Out Sessions Reports and Facilitated Review Panel Comments/Suggestions
4:20—5:00 p.m. Summarize Findings with Opportunity for Facilitated Input from Plenary Concluding Remarks and Closing of IFNEC Workshop Reception & Dinner *

* During the IFNEC Workshop the lunch, reception and dinner will be provided by the host country.

Event Goals

In organizing U.S. civil nuclear industry participation in the upcoming IFNEC Workshop, the ITA intends to give IFNEC Participant Countries the opportunity to hear the views and perspectives of the U.S. industry in this sector and for industry representatives to have the opportunity to showcase their knowledge and experience with nuclear project financing to the IFNEC Participant Countries. Participants in this workshop will benefit from the expertise that the U.S. industry has amassed in this sector and may potentially learn how to better partner with U.S. industry on nuclear power projects in the future, thus leading to greater U.S. exports. U.S. participants will also have the opportunity to network, build relationships in the global civil nuclear sector and learn more about current and future project opportunities.

Participation Requirements

All parties interested in participating in the IFNEC Workshop must complete and submit an application package for consideration by the ITA. All applicants will be evaluated based on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. A minimum of 15 applicants will be selected to participate in the IFNEC Workshop from the applicant pool of U.S. companies and trade associations. Only companies or trade associations representing companies that are already doing business internationally may apply. Applications will be reviewed on a rolling basis in the order that they are received.

Fees

After a company or trade association has been selected to participate in the IFNEC Workshop, the IFNEC Steering Group Chair will send out a formal invitation. There is NO participation fee associated with attending the IFNEC Workshop. However, participants will be responsible for personal costs associated with lodging, most meals, incidentals, local ground transportation, air transportation from the United States to the event location, and return to the United States. The Abu Dhabi's Regulation and Supervision Bureau host will provide for the lunch, reception and dinner.

Conditions for Participation

Applicants must submit to ITA's staff (see Contact) a completed mission application signed by a company official, together with supplemental application materials addressing how he/she satisfies the selection criteria listed below by August 23, 2013. If the ITA receives an incomplete application, then it may be rejected or ITA may request additional information.

In question 11 of the trade event application, each applicant is asked to certify that the products and services it intends to export through the trade event are either manufactured or produced in the United States, or, if not, are marketed under the name of a U.S. firm and have U.S. content representing at least fifty-one percent of the value of the finished good or service. If applicants find this certification difficult to make in the context of this event, or are unsure of whether they can certify to this, we encourage them to indicate on the application form why the applicant's company should be considered for participation in the event, what experience or expertise the company can contribute to the event discussions, and how the company's goals and objectives are consistent with the purpose of the event.

In the case of a trade association, the applicant must certify that as part of its activities in this event, it will represent the interests of members meeting the criteria discussed in the previous paragraph or provide an explanation of the type described in the previous paragraph.

Selection Criteria for Participation

Selection will be based on the following criteria:

• The applicant's experience producing technology or providing services to civil nuclear energy projects or, in the case of a trade association, the experience of its members;

• The extent and depth of the applicant's activities in the global civil nuclear energy industry;

• The applicant's company or, in the case of a trade association, the association's members' potential for, or interest in, doing business with IFNEC member countries;

• The applicant's ability to identify and discuss policy issues relevant to U.S. competitiveness in the nuclear energy sector, with special emphasis on financing; and

• Consistency of the applicant's company or trade association's goals and objectives with the stated scope of the IFNEC Workshop.

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

Selected applicants will be asked to sign a Participation Agreement with the Department of Commerce which includes the following mandatory certifications (applicants that cannot attest to these certifications cannot participate):

Certify that the products and services that it intends to highlight as examples at the workshop would be in compliance with U.S. export controls and regulations;

• Certify that it has identified to the Department of Commerce for its evaluation any business pending before the Department that may present the appearance of a conflict of interest;

• Certify that it has identified any pending litigation (including any administrative proceedings) to which it is a party that involves the Department of Commerce; and

• Certify that it and its affiliates (1) have not and will not engage in the bribery of foreign officials in connection with a company's/participant's involvement in this mission, and (2) maintain and enforce a policy that prohibits the bribery of foreign officials.

Timeframe for Recruitment and Participation

Recruitment for participation in the IFNEC Workshop as a representative of the U.S. nuclear industry will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar, notices to industry trade associations and other multiplier groups. Recruitment will begin immediately and conclude no later than August 23, 2013. The ITA will review applications and make selection decisions on a rolling basis beginning on or about August 23, 2013. Applications received after August 28, 2013 will be considered only if space and scheduling permit.

FOR FUTHER INFORMATION CONTACT: Michelle Scott, Senior Policy Advisor, MAS-Office of Energy and Environmental Industries, International Trade Administration, Department of Commerce, Phone: (202)–482–3851, Email: *Michelle.Scott@trade.gov.*

Elnora Moye,

Trade Assistant.

[FR Doc. 2013–19761 Filed 8–14–13; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for National Marine Sanctuary Advisory Councils

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: ONMS is seeking applications for vacant seats for 8 of its 13 national marine sanctuary advisory councils and for the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council (advisory councils). Vacant seats, including positions (i.e., primary member and alternate), for each of the advisory councils are listed in this notice under Supplementary Information. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as primary members or alternates should expect to serve two- or three year terms, pursuant to the charter of the specific national marine sanctuary advisory council or the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council.

DATES: Applications are due by September 30, 2013.

ADDRESSES: Application kits are specific to each advisory council. As such, application kits must be obtained from and returned to the council-specific addresses noted below.

• Cordell Bank National Marine Sanctuary Advisory Council: Kaitlin Graiff, Cordell Bank National Marine Sanctuary, P.O. Box 159, Olema, CA 94950; (415) 663–0314 extension 105; email *Kaitlin.Graiff@noaa.gov;* or download application from *http://cordellbank.noaa.gov/.*

• Florida Keys National Marine Sanctuary Advisory Council: Hannah Weddington, Florida Keys National Marine Sanctuary, 33 East Quay Rd., Key West, FL 33040; (305) 809–4700 extension 241; email *hannah.weddington@noaa.gov;* or download application from *http://floridakeys.noaa.gov/.*

• Gulf of the Farallones National Marine Sanctuary Advisory Council: Leslie Abramson, Gulf of the Farallones National Marine Sanctuary, 991 Marine Drive, The Presidio, San Francisco, CA 94129; 415–561–6622 extension 306; email *Leslie.Abramson@noaa.gov;* or download application from: *http://farallones.noaa.gov/manage/sac.html.*

• Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council: Malia Chow, 6600 Kalaniana'ole Hwy, Suite 301, Honolulu, HI 96825; (808) 397–2651 extension 251; email *Malia.Chow@noaa.gov;* or download application from *http://hawaiihumpbackwhale.noaa.gov/council/council_application.html.*

• Monitor National Marine Sanctuary Advisory Council: Shannon Ricles, Monitor National Marine Sanctuary, 100 Museum Drive, Newport News, VA 23606; (757) 591–7328; email S*hannon.Ricles@noaa.gov;* or download application from *http://monitor.noaa.gov.*

• National Marine Sanctuary of American Samoa Advisory Council: Joseph Paulin, National Marine Sanctuary of American Samoa, Tauese P.F. Sunia Ocean Center, Utulei, American Samoa; (684) 633–6500 extension 226; email *joseph.paulin@noaa.gov;* or download application from *http://americansamoa.noaa.gov.*

• Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council: Katie Gentry, Office of National Marine Sanctuaries, Pacific Island Region, 6600 Kalaniana'ole Hwy, #300, Honolulu, HI 96825; (808) 694–3936; email *Katie.Gentry@noaa.gov;* or download application from *http://www.papahanaumokuakea.gov/council/welcome.*

• Olympic Coast National Marine Sanctuary Advisory Council: Karlyn Langjahr, Olympic Coast National Marine Sanctuary, 115 East Railroad Ave., Suite 101, Port Angeles, WA 98362; (360) 457–6622 extension 31; email *Karlyn.Langjahr@noaa.gov;* or download application from *http://olympiccoast.noaa.gov/involved/sac/sac_welcome.html.*

• Stellwagen Bank National Marine Sanctuary Advisory Council: Elizabeth Stokes, Stellwagen Bank National Marine Sanctuary, 175 Edward Foster Road, Scituate, MA 02066; (781) 545–

8026 extension 201; email *Elizabeth.Stokes@noaa.gov*; or download application from *http://stellwagen.noaa.gov/.*

FOR FURTHER INFORMATION CONTACT: For further information on a particular national marine sanctuary advisory council, please contact the individual identified in the Addresses section of this notice.

SUPPLEMENTARY INFORMATION: ONMS serves as the trustee for 14 marine protected areas encompassing more than 170,000 square miles of ocean and Great Lakes waters from the Hawaiian Islands to the Florida Key, and from Lake Huron to American Samoa. National marine sanctuaries protect our Nation's most vital coastal and marine natural and cultural resources, and through active research, management, and public engagement, sustains healthy environments that are the foundation for thriving communities and stable economies. One of the many ways ONMS ensures public participation in the designation and management of national marine sanctuaries is through the formation of advisory councils. National marine sanctuary advisory councils are community-based advisory groups established to provide advice and recommendations to the superintendents of the national marine sanctuaries and the Papahānaumokuākea Marine National Monument on issues including management, science, service, and stewardship; and to serve as liaisons between their constituents in the community and the sanctuary. Additional information on ONMS and its 14 advisory councils can be found at *http://sanctuaries.noaa.gov.* Information related to the purpose, policies and operational requirements for advisory councils can be found in the charter for a particular advisory council (*http://sanctuaries.noaa.gov/management/ac/council_charters.html*) and the National Marine Sanctuary Advisory Council Implementation Handbook (*http://www.sanctuaries.noaa.gov/management/ac/acref.html*).

The following is a list of the vacant seats, including positions (i.e., primary member or alternate), for each of the national marine sanctuary advisory councils currently seeking applications for primary members and alternates:

Cordell Bank National Marine Sanctuary Advisory Council: Fishing (primary member); Fishing (alternate); and Education (alternate).

Florida Keys National Marine Sanctuary Advisory Council: Boating Industry (primary member); Citizen at Large—Upper Keys (primary member); Citizen at Large—Upper Keys (alternate); Diving—Upper Keys (primary member); Diving—Upper Keys (alternate); Fishing—Charter Sports Fishing (primary member); Fishing—Charter Sports Fishing (alternate); Fishing—Recreational (primary member); Fishing—Recreational (alternate); Research and Monitoring (primary member); Research and Monitoring (alternate); Tourism—Lower Keys (primary member); and Tourism—Lower Keys (alternate).

Gulf of the Farallones National Marine Sanctuary Advisory Council: Education (primary member); and Education (alternate).

Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council: Commercial Shipping (primary member); Commercial Shipping (alternate); Whale Watching (primary member); Whale Watching (alternate); Ocean Recreation (primary member); Ocean Recreation (alternate); Business/Commerce (primary member); Business/Commerce (alternate); Citizen-at-Large (primary member); Citizen-at-Large (alternate); Conservation (primary member); Conservation (alternate); Tourism (primary member); Tourism (alternate); Lāna'i Island (primary member); Lāna'i Island (alternate); Moloka'i Island (primary member); Moloka'i Island (alternate); Youth (primary member); Youth (alternate); Native Hawaiian (alternate); Research (alternate); Honolulu County (alternate); and Hawai'i County (alternate).

Monitor National Marine Sanctuary Advisory Council: Recreational Diving (primary member); Heritage Tourism (primary member); and Citizen-At-Large (primary member).

National Marine Sanctuary of American Samoa Advisory Council: Community-At-Large: Tutuila East Area (primary member); Community-At-Large: Manu'a Area (primary member); Education (primary member); Commercial Fishing (primary member); and Ocean Recreation/Ocean-Centered Eco-Tourim (primary member).

Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council: Native Hawaiian, Elder (alternate); and Native Hawaiian (alternate).

Olympic Coast National Marine Sanctuary Advisory Council: Conservation (primary member); and Tourism/Economic Development (primary member).

Stellwagen Bank National Marine Sanctuary Advisory Council: Research (2 primary members); Conservation (primary member); Education (alternate); Marine Transportation (primary member); Marine Transportation (alternate); Recreational Fishing (primary member); Recreational Fishing (alternate); Mobile Gear Commercial Fishing (primary member); Business Industry (alternate); At Large (primary member); At Large (alternate); Youth (primary member); and Youth (alternate).

Authority: 16 U.S.C. 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: July 23, 2013.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2013–19744 Filed 8–14–13; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC781

Takes of Marine Mammals Incidental to Specified Activities; U.S. Air Force Launches, Aircraft and Helicopter Operations, and Harbor Activities Related to Launch Vehicles From Vandenberg Air Force Base (VAFB), California

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

ACTION: Notice; receipt of application for letter of authorization; request for comments and information.

SUMMARY: NMFS has received a request from the U.S. Air Force (USAF) for authorization to take marine mammals incidental to launching space launch vehicles, intercontinental ballistic and small missiles, aircraft and helicopter operations, and harbor activities related to the Delta IV/Evolved Expendable Launch Vehicle (EELV) at VAFB, CA, from February 2014 through February 2019. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is announcing our receipt of the USAF's request for the development and implementation of regulations governing the incidental taking of marine mammals and inviting information, suggestions, and comments on the USAF's application and request.

DATES: Comments and information must be received no later than September 16, 2013.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Permits and

Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *ITP.Nachman@noaa.gov.* NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 25-megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

A copy of the USAF's application may be obtained by visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Candace Nachman, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by United States citizens who engage in a specified activity (other than commercial fishing) within a specific geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

With respect to military readiness activities, the MMPA defines ''harassment'' as: ''(i) any act that injures or has the significant potential to injure a marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].''

Summary of Request

On June 24, 2013, NMFS received an application from the USAF requesting a letter of authorization (LOA) for the take of five species of pinnipeds incidental to USAF launch, aircraft, and helicopter operations from VAFB launch complexes and *Delta Mariner* operations, cargo unloading activities, and harbor maintenance dredging in support of the Delta IV/EELV launch activity on south VAFB. The USAF is requesting a 5-year LOA for these activities. These activities are classified as military readiness activities. The USAF states that these activities may result in take of marine mammals from noise or visual disturbance from rocket and missile launches, as well as from the use of heavy equipment during the *Delta Mariner* off-loading operations, cargo movement activities, increased presence of personnel, and harbor maintenance dredging. The USAF requests to take five pinniped species by Level B harassment.

Description of the Specified Activity

There are currently six active space launch vehicle facilities at VAFB used to launch satellites into polar orbit. These facilities support launch programs for the Atlas V, Delta II, Delta IV, Falcon 9, Minotaur, and Taurus. There are also a variety of small missiles launched from various facilities on North VAFB, including the Minuteman III and several types of interceptor and target vehicles for the Missile Defense Agency. The VAFB airfield, located on north VAFB, supports various aircraft operations. A full description of the activities to be conducted by the USAF at VAFB, including descriptions of the different space vehicles and missiles, are described in the USAF's application. Additionally, United Launch Alliance, on behalf of the USAF, proposes to conduct Delta IV/EELV activities (transport vessel operations, harbor maintenance dredging, and cargo movement activities). These activities are described in Appendix A of the USAF's application.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning the USAF's request (see **ADDRESSES**). All input related to the USAF's request and NMFS' role in governing the incidental taking of marine mammals will be considered by NMFS when developing, if appropriate, the most effective regulations governing the issuance of an LOA.

Dated: August 9, 2013.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–19840 Filed 8–14–13; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2010–0041]

Collection of Information; Proposed Extension of Approval; Comment Request—Publicly Available Consumer Product Safety Information Database

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (CPSC or Commission) requests comments on a proposed extension of approval of a collection of information for the Publicly Available Consumer Product Safety Information Database. The Commission will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from the Office of Management and Budget (OMB).

DATES: The Office of the Secretary must receive comments not later than October 15, 2013.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2010–0041, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *http://www.regulations.gov*. Follow the instructions for submitting comments. The Commission does not accept comments submitted by electronic mail (email), except through *www.regulations.gov*. The Commission encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Written Submissions: Submit written submissions in the following way: Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East-West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov*. Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov,* and insert the docket number, CPSC–2010–0041, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: For further information contact: Robert H. Squibb, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; (301) 504–7815, or by email to: *rsquibb@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

Section 212 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) added section 6A to the Consumer Product Safety Act (CPSA), which requires the Consumer Product Safety Commission (CPSC or Commission) to establish and maintain a publicly available, searchable database on the safety of consumer products and other products or substances regulated by the Commission (Database). Among other things, section 6A of the CPSA requires the Commission to collect reports of harm from the public for potential publication in the publicly available Database and to collect and publish comments about reports of harm from manufacturers.

On May 24, 2010, the Commission published a proposed rule on the Database and announced that a proposed collection of information in conjunction with the Database had been submitted to OMB for review and clearance under 44 U.S.C. 3501–3520.75 FR 29156. The Commission issued a final rule on the Database on December 9, 2010 (75 FR 76832). The final rule interprets various statutory requirements in section 6A of the CPSA pertaining to the information to be included in the Database and also establishes provisions regarding submitting reports of harm; providing notice of reports of harm to manufacturers; publishing reports of harm and manufacturer comments in the Database; and dealing with confidential and materially inaccurate information.

OMB approved the collection of information for the Database under control number 3041–0146. OMB's approval will expire on January 31, 2014. The Commission now proposes to request an extension of approval of this collection of information.

B. Information Collected Through the Database

The primary purpose of this information collection is to populate the publicly searchable Database of consumer product safety information mandated by section 6A of the CPSA. There are four components to the information collection: Reports of harm, manufacturer comments, branding information, and the Small Batch Manufacturer Registry (SBMR).

Reports of Harm: Reports of harm communicate information regarding an injury, illness, or death, or any risk (as determined by the Commission) of injury, illness, or death, relating to the use of a consumer product. Reports can be submitted to the CPSC by consumers; local, state, or federal government agencies; health care professionals; child service providers; public safety entities; and others. Reports may be submitted in one of three ways: Via the CPSC Web site (*www.SaferProducts.gov*), by telephone via a CPSC call center, or by email, fax, or mail, using the incident report form (available for download or printing via the CPSC Web site). Reports may also originate as a free-form letter or email. Submitters must consent to inclusion of their report of harm in the publicly searchable Database.

Manufacturer Comments: A manufacturer or private labeler may submit a comment related to a report of harm if the report of harm identifies the manufacturer or private labeler and the CPSC transmits such report of harm to the manufacturer. Manufacturers' comments may be submitted through the business portal, by email, mail, or fax. The business portal is a feature of the Database that allows manufacturers who register on the business portal to receive reports of harm and comment on such reports through the business portal. Use of the business portal expedites the receipt of reports of harm and business response times.

A manufacturer may request that the Commission designate information in a report of harm as confidential. Such a request may be made using the business portal, email, mail, or fax. Additionally, any person or entity reviewing a report of harm or a manufacturer's comment (either before or after publication in the Database) and who believes that the report contains materially inaccurate information, may request that the report or comment, or portions of the report or comment, be excluded from the Database. Such a request may be submitted by email, mail, or fax, and registered businesses also may utilize the business portal for such requests.

Branding Information: Using the business portal, registered businesses may voluntarily submit branding information to assist CPSC in correctly and timely routing reports of harm. Brand names may be licensed to an entity other than the manufacturer. CPSC's accurate understanding of applicable licensing arrangements relating to consumer products increases the likelihood that the correct manufacturer is timely notified regarding a report of harm.

Small Batch Manufacturers Registry: The business portal also contains the SBMR, which is the online mechanism by which small batch manufacturers (as defined in the CPSA) can identify themselves to obtain relief from certain third party testing requirements for children's products. To register as a small batch manufacturer and receive relief from third party testing, a business must attest that the company's total gross revenue and the number of units of the covered product manufactured both fall within the statutory limits.

C. Estimated Burden

1. Estimated Annual Burden for Respondents

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN FOR REPORTS OF HARM

Collection type	Number of respondents	Response frequency [1]	Total annual responses	Minutes per response	Total burden, in hours [2]
Reports of Harm—submitted through Web site	8,030	1.02	8,207	12	1,641
Reports of Harm—submitted by phone	3,749	1.00	3,749	10	625
Reports of Harm—submitted by mail, e-mail, fax	904	6.71	6,067	20	2,022
Total	12,683		18,023		4,288

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN FOR MANUFACTURER SUBMISSIONS

Collection type	Number of respondents	Response frequency [1]	Total annual responses	Minutes per response	Total burden, in hours [2]
Manufacturer Comments—submitted through Web site	624	8.20	5,117	116	9,893
Manufacturer Comments—submitted by mail, email, fax	132	1.25	165	146	402
Requests to Treat Information as Confidential—submitted through Web site	11	1.27	14	15	4
Requests to Treat Information as Confidential—submitted by mail, email, fax	0	0	0	45	0
Requests to Treat Information as Materially Inaccurate—submitted through Web site	231	2.46	568	438	4,146
Requests to Treat Information as Materially Inaccurate—submitted by mail, email, fax	83	1.25	104	468	811
Voluntary Brand Identification	545	2.25	1,227	10	205
Small Batch Manufacturer Identification	578	1	578	10	96
Total	2,204		7,773		15,557

Using the data in Tables 1 and 2 above, we estimate the annual reporting cost to be $1,086,332. This estimate is based on the sum of two estimated total figures for reports of harm and manufacturer submissions. The estimated number of respondents and responses are based on the actual responses received in FY 2012. We assume that the number of responses and respondents will be similar in future years.

Reports of Harm: Table 1 sets forth the data used to estimate the burden associated with submitting reports of harm. We had previously estimated the time associated with the electronic and telephone submission of reports of harm at 12 and 10 minutes, respectively, and because we have had no indication that these estimates are not appropriate or accurate, we used those figures for present purposes as well. We estimate that the time associated with a paper or PDF form would be 20 minutes, on average.

To estimate the costs for submitting reports of harm, we multiplied the estimated total burden hours associated with reports of harm (1,641 hours + 625 hours + 2,022 hours = 4,288 hours) by an estimated total compensation for all workers in private industry of $29.13 per hour,[3] which results in an estimated cost of $124,909 (4,288 hours × $29.13 per hour = $124,909).

Manufacturer Submissions: Table 2 sets forth the data used to estimate the burden associated with manufacturers' submissions to the Database. To gain information on how long it takes a manufacturer to submit a general comment or a claim that a report contains materially inaccurate information through the business portal, we contacted six businesses registered on the business portal. We asked each company how long it typically takes to research, compose, and enter a comment or a claim of materially inaccurate information. We had observed that a large percentage of the general comments come from a few businesses and assumed that the experience of a business that submits many comments each year would be different from one that submits only a few. Accordingly, we divided all responding businesses into three groups based on the number of general comments submitted in FY 2012, and then selected two businesses from each group to contact. The first group we contacted consisted of businesses that submitted 50 or more comments in FY 2012, accounting for 46 percent of all general comments received. The second group we contacted included businesses that submitted 6 to 49 comments, accounting for 36 percent of all general comments received. The last group contacted included businesses that submitted no more than five comments, accounting for 18 percent of all general comments received.

To estimate the burden associated with submitting a general comment regarding a report of harm through the business portal, we averaged the burden provided by each company within each group and then calculated a weighted average from the three groups, weighting each group by the proportion of comments received from that group. We found that the average time to submit a general comment regarding a report of harm is 116 minutes based on the data in Table 3 (((10 minutes + 180 minutes)/2 companies)*.46 + ((10 minutes + 30 minutes)/2 companies)*.36 + ((240 minutes + 480 minutes)/2 companies)*.18 = 116 minutes).

[1] Frequency of responses is calculated by dividing the number of responses by the number of respondents.

[2] Numbers have been rounded.

[3] U.S. Department of Labor, Bureau of Labor Statistics, Table 9 of the Employer Costs for Employee Compensation (ECEC), Private Industry, goods-producing and service-providing industries, by occupational group, March 2013 (data extracted on 07/24/2013 from *http://www.bls.gov/news.release/ecec.t09.htm.*

TABLE 3—ESTIMATED BURDEN TO ENTER A GENERAL COMMENT IN THE DATABASE

Group	Company	General comments (minutes)
Group 1 (>= 50 comments).	Company A	10
	Company B	180
Group 2 (6–49 comments).	Company A	10
	Company B	30
Group 3 (<= 5 comments).	Company A	240
	Company B	480

Registered businesses generally submit comments through our Web site. Unregistered businesses submit comments by mail, email, or fax. We estimate that submitting comments in this way takes a little longer because we often must ask the businesses to amend their submissions to include the required certifications. Thus, we estimated that, on average, comments submitted by mail, email, or fax take 30 minutes longer than those submitted through our Web site (116 minutes + 30 minutes = 146 minutes).

The submission of a claim of materially inaccurate information is a relatively rare event for all respondents, so we averaged all responses together. Four of the businesses contacted had submitted claims of materially inaccurate information during FY 2012. We found that the average time to submit a claim that a report of harm contains a material inaccuracy is 438 minutes ((10 minutes + 120 minutes + 180 minutes + 1440 minutes)/4 companies = 438 minutes).

Registered businesses generally submit claims through the business portal. Unregistered businesses submit claims by mail, email, or fax. We estimate that submitting claims in this way takes a little longer because we often must ask the businesses to amend their submissions to include the required certifications. Thus, we estimated that on average, claims submitted by mail, email, or fax take 30 minutes longer than those submitted through our Web site (438 minutes + 30 minutes = 468 minutes).

We previously had estimated that confidential information claims submitted through our Web site would take 15 minutes because the information to be entered would be readily accessible by the respondent. We have found that confidential information claims are very rare, and the few such claims that we have received have been submitted through our Web site. That limited experience did not suggest the need for any update of the estimate for Web site submission of confidential information claims. Although we have not received any confidential information claims by mail, email, or fax, based on our experience with comments and claims of materially inaccurate information, we estimate that a confidential information claim submitted by mail, email, or fax would take 30 minutes longer than those submitted through our Web site (15 minutes + 30 minutes = 45 minutes).

For voluntary brand identification, we estimate that a response would take 10 minutes, on average. Most responses consist only of the brand name and a product description. In many cases a business will submit multiple entries in a brief period of time, and we can see from the date and time stamps on these records that an entry often takes less than two minutes. CPSC staff enters the same data in a similar form based on our own research, and that experience was also factored into our estimate.

For small batch manufacturer identification, we estimate that a response would take 10 minutes, on average. The form consists of three check boxes, and the information should be readily accessible to the respondent.

The responses summarized in Table 2 are generally submitted by manufacturers. To avoid underestimating the cost associated with the collection of this data, we assigned the higher hourly wage associated with a manager or professional in goods-producing industries to these tasks. To estimate the cost of manufacturer submissions, we multiplied the estimated total burden hours in Table 2 (15,557 hours) by an estimated total compensation for a manager or professional in goods-producing industries of $61.80 per hour,[4] which results in an estimated cost of $961,423 (15,557 hours × $61.80 per hour = $961,423).

Therefore, the total estimated annual cost to respondents is $1,086,332 ($124,909 burden for reports of harm + $961,423 burden for manufacturer submissions = $1,086,332).

[4] U.S. Department of Labor, Bureau of Labor Statistics, Table 9 of the Employer Costs for Employee Compensation (ECEC), Private Industry, goods-producing and service-providing industries, by occupational group, March 2013 (data extracted on 07/24/2013 from *http://www.bls.gov/news.release/ecec.t09.htm.*

2. Estimated Annual Burden on Government

We estimate the annualized cost to the CPSC to be $1,028,794. This figure is based on the costs for four categories of work for the Database: Reports of Harm, Materially Inaccurate Information Claims, Manufacturer Comments, and Small Batch Identification. Each category is described below. No government cost is associated with Voluntary Brand Identification because this information is entered directly into the Database by the manufacturer with no processing required by the government. The information assists the government in directing reports of harm to the correct manufacturer. We did not attempt to calculate separately the government cost for claims of confidential information because the number of claims is so small. The time to process these claims is included with claims of materially inaccurate information.

Reports of Harm: The Reports of Harm category includes many different tasks. Some costs related to this category are from a data entry contract. Tasks related to this contract include clerical coding of the report, such as identifying the type of consumer product reported and the appropriate associated hazard, as well as performing quality control on the data in the report. The contractor spends an estimated 3,380 hours per year performing these tasks. With an hourly rate of $32.57 for contracter services, the annual cost to the government is $110,087.

The Reports of Harm category also includes sending consent for reports when necessary, processing that consent when CPSC receives it, determining whether a product is out of CPSC's jurisdiction, and checking that pictures and attachments do not have any personally identifiable information. The Reports category also entails notifying manufacturers when one of their products is reported, completing a risk of harm determination form for every report eligible for publication, referring some reports to a Subject Matter Expert (SME) within the CPSC for a determination on whether the reports meet the requirement of having a risk of harm, and determining whether a report meets all the statutory and regulatory requirements for publication. Detailed costs are described in Table 4.

TABLE 4—ESTIMATED COSTS FOR REPORTS OF HARM TASK

Grade level	Number of hours (annual)	Total compensation per hour	Total annual cost
Contract	3380	$32.57	$110,086.60
7	1560	33.03	51,526.80
9	832	40.53	33,720.96
12	6396	58.78	375,956.88
13	884	69.67	61,588.28
14	2053	82.60	169,577.80
15	421	96.84	40,769.64
Total	12146		843,226.96

Materially Inaccurate Information (MII) Claims: The MII Claims category includes reviewing and responding to claims, participating in meetings where the claims are discussed, and completing a risk of harm determination on reports when a company alleges that a report does not describe a risk of harm. Detailed costs are described in Table 5.

TABLE 5—ESTIMATED COSTS FOR MII CLAIMS TASK

Grade level	Number of hours (annual)	Total compensation per hour	Total annual cost
12	364	$58.78	$21,395.92
13	1040	69.67	72,456.80
14	378	82.60	31,222.80
15	151	96.84	14,622.84
SES	104	103.91	10,806.64
Total	2037		150,505

Manufacturer Comments: The Comments category includes reviewing and accepting or rejecting comments. Detailed costs are described in Table 6.

TABLE 6—ESTIMATED COSTS FOR MANUFACTURER COMMENTS TASK

Grade level	Number of hours (annual)	Total compensation per hour	Total annual cost
12	104	$58.78	$6,113.12
13	182	69.67	12,679.94
Total	286		18,793.06

Small Batch Manufacturer Identification: The Small Batch Manufacturer Identification category includes time spent posting the list of small batch registrations, as well as answering manufacturers' questions on registering as a Small Batch company and what the implications to that company of small batch registration. Detailed costs are described in Table 7.

TABLE 7—ESTIMATED COSTS FOR SMALL BATCH TASK

Grade level	Number of hours (annual)	Total compensation per hour	Total annual cost
15	168	$96.84	$16,269.12
Total	168		16,269.12

We estimate the annualized cost to the CPSC of $1,028,794 by adding the four categories of work related to the Database summarized in Tables 4 through 7 (Reports of Harm ($843,226.96) + MII Claims ($150,505.00) + Manufacturer Comments ($18,793.06) + Small Batch Identification ($16,269.12) = $1,028,794.14).

This information collection renewal request based on an estimated 19,845 burden hours per year for the Database is a decrease of 17,284 hours since this collection of information was last approved by OMB in 2011. The decrease in burden is due primarily to the fact that the number of responses estimated in our original request overstated the number of actual responses submitted; we thus lowered the estimated number of responses based on actual experience since the original request.

D. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

• Whether the collection of information described above is necessary for the proper performance of the Commission's functions, particularly with respect to the Database, including whether the information would have practical utility;

• Whether the estimated burden of the proposed collection of information is accurate;

• Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

• Whether the burden imposed by the collection of information could be minimized by use of automated, electronic, or other technological collection techniques, or other forms of information technology.

Dated: August 12, 2013.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2013–19858 Filed 8–14–13; 8:45 am]

BILLING CODE 6355–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS) has submitted a public information collection request (ICR) entitled Peer Reviewer Application Instructions for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Vielka Garibaldi, at (202) 606–6886 or email to *vgaribaldi@cns.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) *By fax to:* (202) 395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; or

(2) *By email to: smar@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Propose ways to enhance the quality, utility, and clarity of the information to be collected; and

• Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments

A 60-day notice requesting public comment was published in the **Federal Register** on May 30, 2013. This comment period ended July 30, 2013. CNCS received no responsive comments to the 60-day notice.

Description: CNCS seeks to renew the current information collection. Minor revisions are proposed to clarify eGrants instructions and reflect adjustments to the Corporation for National and Community Service eGrants system. The information collection will otherwise be used in the same manner as the existing application. CNCS also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on September 30, 2013.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Peer Reviewer Application Instructions.

OMB Number: 3045–0090.

Agency Number: None.

Affected Public: Individuals who are interested in serving as peer reviewers and peer review panel coordinators for CNCS.

Total Respondents: 2,000.

Frequency: One time to complete.

Average Time Per Response: Averages 40 minutes.

Estimated Total Burden Hours: 1,333 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: August 8, 2013.

Vielka Garibaldi,

Director, Office of Grants Policy and Operations.

[FR Doc. 2013–19792 Filed 8–14–13; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for Dam Safety Study, Lake Lewisville Dam, Elm Fork Trinity River, Denton County, Texas

AGENCY: Department of the Army, U. S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: Authorized by the River and Harbor Act of March 2, 1945, Lake Lewisville embankment construction began in December 1948 with completion in August 1955. The project includes an earthen embankment that is approximately 32,000 feet in length and has a maximum height of 125 feet at elevation 560 feet (all elevations are NGVD) with gated outlet works and an uncontrolled concrete ogee weir spillway. The primary purposes of the project are flood risk management,

water supply, recreation and non-Federal hydropower. Top of conservation pool was originally set at elevation 515.

Following construction of Ray Roberts Dam upstream, the conservation pool of Lewisville was raised from elevation 515 to 522 on November 30, 1988. At elevation 522, the lake inundates approximately 29,600 surface acres. Top of flood pool is elevation 532 which inundates approximately 39,200 surface acres. Downstream of the dam, approximately 2,000 acres of Corps of Engineers (Corps) owned lands are currently leased by the Lewisville Lake Environmental Learning Area. A former fish hatchery is also operated by the government for national research on controlling nuisance aquatic plants.

The risk associated with the Lake Lewisville project was first evaluated in 2005 after the Corps instituted a Screening Portfolio Risk Assessment (SPRA) program to assess the risk of all 694 dams in the Corps' portfolio. The SPRA report completed in July 2005, was reviewed by Corps senior dam safety officials who concluded that the risks associated with the possible poor performance of the dam were above the Corps' tolerable risk guidelines. As a result, additional studies of the project were initiated. These studies are currently ongoing, and will evaluate appropriate ways to minimize risk associated with the project. While the Corps completes in-depth studies of the project to determine appropriate permanent methods for correcting potential problems, interim risk reduction measures have been implemented. In anticipation of possible permanent corrective actions at the project, and in order to fully comply with National Environmental Policy Act (NEPA) requirements, the Corps is preparing a project report and a Draft Environmental Impact Statement (DEIS) to identify the environmental impacts associated with any alternatives to repair and reduce risks at the Lake Lewisville Dam. The general study area will be the Lake Lewisville proper and floodplain from Ray Roberts Dam downstream to Interstate Highway 20 in Dallas County.

DATES: A public scoping meeting will be held on August 20, 2013 beginning at 7:00 p.m.

ADDRESSES: The meeting will be held at the Medical Center of Lewisville—Grand Theater Black Box Theater Room, 100 North Charles Street, Lewisville, TX 75057.

FOR FURTHER INFORMATION CONTACT: Questions pertaining to the proposed action and DEIS can be addressed to: Ms. Hollie Hunter, Environmental Project Manager, CESWF–PER–EE, U.S. Army Corps of Engineers, Fort Worth District, P.O. Box 17300, Fort Worth, TX 76102–0300, (817) 886–1849.

SUPPLEMENTARY INFORMATION: The study area lies within an area of rapid growth in the Lewisville, Grapevine, Dallas, Texas corridor along the Elm Fork and Mainstem floodways of the Trinity River.

Alternatives will be developed and evaluated based on ongoing research and data collection and past studies conducted by the Corps. Preliminary alternatives considered will include dam modifications necessary to reduce risk to acceptable levels, and will include consideration of any required hydraulic, environmental or recreational mitigation.

The public will be invited to participate in the scoping process, invited to attend public meetings, and given the opportunity to review the DEIS. The first public scoping meeting will be on (see **DATES** and **ADDRESSES**). Subsequent public meetings, if deemed necessary, will be announced in the local news media. Release of the DEIS for public comment is scheduled for September 2014. The exact release date, once established, will be announced through mailings to known interested individuals, agencies and officials and in the local news media.

Future coordination with other agencies and public scoping will be conducted to ensure full and open participation and aid in the development of the DEIS. All affected Federal, state, and local agencies, affected Indian tribes, and other interested private organizations and parties are hereby invited to participate. Continued coordination will also be conducted with the U. S. Fish and Wildlife Service (USFWS). The USFWS will furnish information on threatened and endangered species in accordance with the Endangered Species Act. In addition, the USFWS will also be requested to provide support with planning aid and to provide a Fish and Wildlife Coordination Act Report. The State Historic Preservation Office will be consulted as required by Section 106 of the National Historic Preservation Act.

Dated: August 7, 2013.

Eric W. Verwers,

Chief, Planning, Environmental, and Regulatory Division.

[FR Doc. 2013–19813 Filed 8–14–13; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant a Partially Exclusive License; Ridgetop Group, Inc.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Ridgetop Group, Inc. located at 3580 West Ina Road, Tucson, AZ 85741, a revocable, nonassignable, partially exclusive license in the United States to practice for all fields of use the Government-Owned invention described in U.S. Patent No. 7,626,398: System for Isolating Faults Between Electrical Equipment, Navy Case Number 97027, inventors Quiter et al., issued December 01, 2009.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than August 30, 2013.

ADDRESSES: Written objections are to be filed with the Naval Air Warfare Center Aircraft Division, Technology Transfer Office, Attention Gaetan Mangano, Code 4.0, Highway 547, Building 150–3, Lakehurst, NJ 08733.

FOR FURTHER INFORMATION CONTACT: Dan Swanson, 406–994–7736, *dss@montana.edu,* TechLink, 2310 University Way, Building 2–2, Bozeman, MT 59715. TechLink is an authorized Department of Defense Partnership Intermediary.

Authority: 35 U.S.C. 207, 37 CFR Part 404.

Dated: August 7, 2013.

C.K. Chiappetta,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2013–19803 Filed 8–14–13; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Revision of a Currently Approved Information Collection for the Energy Efficiency and Conservation Block Grant Program Status Report

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: A 60-day notice and request for comments was published in the **Federal Register** on July 6, 2013 (78 FR 34089). No comments were received in response to this Notice.

This subsequent 30-day notice allows public comment on the final version of the information collection request.

The Department of Energy (DOE) invites public comment on a revision of a currently approved collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. Comments are invited on: (a) Whether the revision of the currently approved 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 reduced burden pertaining to the approved collection of information, including the validity of the methodology and assumptions used; (c) ways to further enhance the quality, utility, and clarity of the information being collected; and (d) ways to further minimize the burden regarding the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this revision to an approved information collection must be received on or before September 16, 2013. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Written comments may be sent to: Christine Platt Patrick, EE–2K, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585, Email: *Christine.Platt@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: Pam Bloch Mendelson, EE–2K, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585–1290, Phone: (202) 287–1857, Fax: (202) 287–1745, Email: *Pam.Mendelson@ee.doe.gov.*

Additional information and reporting guidance concerning the Energy Efficiency and Conservation Block Grant (EECBG) Program is available for review at the following Web sites: *http://www1.eere.energy.gov/wip/recovery_act_guidance.html* and *http://www1.eere.energy.gov/wip/guidance.html.*

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) 1910–5150; (2) ''Energy Efficiency and Conservation Block Grant (EECBG) Program Status Report''; (3) Revision of currently approved collection; (4) To collect information on:

OMB No.:

Information Collection Request Title:

Type of Review:

Purpose:

Annual Estimated Number of Respondents:

Annual Estimated Hourly Burden Number:

Annual Estimated Cost Burden:

Annual Estimated Federal Reporting and Recordkeeping Cost Burden: The status of grantee activities, expenditures, and results, to ensure that program funds are being used appropriately, effectively and expeditiously (especially important for Recovery Act funds); (5) 2,404; (6): 141,066; (7) $4,796,152; and (8) $222,480.

Statutory Authority: Title V, Subtitle E of the Energy Independence and Security Act (EISA), Public Law 110–140 as amended (42 U.S.C. 17151 et seq.), authorizes DOE to administer the EECBG program. All grant awards made under this program shall comply with applicable law including the Recovery Act (Pub. L. 111–5) and other authorities applicable to this program.

Issued in Washington, DC, August 9, 2013.

AnnaMaria Garcia,

Program Manager, Office of Weatherization and Intergovernmental, Programs Office of Energy Efficiency and Renewable Energy.

[FR Doc. 2013–19836 Filed 8–14–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a combined meeting of the Environmental Monitoring and Remediation Committee, Waste Management Committee, and Waste Isolation Pilot Plant Ad Hoc Committee of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico (known locally as the Northern New Mexico Citizens' Advisory Board [NNMCAB]). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register.**

DATES: Tuesday, September 10, 2013, 2:00 p.m.–4:00 p.m.

ADDRESSES: Cities of Gold Conference Center, 10–A Cities of Gold Road, Pojoaque, NM 87506.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board, 94 Cities of Gold Road, Santa Fe, NM 87506. Phone (505) 995–0393; Fax (505) 989–1752 or Email: *menice.santistevan@nnsa.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Purpose of the Environmental Monitoring and Remediation Committee (EM&R): The EM&R Committee provides a citizens' perspective to NNMCAB on current and future environmental remediation activities resulting from historical Los Alamos National Laboratory operations and, in particular, issues pertaining to groundwater, surface water and work required under the New Mexico Environment Department Order on Consent. The EM&R Committee will keep abreast of DOE–EM and site programs and plans. The committee will work with the NNMCAB to provide assistance in determining priorities and the best use of limited funds and time. Formal recommendations will be proposed when needed and, after consideration and approval by the full NNMCAB, may be sent to DOE–EM for action.

Purpose of the Waste Management (WM) Committee: The WM Committee reviews policies, practices and procedures, existing and proposed, so as to provide recommendations, advice, suggestions and opinions to the NNMCAB regarding waste management operations at the Los Alamos site.

Purpose of the Waste Isolation Pilot Plant (WIPP) Ad Hoc Committee: The WIPP Ad Hoc Committee is preparing a recommendation on priorities at WIPP. The committee will be disbanded upon completion of the draft recommendation.

Tentative Agenda:

1. 2:00 p.m. Approval of Agenda
2. 2:05 p.m. Approval of Minutes of August 14, 2013.
3. 2:15 p.m. Presentation by Secretary Ryan Flynn, New Mexico Environment Department (NMED): Order on Consent, NMED Perspective
4. 2:45 p.m. Old Business
   - Finalize Committee Work Plans
   - WIPP/Waste Controls Specialists Tour
5. 3:15 p.m. New Business
   - Recommendations in Progress
   - Appoint Ad Hoc Committee to Review NNMCAB Bylaws
6. 3:25 p.m. Update from Executive Committee—Carlos Valdez, Chair

7. 3:35 p.m. Update from DOE—Lee Bishop, Deputy Designated Federal Officer
8. 3:45 p.m. Public Comment Period
9. 4:00 p.m. Adjourn

Public Participation: The NNMCAB's Committees welcome the attendance of the public at their combined committee meeting and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Menice Santistevan at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Committees either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Menice Santistevan at the address or phone number listed above. Minutes and other Board documents are on the Internet at: *http://www.nnmcab.energy.gov/.*

Issued at Washington, DC, on August 9, 2013.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2013–19834 Filed 8–14–13; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES:

Thursday, September 5, 2013—8:30 a.m.–5:00 p.m.

Friday, September 6, 2013—8:30 a.m.–3:30 p.m.

ADDRESSES: Red Lion Hanford House, 802 George Washington Way, Richland, WA 99352.

FOR FURTHER INFORMATION CONTACT: Kimberly Ballinger, Federal Coordinator, Department of Energy Richland Operations Office, 825 Jadwin Avenue, P.O. Box 550, A7–75, Richland, WA 99352; Phone: (509) 376–6332; or Email: *kimberly.ballinger@rl.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

- Draft Advice
  - Advice on Budget Process and Priorities
  - Advice on Double-Shell Tank AY–102
  - Advice on Double-Shell Tank/Flammable Gas
  - Advice on System Plan 7
- Discussion Topics
  - Tri-Party Agreement Agencies' Program Updates—Annual Report
  - Committee Reports
  - Adopt 2014 Hanford Advisory Board Work Plan
  - Adopt 2014 Hanford Advisory Board Calendar
  - Board Business

Public Participation: The meeting is open to the public. The EM SSAB, Hanford, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kimberly Ballinger at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kimberly Ballinger at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Kimberly Ballinger's office at the address or phone number listed above. Minutes will also be available at the following Web site: *http://www.hanford.gov/page.cfm/hab.*

Issued at Washington, DC on August 8, 2013.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2013–19817 Filed 8–14–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, September 11, 2013, 6:00 p.m.

ADDRESSES: Department of Energy Information Center, Office of Science and Technical Information, 1 Science.gov Way, Oak Ridge, Tennessee 37830.

FOR FURTHER INFORMATION CONTACT: Melyssa P. Noe, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 241–3315; Fax (865) 576–0956 or email: *noemp@emor.doe.gov* or check the Web site at *www.oakridge.doe.gov/em/ssab.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

- Welcome and Announcements
- Comments from the Deputy Designated Federal Officer, Susan Cange
- Comments from the DOE, Tennessee Department of Environment and Conservation, and Environmental Protection Agency Liaisons
- Public Comment Period
- Presentation
- Additions/Approval of Agenda
- Motions/Approval of Previous Meeting Minutes and Elections
- Status of Recommendations with DOE
- Committee Reports
- Federal Coordinator Report
- Adjourn

Public Participation: The EM SSAB, Oak Ridge, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Melyssa P. Noe at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Melyssa P. Noe at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Melyssa P. Noe at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.oakridge.doe.gov/em/ssab/board-minutes.html.*

Issued at Washington, DC, on August 9, 2013.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2013–19826 Filed 8–14–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, September 25, 2013 1:00 p.m.–7:00 p.m.

ADDRESSES: Sagebrush Inn Conference Center, 1508 Paseo del Pueblo Sur, Taos, New Mexico 87571.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board (NNMCAB), 94 Cities of Gold Road, Santa Fe, NM 87506. Phone (505) 995–0393; Fax (505) 989–1752 or Email: *Menice.Santistevan@nnsa.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1:00 p.m. Call to Order by Deputy Designated Federal Officer (DDFO), Lee Bishop Establishment of a Quorum: Roll Call and Excused Absences, William Alexander Welcome and Introductions, Carlos Valdez, Chair Approval of Agenda and July 31, 2013 Meeting Minutes
1:15 p.m. Public Comment Period
1:30 p.m. Old Business
- Written Reports
- Other Items

1:45 p.m. New Business
- Top Issue/Accomplishment for Fall EM SSAB Chairs' Meeting
- Other items

2:00 p.m. Items from EM SSAB Designated Federal Officer, Cate Alexander
2:30 p.m. Break
2:45 p.m. Presentation on Waste Isolation Pilot Plant (WIPP) Inventory, Joe Franco
3:45 p.m. Update from Liaison Members
- Los Alamos National Laboratory, Jeffrey Mousseau
- New Mexico Environment Department, John Kieling
- DOE, Peter Maggiore

4:30 p.m. Consideration and Action on Draft Recommendation(s)
5:00 p.m. Dinner Break
6:00 p.m. Public Comment Period, Carlos Valdez
6:15 p.m. Consideration and Action on Draft Recommendation(s) (continued)
6:30 p.m. Items from DDFO, Lee Bishop
- Report on NNMCAB Recommendations and DOE Responses
- Other items

6:45 p.m. Wrap-Up and Comments from Board Members, Carlos Valdez
7:00 p.m. Adjourn

Public Participation: The EM SSAB, Northern New Mexico, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Menice Santistevan at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Menice Santistevan at the address or phone number listed above. Minutes and other Board documents are on the Internet at: *http://www.nnmcab.energy.gov/.*

Issued at Washington, DC on August 9, 2013.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2013–19832 Filed 8–14–13; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP13–990–001]

ProLiance Energy, LLC; Notice for Amendment of Petition for Temporary Waivers

Take notice that on August 8, 2013, ProLiance Energy, LLC filed with the Federal Energy Regulatory Commission a petition to amend temporary waivers of the Commission's capacity release regulations and policies granted by order of the Commission issued on July 18, 2013, in the above captioned proceeding.[1]

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or

[1] *ProLiance Energy, LLC,* 144 FERC ¶ 61,037 (2013).

protests must be filed on or before 5:00 p.m. Eastern time on the specified comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioners. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Petitioners.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on Friday, August 16, 2013.

Dated: August 9, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–19799 Filed 8–14–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP13–1042–001]

ProLiance Energy, LLC; Notice for Amendment of Petition for Temporary Waivers

Take notice that on August 9, 2013, ProLiance Energy, LLC filed with the Federal Energy Regulatory Commission a petition to amend temporary waivers of the Commission's capacity release regulations and policies granted by order of the Commission issued on July 30, 2013, in the above captioned proceeding.[1]

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before 5:00 p.m. Eastern time on the specified comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioners. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Petitioners.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on Friday, August 16, 2013.

Dated: August 9, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–19800 Filed 8–14–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG13–50–000.
Applicants: Whitetail Wind Energy, LLC.
Description: Self-Certification of EG of Whitetail Wind Energy, LLC.
Filed Date: 8/7/13.
Accession Number: 20130807–5164.
Comments Due: 5 p.m. ET 8/28/13.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13–1709–001.
Applicants: Blackwell Wind, LLC.
Description: Blackwell Wind, LLC Amendment to MBR Tariff to be effective 8/8/2013.
Filed Date: 8/7/13.
Accession Number: 20130807–5162.
Comments Due: 5 p.m. ET 8/28/13.

Docket Numbers: ER13–1710–001.
Applicants: Elk City Wind, LLC.
Description: Elk City Wind, LLC Amendment to MBR Tariff to be effective 8/8/2013.
Filed Date: 8/7/13.
Accession Number: 20130807–5167.
Comments Due: 5 p.m. ET 8/28/13.

Docket Numbers: ER13–1711–001.
Applicants: Elk City II Wind, LLC.
Description: Elk City II Wind, LLC Amendment to MBR Tariff to be effective 8/8/2013.
Filed Date: 8/7/13.
Accession Number: 20130807–5168.
Comments Due: 5 p.m. ET 8/28/13.

Docket Numbers: ER13–1712–001.
Applicants: FPL Energy Cowboy Wind, LLC.
Description: FPL Energy Cowboy Wind, LLC Amendment to MBR Tariff to be effective 8/8/2013.
Filed Date: 8/7/13.
Accession Number: 20130807–5170.
Comments Due: 5 p.m. ET 8/28/13.

Docket Numbers: ER13–1713–001.
Applicants: FPL Energy Oklahoma Wind, LLC.
Description: FPL Energy Oklahoma Wind, LLC Amendment to MBR Tariff to be effective 8/8/2013.
Filed Date: 8/7/13.
Accession Number: 20130807–5171.
Comments Due: 5 p.m. ET 8/28/13.

Docket Numbers: ER13–1714–001.
Applicants: FPL Energy Sooner Wind, LLC.
Description: FPL Energy Sooner Wind, LLC Amendment to MBR Tariff to be effective 8/8/2013.
Filed Date: 8/7/13.
Accession Number: 20130807–5172.
Comments Due: 5 p.m. ET 8/28/13.

Docket Numbers: ER13–1715–001.
Applicants: High Majestic Wind II, LLC.
Description: High Majestic Wind II, LLC Amendment to MBR Tariff to be effective 8/8/2013.
Filed Date: 8/7/13.
Accession Number: 20130807–5175.
Comments Due: 5 p.m. ET 8/28/13.

Docket Numbers: ER13–1716–001.
Applicants: Minco Wind, LLC.
Description: Minco Wind, LLC Amendment to MBR Tariff to be effective 8/8/2013.

[1] *ProLiance Energy, LLC,* 144 FERC ¶ 61,075 (2013).

Filed Date: 8/7/13.
Accession Number: 20130807–5176.
Comments Due: 5 p.m. ET 8/28/13.

Docket Numbers: ER13–1717–001.
Applicants: Minco Wind II, LLC.
Description: Minco Wind II, LLC Amendment to MBR Tariff to be effective 8/8/2013.
Filed Date: 8/7/13.
Accession Number: 20130807–5177.
Comments Due: 5 p.m. ET 8/28/13.

Docket Numbers: ER13–1720–001.
Applicants: Gray County Wind Energy, LLC.
Description: Gray County Wind Energy, LLC Amendment to MBR Tariff to be effective 8/8/2013.
Filed Date: 8/7/13.
Accession Number: 20130807–5173.
Comments Due: 5 p.m. ET 8/28/13.

Docket Numbers: ER13–1721–001.
Applicants: High Majestic Wind Energy Center, LLC.
Description: High Majestic Wind Energy Center, LLC Amendment to MBR Tariff to be effective 8/8/2013.
Filed Date: 8/7/13.
Accession Number: 20130807–5174.
Comments Due: 5 p.m. ET 8/28/13.

Docket Numbers: ER13–2126–000.
Applicants: PJM Interconnection, L.L.C.
Description: Queue Position Y2–100; Original Service Agreement No. 3608 to be effective 7/8/2013.
Filed Date: 8/7/13.
Accession Number: 20130807–5151.
Comments Due: 5 p.m. ET 8/28/13.

Docket Numbers: ER13–2127–000.
Applicants: Cimarron Wind Energy, LLC.
Description: Cimarron Wind Energy, LLC Amendment to MBR Tariff to be effective 8/8/2013.
Filed Date: 8/7/13.
Accession Number: 20130807–5163.
Comments Due: 5 p.m. ET 8/28/13.

Docket Numbers: ER13–2128–000.
Applicants: Ensign Wind, LLC.
Description: Ensign Wind, LLC Amendment to MBR Tariff to be effective 8/8/2013.
Filed Date: 8/7/13.
Accession Number: 20130807–5169.
Comments Due: 5 p.m. ET 8/28/13.

Docket Numbers: ER13–2129–000.
Applicants: Minco Wind III, LLC.
Description: Minco Wind III, LLC Amendment to MBR Tariff to be effective 8/8/2013.
Filed Date: 8/7/13.
Accession Number: 20130807–5179.
Comments Due: 5 p.m. ET 8/28/13.

Docket Numbers: ER13–2130–000.
Applicants: Minco Wind Interconnection Services, LLC.
Description: Minco Wind Interconnection Services, LLC Amendment to MBR Tariff to be effective 8/8/2013.
Filed Date: 8/7/13.
Accession Number: 20130807–5181.
Comments Due: 5 p.m. ET 8/28/13.

Docket Numbers: ER13–2131–000.
Applicants: PJM Interconnection, L.L.C.
Description: Queue Position Y2–109; Original Service Agreement No. 3607 to be effective 7/8/2013.
Filed Date: 8/7/13.
Accession Number: 20130807–5194.
Comments Due: 5 p.m. ET 8/28/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 8, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–19797 Filed 8–14–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–1155–001.
Applicants: ISO New England Inc.
Description: Notice of Effective Date—ER12–1155–000 to be effective 8/21/2013.
Filed Date: 8/7/13.
Accession Number: 20130807–5079.
Comments Due: 5 p.m. ET 8/28/13.

Docket Numbers: ER13–1734–000.
Applicants: Plainfield Renewable Energy, LLC.
Description: Supplement to June 20, 2013 Plainfield Renewable Energy, LLC tariff filing.
Filed Date: 8/6/13.
Accession Number: 20130806–5158.
Comments Due: 5 p.m. ET 8/16/13.

Docket Numbers: ER13–1865–001.
Applicants: Tesoro Refining & Marketing Company LLC.
Description: Amended Application of Tesoro Refining and Marketing Co LLC to be effective 7/30/2013.
Filed Date: 8/6/13.
Accession Number: 20130806–5195.
Comments Due: 5 p.m. ET 8/27/13.

Docket Numbers: ER13–1991–001.
Applicants: Desert Sunlight 250, LLC.
Description: Amendment to Desert Sunlight 250, LLC MBR Application to be effective 7/18/2013.
Filed Date: 8/7/13.
Accession Number: 20130807–5085.
Comments Due: 5 p.m. ET 8/28/13.

Docket Numbers: ER13–1992–001.
Applicants: Desert Sunlight 300, LLC.
Description: Amendment to Desert Sunlight 300, LLC MBR Application to be effective 7/18/2013.
Filed Date: 8/7/13.
Accession Number: 20130807–5089.
Comments Due: 5 p.m. ET 8/28/13.

Docket Numbers: ER13–2118–000.
Applicants: NedPower Mount Storm, LLC.
Description: Compliance Filing—NedPower MBR Tariff Nuclear Waiver to be effective 8/7/2013.
Filed Date: 8/6/13.
Accession Number: 20130806–5206.
Comments Due: 5 p.m. ET 8/27/13.

Docket Numbers: ER13–2119–000.
Applicants: New York Independent System Operator, Inc.
Description: Request of the New York Independent System Operator, Inc. for a limited, one-time tariff waiver.
Filed Date: 8/6/13.
Accession Number: 20130806–5229.
Comments Due: 5 p.m. ET 8/27/13.

Docket Numbers: ER13–2120–000.
Applicants: Bangor Hydro Electric Company.
Description: Filing of E&P Agreement with First Wind to be effective 8/8/2013.
Filed Date: 8/7/13.
Accession Number: 20130807–5054.
Comments Due: 5 p.m. ET 8/28/13.

Docket Numbers: ER13–2121–000.
Applicants: KASS Commodities.
Description: KASS Commodities LLC Notice of Change in Status to be effective N/A.
Filed Date: 8/7/13.
Accession Number: 20130807–5070.
Comments Due: 5 p.m. ET 8/28/13.

Docket Numbers: ER13–2122–000.
Applicants: Fowler Ridge Wind Farm LLC.
Description: Compliance Filing—Fowler Ridge MBR Tariff Nuclear Waiver to be effective 8/8/2013.
Filed Date: 8/7/13.

Accession Number: 20130807–5080.
Comments Due: 5 p.m. ET 8/28/13.

Docket Numbers: ER13–2123–000.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.
Description: Revisions to Sch. 24 to Comply with Order 676–G Compliance to be effective 10/7/2013.
Filed Date: 8/7/13.
Accession Number: 20130807–5087.
Comments Due: 5 p.m. ET 8/28/13.

Docket Numbers: ER13–2124–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: 08–07–13 RSG Allocation Improvements to be effective 10/17/2013.
Filed Date: 8/7/13.
Accession Number: 20130807–5101.
Comments Due: 5 p.m. ET 8/28/13.

Docket Numbers: ER13–2125–000.
Applicants: Portland General Electric Company.
Description: Second Revised Volume No. 12 to be effective 9/30/2013.
Filed Date: 8/7/13.
Accession Number: 20130807–5125.
Comments Due: 5 p.m. ET 8/28/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 7, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–19776 Filed 8–14–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2179–020; ER10–2181–019; ER10–2182–019.
Applicants: Calvert Cliffs Nuclear Power Plant, LLC, Nine Mile Point Nuclear Station, LLC, R.E. Ginna Nuclear Power Plant, LLC.
Description: Notice of Non-Material Change in Status of Calvert Cliffs Nuclear Power Plant, LLC, et al.
Filed Date: 8/8/13.
Accession Number: 20130808–5137.
Comments Due: 5 p.m. ET 8/29/13.

Docket Numbers: ER12–569–002; ER12–775–001; ER10–1849–001; ER11–2037–001; ER12–2227–002; ER10–1887–001; ER10–1920–003; ER10–1928–003; ER10–1952–002; ER10–1961–001; ER12–1228–001; ER10–2720–003; ER11–4428–003; ER12–1880–002; ER10–1971–010.
Applicants: Blackwell Wind, LLC, Blackwell Wind, LLC, Cimarron Wind Energy, LLC, Elk City Wind, LLC, Elk City II Wind, LLC, Ensign Wind, LLC, FPL Energy Cowboy Wind, LLC, FPL Energy Oklahoma Wind, LLC, FPL Energy Sooner Wind, LLC, Gray County Wind Energy, LLC, High Majestic Wind Energy Center, LLC, High Majestic Wind II, LLC, Minco Wind, LLC, Minco Wind II, LLC, Minco Wind III, LLC, NextEra Energy Power Marketing, LLC.
Description: Amending December 27, 2012 NextEra Companies Triennial Market Power Update for the Southwest Power Pool Region.
Filed Date: 8/8/13.
Accession Number: 20130808–5111.
Comments Due: 5 p.m. ET 8/29/13.

Docket Numbers: ER12–2178–007; ER10–2172–018; ER12–2311–007; ER11–2016–013; ER10–2184–018; ER10–2183–015; ER10–1048–015; ER10–2192–018; ER11–2056–012; ER10–2178–018; ER10–2174–018; ER11–2014–015; ER11–2013–015; ER10–3308–017; ER10–1020–014; ER10–1145–014; ER10–1144–013; ER10–1078–014; ER10–1079–010; ER10–1080–014; ER11–2010–015; ER10–1081–014; ER10–2180–018; ER11–2011–014; ER12–2201–007; ER12–2528–006; ER11–2009–014; ER11–3989–012; ER10–1143–014; ER11–2780–014; ER12–1829–007; ER11–2007–013; ER12–1223–012; ER11–2005–015.
Applicants: AV Solar Ranch 1, LLC, Baltimore Gas and Electric Company, Beebe Renewable Energy, LLC, Cassia Gulch Wind Park, LLC, CER Generation, LLC, CER Generation II, LLC, Commonwealth Edison Company, Constellation Energy Commodities Group Maine, LLLC, Constellation Mystic Power, LLC, Constellation NewEnergy, Inc., Constellation Power Source Generation, Inc., Cow Branch Wind Power, LLC, CR Clearing, LLC, Criterion Power Partners, LLC, Exelon Framingham, LLC, Exelon Generation Company, LLC, Exelon New Boston, LLC, Exelon West Medway, LLC, Exelon Wind 4, LLC, Exelon Wyman, LLC, Handsome Lake Energy, LLC, Harvest II Windfarm, LLC, Harvest Windfarm, LLC, High Mesa Energy, LLC, Michigan Wind 1, LLC, Michigan Wind 2, LLC, PECO Energy Company, Safe Harbor Water Power Corporation, Shooting Star Wind Project, LLC, Tuana Springs Energy, LLC, Wildcat Wind, LLC, Wind Capital Holdings, LLC.
Description: Notice of Non-Material Change in Status of AV Solar Ranch 1, LLC, et al.
Filed Date: 8/8/13.
Accession Number: 20130808–5152.
Comments Due: 5 p.m. ET 8/29/13.

Docket Numbers: ER13–692–006.
Applicants: Midcontinent Independent System Operator, Inc.
Description: 2013–08–08 OASIS Compliance Errata Filing to be effective 4/15/2013.
Filed Date: 8/8/13.
Accession Number: 20130808–5119.
Comments Due: 5 p.m. ET 8/29/13.

Docket Numbers: ER13–1783–001.
Applicants: Duke Energy Progress, Inc.
Description: Revised Service Agreement No. 134 under Duke Energy Progress OATT to be effective 6/1/2013.
Filed Date: 8/8/13.
Accession Number: 20130808–5126.
Comments Due: 5 p.m. ET 8/29/13.

Docket Numbers: ER13–1931–001.
Applicants: South Jersey Energy ISO3, LLC.
Description: South Jersey Energy ISO3, LLC submits Amendment to Application for Market-Based Rates to be effective 7/11/2013.
Filed Date: 8/8/13.
Accession Number: 20130808–5055.
Comments Due: 5 p.m. ET 8/29/13.

Docket Numbers: ER13–2043–001.
Applicants: South Jersey Energy ISO4, LLC.
Description: South Jersey Energy ISO4, LLC submits Amendment to Application for Market-Based Rates to be effective 7/27/2013.
Filed Date: 8/8/13.
Accession Number: 20130808–5056.
Comments Due: 5 p.m. ET 8/29/13.

Docket Numbers: ER13–2044–001.
Applicants: South Jersey Energy ISO5, LLC.
Description: South Jersey Energy ISO5, LLC submits Amendment to Application for Market-Based Rates to be effective 7/27/2013.
Filed Date: 8/8/13.
Accession Number: 20130808–5057.

Comments Due: 5 p.m. ET 8/29/13.

Docket Numbers: ER13–2132–000.
Applicants: Nevada Power Company.
Description: Rate Schedule No. 135 SCE Eldorado Interim Interconnection Agmt Concurrence to be effective 6/25/2013.
Filed Date: 8/8/13.
Accession Number: 20130808–5117.
Comments Due: 5 p.m. ET 8/29/13.

Docket Numbers: ER13–2133–000.
Applicants: Granite State Electric Company.
Description: Borderline Sales—Rate Update to be effective 5/1/2013.
Filed Date: 8/8/13.
Accession Number: 20130808–5134.
Comments Due: 5 p.m. ET 8/29/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 8, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–19798 Filed 8–14–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–498–000]

Eastern Shore Natural Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed White Oak Lateral Project; Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the White Oak Lateral Project involving construction and operation of facilities by Eastern Shore Natural Gas Company (Eastern Shore) in Kent County, Delaware. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Please note that the scoping period will close on September 9, 2013.

You may submit comments in written form or verbally. Further details on how to submit written comments are in the Public Participation section of this notice

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

Eastern Shore provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?''. This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*www.ferc.gov*).

Summary of the Proposed Project

Eastern Shore proposes to construct, own, operate, new natural gas facilities in the Dover area of Kent County, Delaware. The White Oak Lateral Project would provide about 55,200 dekatherms of natural gas per day to Calpine Energy Services, L.P. to fuel the Garrison Energy Center, a proposed 309-megawatt combined cycle natural gas fueled power plant under development in Kent County, Delaware.

The White Oak Lateral Project would consist of the following facilities:

- Approximately 5.5 miles of 16-inch-diameter natural gas pipeline;
- one mainline valves assembly; and
- metering and regulating facility.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Construction of the proposed facilities would disturb approximately 118 acres of land for the aboveground facilities and the pipeline. Following construction, Eastern Shore would maintain about 10 acres for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses. Approximately 63 percent of the proposed pipeline route parallels existing pipeline, utility, or road rights-of-way.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[2] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- land use;
- water resources, fisheries, and wetlands;
- cultural resources;
- vegetation and wildlife;
- air quality and noise;
- endangered and threatened species; and
- public safety.

We will also evaluate reasonable alternatives to the proposed project or

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section beginning on page 4.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate with us in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with applicable State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, § 1501.6.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before September 9, 2013.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances please reference the project docket number (CP13–498–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You can file your comments electronically using the eComment feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You can file your comments electronically using the eFiling feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the User's Guide under the ''e-filing'' link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (i.e., CP13–498). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

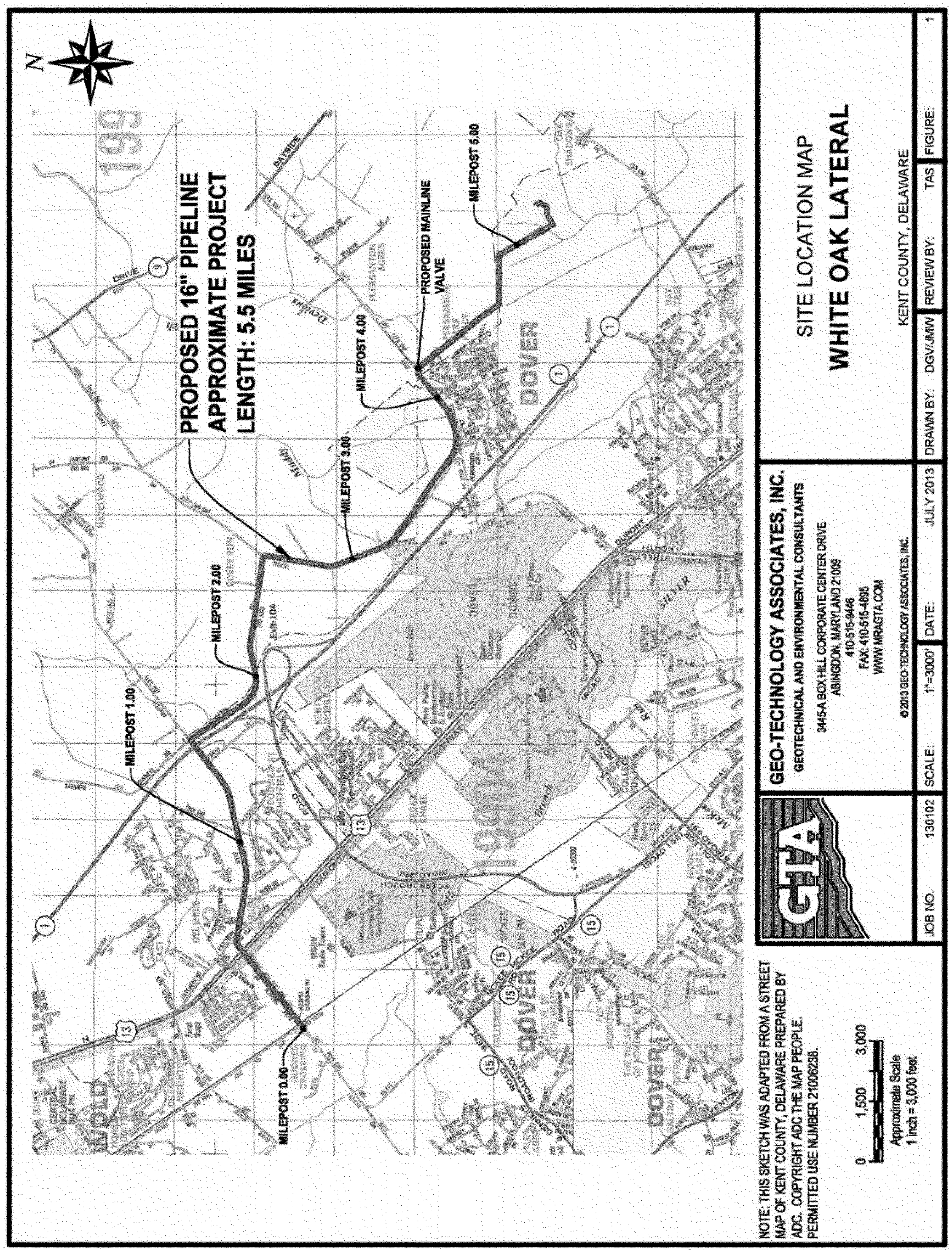
Dated: August 9, 2013.

Kimberly D. Bose,

Secretary.

BILLING CODE 6717–01–P

Appendix 1



Appendix 2

INFORMATION REQUEST

White Oak Lateral Project

Name____

Agency____

Address_______________________________________

City__________________**State**______ **Zip Code**________

☐ **Please send me a paper copy of the published NEPA document**

☐ **Please remove my name from the mailing list**

FROM______________________________

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ATTN: OEP - Gas 4, PJ - 11.4
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

(CP13-498-000 White Oak Lateral Project)

Staple or Tape Here

[FR Doc. 2013–19824 Filed 8–14–13; 8:45 am]

BILLING CODE 6717–01–C

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12690–005]

Public Utility District No. 1 of Snohomish County, Washington; Notice of Availability of Final Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission or FERC's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects reviewed the Public Utility District No. 1 of Snohomish County, Washington's (Snohomish PUD) application for a 10-year license for the proposed Admiralty Inlet Pilot Tidal Project No. 12690, which would be located in Admiralty Inlet in Puget Sound, near the City of Port Townsend, in Island County, Washington, and has prepared a final environmental assessment (FEA) in cooperation with the U.S. Department of Energy (DOE/EA–1949). In the FEA, Commission staff analyzed the potential environmental effects of constructing and operating the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the FEA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, 202–502–8659. A copy of the EA can also be found on DOE's Public Reading Room Web site at *http://www.eere.energy.gov/golden/NEPA_FEA_FONSI.aspx.* Please reference DOE/EA–1949 in the National Environmental Policy Act, Documents section.

You may also register online at *www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

FOR FURTHER INFORMATION CONTACT: Stephen Bowler by telephone at 202–502–6861 or by email at *stephen.bowler@ferc.gov.*

Dated: August 9, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–19819 Filed 8–14–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TS13–4–000]

Hudson Transmission Partners, LLC; Notice of Filing

Take notice that on July 12, 2013, Hudson Transmission Partners, LLC filed a request for exemption from, or waiver of, the standards of conduct set forth in Part 358 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 358.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on August 23, 2013.

Dated: August 8, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–19821 Filed 8–14–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC11–46–000]

Ameren Corporation; Notice of Filing

Take notice that on July 22, 2013, Ameren Corporation (Ameren) submitted a refund report and request for Commission guidance in compliance with the Commission's Order Rejecting Refund Report and Providing Guidance, issued on June 13, 2013.[1]

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on August 30, 2013.

[1] *Ameren Corporation,* 143 FERC ¶ 61, 240 (2013).

Dated: August 9, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–19796 Filed 8–14–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR13–29–000]

Williams Olefins Feedstock Pipelines, L.L.C.; Notice of Petition for Declaratory Order

Take notice that on August 6, 2013, pursuant to Rule 207(a)(2) of the Commission's Rules of Practices and Procedure, 18 CFR 385.207(a)(2)(2012), Williams Olefins Feedstock Pipelines, L.L.C., filed a petition requesting a declaratory order finding that a proposed Bayou Ethane Pipeline project is not subject to Commission's jurisdiction because the transported ethane will only be used as feedstock to produce ethylene, and not burned as fuel, as more fully described in their petition.

Any person desiring to intervene or to protest in this proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on Friday, September 6, 2013.

Dated: August 8, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–19823 Filed 8–14–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 344–023–California; Project No. 14520–000–California]

Southern California Edison, City of Banning, California; Notice of Meeting To Conduct a Technical Conference for the San Gorgonio Hydroelectric Project and the Proposed Whitewater Flume Water Power Project

a. *Date and Time of Meeting:* Thursday, September 12, 2013, beginning at 10:00 a.m. (PDT) and concluding at 1:00 p.m. (PDT).

b. *Place:* City of Banning, California, City Hall Council Chambers, 99 East Ramsey St., Banning, CA 92220 and by teleconference.

c. *FERC Contact:* Rebecca Martin at (202) 502–6012 or email at *Rebecca.Martin@ferc.gov.*

d. *Purpose of Meeting:* To discuss the need for a U.S. Forest Service Special Use Permit for Southern California Edison's application to surrender its license for the San Gorgonio Project No. 344 and any related issues to the City of Banning's license application for the Whitewater Flume Project No. 14520.

e. A summary of the meeting will be prepared for the projects' record.

f. All local, state, and federal agencies, Indian tribes, and other interested parties are invited to participate either in person or by phone. Please call Rebecca Martin (202) 502–6012 by September 3, 2013, to RSVP and for the teleconference call-in number if you wish to participate by teleconference.

g. FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or 202–208–8659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

Dated: August 8, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–19822 Filed 8–14–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP13–1031–000]

Trailblazer Pipeline Company LLC; Notice of Technical Conference

Take notice that a technical conference will be held on Tuesday, September 10, 2013, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The Commission's July 31, 2013 Order in the above-captioned proceeding [1] directed that a technical conference be held to address certain non-rate issues raised by Trailblazer Pipeline Company LLC's (Trailblazer) July 1, 2013 filing. At the technical conference, Trailblazer should be prepared to address all the issues set for technical conference by the July 31, 2013 Order, and to provide support for its positions, including technical, engineering, and operational support for its proposed gas quality specifications. Consistent with the Commission's Policy Statement, Trailblazer should be prepared to explain how its proposal differs from the Natural Gas Council Plus Interim Guidelines. *See Natural Gas Interchangeability, Policy Statement on Provisions Governing Natural Gas Quality and Interchangeability in Interstate Natural Gas Pipeline Company Tariffs,* 115 FERC ¶ 61,325, at P 34, 37 (2006).

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or 202–502–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

All interested persons are permitted to attend. For further information please contact Andrew Knudsen at (202) 502–6527 or email *Andrew.Knudsen@ferc.gov.*

[1] *Trailblazer Pipeline Company LLC,* 144 FERC ¶ 61,084 (2013) (July 31, 2013 Order).

Dated: August 8, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–19820 Filed 8–14–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2013–0485; FRL–9393–3]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 1-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to consider and review RNAi Technology as a Pesticide: Problem Formulation for Human Health and Ecological Risk Assessment.

DATES: The meeting will be held on October 29, 2013, from 9 a.m. to approximately 6 p.m.

Comments. The Agency encourages that written comments and requests for oral comments be submitted by October 21, 2013. However, written comments and requests to make oral comments may be submitted until the date of the meeting, but anyone submitting written comments after October 21, 2013 should contact the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT**. For additional instructions, see Unit I.C. of the **SUPPLEMENTARY INFORMATION.**

Nominations. Nominations of candidates to serve as *ad hoc* members of FIFRA SAP for this meeting should be provided on or before August 29, 2013.

Webcast. This meeting may be webcast. Please refer to the FIFRA SAP's Web site, *http://www.epa.gov/scipoly/sap* for information on how to access the webcast. Please note that the webcast is a supplementary public process provided only for convenience. If difficulties arise resulting in webcasting outages, the meeting will continue as planned.

Special accommodations. For information on access or services for individuals with disabilities, and to request accommodation of a disability, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at the Environmental Protection Agency, Conference Center, Lobby Level, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA 22202.

Comments: Submit your comments, identified by docket ID number EPA–HQ–OPP–2013–0485, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

If your comments contain any information that you consider to be CBI or otherwise protected, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** to obtain special instructions before submitting your comments.

Nominations, requests to present oral comments, and requests for special accommodations. Submit nominations to serve as *ad hoc* members of FIFRA SAP, requests for special seating accommodations, or requests to present oral comments to the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Sharlene Matten, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–0130; fax number: (202) 564–8382; email address: *matten.sharlene@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) and FIFRA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

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

When submitting comments, remember to:

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

C. How may I participate in this meeting?

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA–HQ–OPP–2013–0485 in the subject line on the first page of your request.

1. *Written comments.* The Agency encourages that written comments be submitted, using the instructions in **ADDRESSES**, no later than October 21, 2013, to provide FIFRA SAP the time necessary to consider and review the written comments. Written comments are accepted until the date of the meeting, but anyone submitting written comments after October 21, 2013 should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT**. Anyone submitting written comments at the meeting should bring 25 copies for distribution to FIFRA SAP.

2. *Oral comments.* The Agency encourages that each individual or group wishing to make brief oral comments to FIFRA SAP submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than October 22, 2013 in order to be included on the meeting agenda. Requests to present oral comments will be accepted until the date of the meeting and, to the extent that time permits, the

Chair of FIFRA SAP may permit the presentation of oral comments at the meeting by interested persons who have not previously requested time. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). Oral comments before FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 30 copies of his or her comments and presentation slides for distribution to the FIFRA SAP at the meeting.

3. *Seating at the meeting.* Seating at the meeting will be open and on a first-come basis.

4. *Request for nominations to serve as ad hoc members of FIFRA SAP for this meeting.* As part of a broader process for developing a pool of candidates for each meeting, FIFRA SAP staff routinely solicits the stakeholder community for nominations of prospective candidates for service as ad hoc members of FIFRA SAP. Any interested person or organization may nominate qualified individuals to be considered as prospective candidates for a specific meeting. Individuals nominated for this meeting should have expertise in one or more of the following areas:

- Ecological risk assessment
- Human health risk assessment
- Bioinformatics
- RNAi technology
- Biotechnology
- Plant breeding and genomics

Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the scientific issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before August 29, 2013. The Agency will consider all nominations of prospective candidates for this meeting that are received on or before this date. However, final selection of *ad hoc* members for this meeting is a discretionary function of the Agency.

The selection of scientists to serve on FIFRA SAP is based on the function of the panel and the expertise needed to address the Agency's charge to the panel. No interested scientists shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency except the EPA. Other factors considered during the selection process include availability of the potential panel member to fully participate in the panel's reviews, absence of any conflicts of interest or appearance of lack of impartiality, independence with respect to the matters under review, and lack of bias. Although financial conflicts of interest, the appearance of lack of impartiality, lack of independence, and bias may result in disqualification, the absence of such concerns does not assure that a candidate will be selected to serve on FIFRA SAP. Numerous qualified candidates are identified for each panel. Therefore, selection decisions involve carefully weighing a number of factors including the candidates' areas of expertise and professional qualifications and achieving an overall balance of different scientific perspectives on the panel. In order to have the collective breadth of experience needed to address the Agency's charge for this meeting, the Agency anticipates selecting approximately 8–10 *ad hoc* scientists.

FIFRA SAP members are subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. In anticipation of this requirement, prospective candidates for service on the FIFRA SAP will be asked to submit confidential financial information which shall fully disclose, among other financial interests, the candidate's employment, stocks and bonds, and where applicable, sources of research support. The EPA will evaluate the candidates financial disclosure form to assess whether there are financial conflicts of interest, appearance of a lack of impartiality or any prior involvement with the development of the documents under consideration (including previous scientific peer review) before the candidate is considered further for service on FIFRA SAP. Those who are selected from the pool of prospective candidates will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. In addition, they will be asked to review and to help finalize the meeting minutes. The list of FIFRA SAP members participating at this meeting will be posted on the FIFRA SAP Web site at *http://www.epa.gov/scipoly/sap* or may be obtained from the OPP Docket or at *http://www.regulations.gov.*

II. Background

A. Purpose of FIFRA SAP

FIFRA SAP serves as the primary scientific peer review mechanism of EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) and is structured to provide scientific advice, information and recommendations to the EPA Administrator on pesticides and pesticide-related issues as to the impact of regulatory actions on health and the environment. FIFRA SAP is a Federal Advisory Committee established in 1975 under FIFRA that operates in accordance with requirements of the Federal Advisory Committee Act. FIFRA SAP is composed of a permanent panel consisting of seven members who are appointed by the EPA Administrator from nominees provided by the National Institutes of Health and the National Science Foundation. FIFRA established a Science Review Board consisting of at least 60 scientists who are available to the SAP on an *ad hoc* basis to assist in reviews conducted by the SAP. As a peer review mechanism, FIFRA SAP provides comments, evaluations and recommendations to improve the effectiveness and quality of analyses made by Agency scientists. Members of FIFRA SAP are scientists who have sufficient professional qualifications, including training and experience, to provide expert advice and recommendation to the Agency.

B. Public Meeting

The use of RNA Interference (RNAi) gene silencing technology, particularly RNAi gene silencing for pesticidal purposes, is a relatively recent innovation. Post-transcriptional silencing of gene function is a very rapid process where double-stranded RNA (dsRNA) directs sequence-specific degradation of an RNA. The EPA is beginning to receive applications for regulatory actions on pesticides based on RNAi gene silencing technologies. The EPA recognizes the need to better understand the scientific issues concerning the assessment of the risks to human health and the environment that RNAi technologies may pose before any regulatory decisions concerning these products can be made. In 1998, the U.S. Environmental Protection Agency developed a formalized process for risk assessment. Problem formulation is the first step in this process. In problem formulation, available information is used to define assessment endpoints and to develop a preliminary understanding of potential risks (i.e., develop a risk hypothesis and conceptual model) associated with the use of a pesticide. Problem formulation also serves as an opportunity to identify missing information/uncertainties that may limit the assessment and any assumptions that may be made in the absence of such data. The EPA is seeking the input of the FIFRA SAP on the assessment of pesticide products based on RNAi technology, particularly with regard to general uncertainties in the current state of knowledge about dsRNAs, including the potential fate of dsRNAs genetically-engineered into plants or other organisms in the environment and any avenues through which they may present risk to human health and/or the environment.

C. FIFRA SAP Documents and Meeting Minutes

EPA's background paper, related supporting materials, charge/questions to FIFRA SAP, FIFRA SAP composition (i.e., members and *ad hoc* members for this meeting), and the meeting agenda will be available by early October. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, at *http://www.regulations.gov* and the FIFRA SAP homepage at *http://www.epa.gov/scipoly/sap.*

FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency approximately 90 days after the meeting. The meeting minutes will be posted on the FIFRA SAP Web site or may be obtained from the OPP Docket or at *http://www.regulations.gov.*

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 29, 2013.

David J. Dix,

Acting Director, Office of Science Coordination and Policy.

[FR Doc. 2013–19873 Filed 8–14–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9900–14–OA]

National Environmental Education Advisory Council

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting(s).

SUMMARY: Under the Federal Advisory Committee Act, EPA gives notice of a series of teleconference meetings of the National Environmental Education Advisory Council (NEEAC). The NEEAC was created by Congress to advise, consult with, and make recommendations to the Administrator of the Environmental Protection Agency (EPA) on matters related to activities, functions and policies of EPA under the National Environmental Education Act (the Act).

The purpose of these teleconference(s) is to discuss specific topics of relevance for consideration by the council in order to provide advice and insights to the Agency on environmental education.

DATES: The National Environmental Education Advisory Council will hold public teleconferences on Wednesday, August 28, 2013, Monday, September 23, 2013, Monday, October 23, 2013 and Monday, November 25, 2013, from 12:00 pm until 1:00 pm Eastern Daylight Time.

FOR FURTHER INFORMATION CONTACT: Javier Araujo, Designated Federal Officer, *araujo.javier@epa.gov,* 202–564–2642, U.S. EPA, Office of Environmental Education, William Jefferson Clinton North Room 1426, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Members of the public wishing to gain access to the teleconference, make brief oral comments, or provide a written statement to the NEEAC must contact Javier Araujo, Designated Federal Officer, at *araujo.javier@epa.gov* or 202–564–2642 by 10 business days prior to each regularly scheduled meeting.

Meeting Access: For information on access or services for individuals with disabilities or to request accommodations please contact Javier Araujo at *araujo.javier@epa.gov* or 202–564–2642, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Stephanie Owens,

Deputy Associate Administrator, Office of External Affairs and Environmental Education.

[FR Doc. 2013–19879 Filed 8–14–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations and Terminations

The Commission gives notice that the following Ocean Transportation Intermediary licenses have been revoked or terminated for the reason shown pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101) effective on the date shown.

License No.: 003134F.
Name: Enterprise Forwarders, Inc.
Address: 8555 NW 29th Street, 2nd Floor, Doral, FL 33122.
Date Revoked: June 30, 2013.
Reason: Failed to maintain a valid bond.

License No.: 16209N.
Name: Amos Cargo Service, Inc.
Address: 855 West Victoria Street, Unit G, Compton, CA 90220.
Date Revoked: July 12, 2013.
Reason: Failed to maintain a valid bond.

License No.: 16299N.
Name: Pan-World Express, Inc.
Address: 2839 East 208th Street, Carson, CA 90810.
Date Revoked: June 17, 2013.
Reason: Failed to maintain a valid bond.

License No.: 016914N.
Name: Air Sea Cargo Network, Inc.
Address: 7982 Capwell Drive, Oakland, CA 94621.
Date Revoked: June 14, 2013.
Reason: Failed to maintain a valid bond.

License No.: 016959F.
Name: Francis Mendez Alvarez dba Servicios Hundurenos.
Address: 1200 Labco Street, Houston, TX 77029.
Date Revoked: July 13, 2013.
Reason: Failed to maintain a valid bond.

License No.: 017531N.
Name: New York Logistic Services, Inc. dba Global American Line.
Address: 1308 Merrywood Drive, Edison, NJ 08817.
Date Revoked: July 16, 2013.
Reason: Failed to maintain a valid bond.

License No.: 018392F.
Name: Broom U.S.A., Inc. dba Transcontinental Logistics Neutral 3PL.
Address: 2293 NW 82th Avenue, Doral, FL 33122.
Date Revoked: June 17, 2013.
Reason: Failed to maintain a valid bond.

License No.: 018461F.
Name: Select Aircargo Services, Inc. dba PAC International Logistics Company.
Address: 12801 South Figueroa Street, Los Angeles, CA 90061.
Date Revoked: July 10, 2013.
Reason: Failed to maintain a valid bond.

License No.: 018716N.
Name: Transporte Medrano Inc.
Address: 134 North Franklin Street, Hempstead, NY 11550.
Date Revoked: July 25, 2013.
Reason: Failed to maintain a valid bond.

License No.: 019364F.
Name: New Life Health Care Services, LLC dba New Life Marine Services.

Address: 3527 Brackenfern Road, Katy, TX 77449.

Date Revoked: June 9, 2013.

Reason: Failed to maintain a valid bond.

License No.: 019608N.

Name: United Logistics (LAX) Inc.

Address: 13079 Artesia Blvd., Suite B–110, Cerritos, CA 90703.

Date Revoked: June 21, 2013.

Reason: Failed to maintain a valid bond.

License No.: 020319N.

Name: Fil Lines USA Inc.

Address: One Woodbridge Center, Suite #255, Woodbridge, NJ 07095.

Date Revoked: June 27, 2013.

Reason: Voluntary Surrender of License.

License No.: 020375N.

Name: Antolin German dba Embarque El Commando.

Address: 488 E. 164th Street, Bronx, NY 10456.

Date Revoked: July 4, 2013.

Reason: Failed to maintain a valid bond.

License No.: 020525N.

Name: Zeus (USA) Logistics LLC.

Address: 231 Blossom Lane, West Palm Beach, FL 33404.

Date Revoked: July 4, 2013.

Reason: Failed to maintain a valid bond.

License No.: 020740F.

Name: Aseco Container Services Inc.

Address: 29 West 30th Street, 12th Floor, New York, NY 10001.

Date Revoked: June 15, 2013.

Reason: Failed to maintain a valid bond.

License No.: 021539NF.

Name: USA Ocean Express LLC dba USA-Ocean Express Agency.

Address: 220 Route 46 West, Suite 214, Little Ferry, NJ 07643.

Date Revoked: July 3, 2013.

Reason: Failed to maintain valid bonds.

License No.: 022476NF.

Name: Maze Express, L.L.C.

Address: 9106 Sorensen Avenue, Santa Fe Springs, CA 90670.

Date Revoked: June 21, 2013.

Reason: Failed to maintain valid bonds.

License No.: 023062NF.

Name: A & M Ocean Machinery, Inc.

Address: 9725 Fontainebleau Blvd., Suite 103, Miami, FL 33172.

Date Revoked: July 4, 2013.

Reason: Failed to maintain valid bonds.

James A. Nussbaumer,

Deputy Director, Bureau of Certification and Licensing.

[FR Doc. 2013–19771 Filed 8–14–13; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 3, 2013.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Charles M. Shea, of Wilmette,* Illinois, as an individual, and the group consisting of JP Morgan Chase Bank, N.A., Naperville, Illinois, as Trustee of the Jerry C. Bradshaw Family Trust—GST Non-Exempt Trust, Naperville, Illinois, and the Jerry C. Bradshaw Family Trust—GST Exempt Trust, Naperville, Illinois; Charles M. Shea, Wilmette, Illinois, as a committee member of the Jerry C. Bradshaw Family Trust—GST Non-Exempt Trust and the Jerry C. Bradshaw Family Trust—GST Exempt Trust; Molly Baed, Wassenaar, Netherlands, as a committee member of the Jerry C. Bradshaw Family Trust—GST Non-Exempt Trust and the Jerry C. Bradshaw Family Trust—GST Exempt Trust; Betty J. Bradshaw, Wheaton, Illinois, as a committee member of the Jerry C. Bradshaw Family Trust—GST Non-Exempt Trust and the Jerry C. Bradshaw Family Trust—GST Exempt Trust, to retain control of the outstanding shares of Marseilles Bancorporation, Inc., Marseilles, Illinois, and thereby retain shares of Marseilles Bank, Marseilles, Illinois.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *The Jennifer L. Wolgamott 2012 Legacy Trust, Cathleen R. Hefti, as trustee and individually,* both of Scottsbluff, Nebraska; the Christie L. Coletti Christensen 2012 Legacy Trust and the Michael P. Coletti 2012 Legacy Trust, both of Greeley, Colorado; and the Kay Lorraine Hefti Coletti Living Trust, Kay L. Coletti and David C. Coletti, trustees, all of Cheyenne, Wyoming; to acquire control of First State Bancshares, Inc., and thereby indirectly acquire First State Bank, both of Scottsbluff, Nebraska, and Security First Bank, Cheyenne, Wyoming.

2. *Norman W. Waitt, Jr.,* Dakota Dunes, South Dakota; Christopher M. Mayer, Omaha, Nebraska; the John S. Schuele Irrevocable Trust, Mary A. Schuele and Dana C. Bradford, co-trustees, all of Omaha, Nebraska; Todd P. Clevenger, Omaha, Nebraska; and the Dana C. Bradford IV Revocable Trust, Dana C. Bradford, trustee, both of Omaha, Nebraska; all as members of a group acting in concert, to acquire control of Premier Bancshares, Inc., and thereby indirectly acquire Premier Bank, both in Omaha, Nebraska.

Board of Governors of the Federal Reserve System, August 12, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–19833 Filed 8–14–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination—on the dates indicated—of the waiting period provided by law and the premerger notification rules. The listing for each transaction includes the transaction number and the parties to the transaction. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

EARLY TERMINATIONS GRANTED
JULY 1, 2013 THRU JULY 31, 2013

07/02/2013		
20130973	G	IHS Inc.; R.L. Polk & Co.; IHS Inc.
20130994	G	Marubeni Corporation; Aircastle Limited; Marubeni Corporation.
20130995	G	Atlas Resource Partners, L.P.; EPE Acquisition, LLC; Atlas Resource Partners, L.P.
20131004	G	BreitBurn Energy Partners L.P.; Whiting Petroleum Corporation; BreitBum Energy Partners L.P.
20131009	G	Dr. Hansjorg Wyss; NovoCure Limited; Dr. Hansjorg Wyss.
07/03/2013		
20130947	G	Barnabas Health, Inc.; Liberty HealthCare System, Inc.; Barnabas Health, Inc.
20130980	G	Scout Capital Partners II, L.P.; Tim Hortons Inc.; Scout Capital Partners II, L.P.
20130989	G	General Atlantic Partners 93, L.P.; Exel Partners LLC; General Atlantic Partners 93, L.P.
07/05/2013		
20130544	G	Flowers Foods, Inc.; Hostess Brands, Inc.; Flowers Foods, Inc.
20130988	G	Cash America International, Inc.; Todd C. Behringer; Cash America International, Inc.
07/08/2013		
20131007	G	Ginsoma Family C.V.; Frank's International C.V.; Ginsoma Family C.V.
20131008	G	General Electric Company; RKI Exploration & Production, LLC; General Electric Company.
20131010	G	Arch Capital Group Ltd.; PMT Mortgage Insurance Co.; Arch Capital Group Ltd.
20131013	G	Bain Capital Fund X, L.P.; Billy L. Brown, Jr.; Bain Capital Fund X, L.P.
20131030	G	Worthington Industries, Inc.; Wuhan Iron and Steel (Group) Corporation; Worthington Industries, Inc.
07/09/2013		
20131002	G	Outerwall Inc,; ecoATM, Inc.; Outerwall Inc,
20131037	G	Canfor Corporation; Gulf Lumber Company, Inc.; Canfor Corporation.
20131038	G	Canfor Corporation; Scotch Lumber Company, Inc.; Canfor Corporation.
07/10/2013		
20131031	G	LIXIL Group Corporation; Sun Capital Partners V, L.P.; LIXIL Group Corporation.
07/11/2013		
20131016	G	Apollo Investment Fund VII, L.P.; ALEKS Corporation; Apollo Investment Fund VII, L.P.
07/12/2013		
20130983	G	EMCOR Group, Inc.; ArcLight Energy Partners Fund III, L.P.; EMCOR Group, Inc.
20130997	G	VEPF IV MV I, L.P.; EHS Holdings, Inc.; VEPF IV MV I, L.P.
20131043	G	Welsh, Carson Anderson & Stowe XI, L.P.; Warburg Pincus Private Equity VIII, L.P.; Welsh, Carson Anderson & Stowe XI, L.P.
20131044	G	KKR North American Fund XI, L.P.; Genstar Capital Partners V, L.P.; KKR North American Fund XI, L.P.
20131046	G	Avista Capital Partners III, L.P.; The Resolute Fund II, L.P.; Avista Capital Partners III, L.P.
20131047	G	Thoma Bravo Fund X, L.P.; Intuit Inc.; Thoma Bravo Fund X, L.P.
20131048	G	Jay W. Cleveland, Jr.; Caterpillar, Inc.; Jay W. Cleveland, Jr.
20131049	G	Par Petroleum Corporation; Tesoro Corporation; Par Petroleum Corporation.
07/15/2013		
20131032	G	Isolde GP Acquisition S.C.A.; EQT V (No. 1) Limited Partnership; Isolde GP Acquisition S.C.A.
20131039	G	Merck & Co., Inc.; Perseus Partners VII, L.P.; Merck & Co., Inc.
20131054	G	LSF VIII International Finance, L.P.; Lafarge S.A.; LSF VIII International Finance, L.P.
07/16/2013		
20131019	G	Nippon Telegraph and Telephone Corporation; Solutionary, Inc.; Nippon Telegraph and Telephone Corporation.
20131050	G	LG Crane LLC; Crane & Co., Inc.; LG Crane LLC.
07/17/2013		
20131056	G	Third Avenue Trust; Cavco Industries, Inc.; Third Avenue Trust
07/18/2013		
20131052	G	Aspect Software Group Holdings Ltd.; Voxeo Corporation; Aspect Software Group Holdings Ltd.

EARLY TERMINATIONS GRANTED—Continued
JULY 1, 2013 THRU JULY 31, 2013

07/19/2013		
20130834	G	General Electric Company; BCV Investments S.C.A.; General Electric Company.
20130992	G	BioScrip, Inc.; CarePoint Partners Holdings LLC; BioScrip, Inc.
20131036	G	Nicholas S. Schorsch; Lovell Minnick Equity Partners III LP; Nicholas S. Schorsch.
20131041	G	Thoma Bravo Fund X, L.P.; Keynote Systems, Inc.; Thoma Bravo Fund X, L.P.
20131061	G	Accenture plc; Monitor Clipper Equity Partners III, L.P.; Accenture plc.
07/22/2013		
20131017	G	Berkshire Hathaway Inc.; NV Energy, Inc.; Berkshire Hathaway Inc.
20131062	G	KSTW Holdings, Inc.; Steinway Musical Instruments, Inc.; KSTW Holdings, Inc.
20131063	G	Quad-C Partners VIII, L.P.; Worldwide Express Holdings, LLC; Quad-C Partners VIII, L.P.
20131067	G	WP Horizon Topco LLC; Marketing Werks, Inc.; WP Horizon Topco LLC.
07/23/2013		
20131051	G	Novo Nordisk Foundation; Ophthotech Corporation; Novo Nordisk Foundation.
20131055	G	Rangers Renal Holdings LP; Lindsay Goldberg & Bessemer II L.P.; Rangers Renal Holdings LP.
07/24/2013		
20131070	G	Koch Industries, Inc.; Roland J. Fagen; Koch Industries, Inc.
07/25/2013		
20131057	G	RoundTable Healthcare Partners III, L.P.; Levine Leichtman Capital Partners IV, L.P.; RoundTable Healthcare Partners III, L.P.
20131064	G	Madison Dearborn Capital Partners VI–A, L.P.; IPC/Packaging LLC; Madison Dearborn Capital Partners VI–A, L.P.
07/26/2013		
20131045	G	Alexander & Baldwin, Inc.; GPC Holdings, Inc.; Alexander & Baldwin, Inc.
20131071	G	Tribune Company; Local TV Holdings, LLC; Tribune Company.
20131072	G	ALS Limited; SCF–VI, L.P.; ALS Limited.
20131077	G	Riverstone Global Energy and Power Fund V (FT), L.P.; Devon Energy Corporation; Riverstone Global Energy and Power Fund V (FT), L.P.
20131078	G	Marathon Petroleum Corporation; The Andersons Clymers Ethanol LLC; Marathon Petroleum Corporation.
20131080	G	Precision Castparts Corp.; Exacta Aerospace, Inc.; Precision Castparts Corp.
20131083	G	Parthenon Investors IV, L.P.; Express Scripts Holding Company; Parthenon Investors IV, L.P.
20131085	G	XPO Logistics, Inc.; Logistics Holding Company Limited; XPO Logistics, Inc.
20131088	G	NGL Energy Partners LP; Mark Cuban; NGL Energy Partners LP.
07/29/2013		
20131040	G	Tenet Healthcare Corporation; Vanguard Health Systems, Inc.; Tenet Healthcare Corporation.
20131068	G	Fred Howe; SS MCP Holdings, LLC; Fred Howe.
07/31/2013		
20131020	G	Lowe's Companies, Inc.; Orchard Supply Hardware Stores Corporation; Lowe's Companies, Inc.

FOR FURTHER INFORMATION CONTACT:

Renee Chapman, Contact Representative; or

Theresa Kingsberry, Legal Assistant; Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2013–19555 Filed 8–14–13; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Renewal of Charter for the Presidential Advisory Council on HIV/AIDS

AGENCY: Office of HIV/AIDS and Infectious Disease Policy, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services is hereby giving notice that the charter for the Presidential Advisory Council on HIV/AIDS (PACHA; the Council) has been renewed.

FOR FURTHER INFORMATION CONTACT: Ms. Caroline Talev, Public Health Assistant, Presidential Advisory Council on HIV/AID, Department of Health and Human Services, 200 Independence Avenue SW., Room 443H, Washington, DC 20201; (202) 205–1178; email: *caroline.talev@hhs.gov.* More detailed information about PACHA can be obtained by accessing the Council's Web site, *www.aids.gov/pacha.*

SUPPLEMENTARY INFORMATION: PACHA is a non-discretionary Federal advisory committee. The Council was established under Executive Order 12963, dated June 14, 1993, and amended under Executive Order 13009, dated June 14, 1995. PACHA is governed by the provisions of the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C. App.). The Council provides advice, information, and recommendations to the Secretary regarding programs and policies to promote effective prevention and cure of HIV disease and AIDS. The functions of the Council are solely advisory in nature.

To carry out its mission, PACHA provides advice, information, and recommendations to the Secretary regarding programs and policies to (a) Reduce HIV incidence; (b) advance research on HIV/AIDS; (c) improve health outcomes and ensure people living with HIV have access to quality health care; (d) address HIV-related health disparities; and (e) provide global leadership in responding to the HIV pandemic and expand access to treatment, care, and prevention for people infected with and affected by HIV/AIDS around the world.

On July 26, 2013, the Secretary of Health and Human Services approved for the PACHA charter to be renewed. One amendment was approved for the charter. It was approved for the subcommittee structure of the Council to be amended to authorize utilization of non-member special consultants. The use of non-member special consultants will allow for more input and involvement from stakeholders in the HIV/AIDS community in the PACHA deliberative process. The new charter was effected and filed with the appropriate Congressional offices and Library of Congress on July 27, 2013. Renewal of the PACHA charter gives authorization for the Council to continue to operate until July 27, 2015.

A copy of the PACHA charter is available on the Council Web site at *www.aids.gov/pacha.* A copy of the charter also can be obtained by accessing the FACA database that is maintained by the Committee Management Secretariat under the General Services Administration. The Web site address for the FACA database is *www.fido.gov/facadatabase.*

Dated: August 8, 2013.

B. Kaye Hayes,

Executive Director, Presidential Advisory Council on HIV/AIDS.

[FR Doc. 2013–19781 Filed 8–14–13; 8:45 am]

BILLING CODE 4150–43–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Renewal of Charter for the National Vaccine Advisory Committee

AGENCY: National Vaccine Program Office, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services is hereby giving notice that the National Vaccine Advisory Committee (NVAC) has been rechartered.

FOR FURTHER INFORMATION CONTACT: LCDR Guillermo Aviles-Mendoza, Public Health Advisor, National Vaccine Program Office, Department of Health and Human Services, Room 739G.4, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Phone: (202) 205–2982; fax: (202) 690–4631; email: *nvpo@hhs.gov.*

SUPPLEMENTARY INFORMATION: NVAC is a non-discretionary Federal advisory committee. The establishment of NVAC was mandated under Section 2105 (42 U.S.C. Section 300aa–5) of the Public Health Service (PHS) Act, as amended. The Committee is governed by provisions of the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C. App.). NVAC advises and makes recommendations to the Director, National Vaccine Program (NVP), on matters related to the Program's responsibilities. The Assistant Secretary for Health is appointed to serve as the Director, NVP.

To carry out its mission, NVAC (1) Studies and recommends ways to encourage the availability of an adequate supply of safe and effective vaccination products in the United States; (2) recommends research priorities and other measures the Director of the NVP should take to enhance the safety and efficacy of vaccines; (3) advises the Director of the NVP in the implementation of Sections 2102 and 2103 of the PHS Act; and (4) identifies annually for the Director of the NVP the most important areas of governmental and non-governmental cooperation that should be considered in implementing Sections 2101 and 2103 of the PHS Act.

On July 23, 2013, the Assistant Secretary for Health approved for the NVAC charter to be renewed. There was one amendment recommended and approved for the charter. The Committee structure has been modified to increase the number of non-voting liaison representatives. An invitation has been extended to the Pan American Health Organization (PAHO) to serve as a non-voting liaison representative member of the Committee. PAHO is an international public health agency with over 110 years of experience working to improve health and living standards of people of the Americas. The organization is part of the United Nations system; it serves as the Regional Office for the Americas of the World Health Organization and as the health organization of the Inter-American System. PAHO works to strengthen national and local health systems and to improve the health of peoples of the Americas. It promotes primary health care strategies, including coordination of immunization campaigns through the Americas. Expanding the NVAC structure to include PAHO will assist the Committee to accomplish its mission of identifying the most important areas of governmental and non-governmental cooperation that should be considered to achieve optimal prevention of human infectious diseases through immunization and to achieve optimal prevention against adverse reactions to vaccine. The new charter was effected and filed with the appropriate Congressional committees and Library of Congress on July 30, 2013. Renewal of the NVAC charter gives authorization for the Committee to continue to operate until July 30, 2015.

A copy of the NVAC charter is available on the Web site for the National Vaccine Program Office at *http://www.hhs.gov/nvpo/nvac.* A copy of the charter also can be obtained by accessing the FACA database that is maintained by the Committee Management Secretariat under the General Services Administration. The Web site address for the FACA database is *http://fido.gov/facadatabase.*

Dated: August 8, 2013.

Bruce Gellin,

Deputy Assistant Secretary for Health (Vaccines and Immunization), Director, National Vaccine Program Office.

[FR Doc. 2013–19780 Filed 8–14–13; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notification of a Cooperative Agreement Award to the World Health Organization

AGENCY: Department of Health and Human Services (HHS), Assistant Secretary for Preparedness and

Response (ASPR), Biomedical Advanced Research and Development Authority.

ACTION: Notification of a sole source Cooperative Agreement Award to the World Health Organization for a grant titled: ''Smallpox Research Oversight Activities: WHO Advisory Committee on Variola Virus Research.''

Statutory Authority: Sections 301 and 319L of the Public Health Service Act, (42 U.S.C. 241 and 247d–7e).

Estimated Amount of Award: $290,000 USD.

Project Period: September 30, 2013 to September 29, 2014.

SUMMARY: A natural re-emergence of smallpox is not deemed possible, but if it were to occur as a result of a terrorist or deliberate event, it would be a potentially devastating threat to public health worldwide and would constitute a public health emergency of international concern (PHEIC) under the International Health Regulations (IHR) (2005). A case of smallpox detected by a member state requires notification to World Health Organization (WHO) as soon as possible, and any confirmed smallpox case would generate an immediate global public health response.

WHO must rely on fast and reliable laboratory diagnostic capacity worldwide to be able to identify a re-emergence of smallpox, particularly in countries where systemic orthopoxvirus infections, such as monkeypox, vaccinia virus infection or cowpox, and other non-pox viral rash illnesses, such as chicken pox, may cause clinical diagnostic confusion.

Over the past 10 years, clinical virology laboratory diagnostics has been evolving and increasingly relies on molecular techniques. This is also true with laboratory diagnoses of poxvirus infections. Precise and consistent identification of orthopoxviruses, in particular variola viruses, is now achievable using such molecular techniques as real-time Polymerase Chain Reaction (PCR), unlike earlier techniques that may have relied on direct virus isolation and identification.

WHO must be alerted when there is a potential or actual smallpox infection. Early detection and confirmation of smallpox cannot rely solely on the two WHO Collaborating Centres for smallpox and other poxvirus infections. In order to facilitate and support a prompt and effective response to mitigate the spread of the disease, these two Centres should be supported by a worldwide network of reliable laboratories able to perform PCR and real-time PCR diagnostics enabling initial detection and identification of smallpox events.

Additionally, the U.S. Government supports the development of other medical products, including vaccines and drugs, for use within the U.S. upon verification of a smallpox case. The U.S. Government, through the Office of the Assistant Secretary for Preparedness and Response (ASPR), has successfully developed vaccine products, and is actively engaged in the development of several drug candidates for smallpox therapies, which require access to the Variola virus to satisfy regulatory requirements for product approvals.

Justification: WHO is the only eligible applicant; it is the only organization that is allowed by international agreements to address the issues outlined in this proposal. WHO is the directing and coordinating authority for health within the United Nations (U.N.) system. It is responsible for providing leadership on global health matters, shaping the health research agenda, setting norms and standards, articulating evidence-based policy options, providing technical support to countries, and monitoring and assessing health trends. In the 21st century, health is a shared responsibility, involving equitable access to essential care and collective defense against transnational threats. States Parties to the U.N. have agreed to international standards on reporting public health incidents of concern under IHR (2005). Additionally, a majority of States Parties have also agreed to specific work-frames for pathogens such as smallpox under the Biological Weapons Convention.

Since May 1999, when the 52nd World Health Assembly (WHA) resolved to postpone the destruction of the Variola virus to allow for essential research (WHA 52.10), WHO has been charged with convening a group of experts to advise on the need for continuing such research, to review proposals for research involving viable Variola virus, to review the progress of such research, and to report to the WHA each year. The need to support the activities described in this project has not changed. In fact, WHO Member States continue to exert pressure for the WHO Secretariat to carry out this work.

The WHO Advisory Committee on Variola Virus Research (ACVVR) was established in 1999 to determine what essential research, if any, must be carried out with live Variola virus. The ACVVR monitored the research progress in order to reach global consensus on the timing for the destruction of existing Variola virus stocks. In 2007, the WHA requested the ACVVR undertake a thorough review of the approved research program with a report presented in 2010. The results were presented at the 64th WHA meeting in May of 2011. The ACVVR continues to serve a critically important function for global public health, and to oversee research requested specifically by the U.S. to complete its national strategic goals. This includes convening a group of experts, the ACVVR, to advise on the need for continuing such research, to review proposals for research involving viable Variola virus, and to review the progress of such research.

Additional Information: The agency program contact is George Korch, who can be contacted by phone at (202) 690–5760 or via email at *George.Korch@hhs.gov.*

Dated: August 8, 2013.

Nicole Lurie,

Assistant Secretary for Preparedness and Response.

[FR Doc. 2013–19860 Filed 8–14–13; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notification of an Expansion to the Cooperative Agreement Award to the World Health Organization

AGENCY: Biomedical Advanced Research and Development Authority (BARDA), Assistant Secretary for Preparedness and Response (ASPR), Department of Health and Human Services (HHS).

ACTION: Notification of an expansion to the Cooperative Agreement Award to the World Health Organization for a grant titled: ''Smallpox Research Oversight Activities: WHO Advisory Committee on Variola Virus Research''

Statutory Authority: Sections 301 and 319L of the Public Health Service Act, (42 U.S.C. 241 and 247d–7e)

Estimated Amount of Award: $175,000 USD.

Project Period: September 30, 2012 to September 29, 2013.

SUMMARY: A natural re-emergence of smallpox is not deemed possible, but if it were to occur as a result of a terrorist or deliberate event, it would be a potentially devastating threat to public health worldwide and would constitute a public health emergency of international concern (PHEIC) under the International Health Regulations (IHR) (2005). A case of smallpox detected by a member state requires notification to World Health Organization (WHO) as soon as possible, and any confirmed smallpox case would generate an

immediate global public health response.

WHO must rely on fast and reliable laboratory diagnostic capacity worldwide to be able to identify a re-emergence of smallpox, particularly in countries where systemic orthopoxvirus infections such as monkeypox, vaccinia virus infection or cowpox, and other non-pox viral rash illnesses, such as chicken pox, may cause clinical diagnostic confusion.

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Additionally, the U.S. Government supports the development of other medical products, including vaccines and drugs, for use within the U.S. upon verification of a smallpox case. The U.S. Government, through the Office of the Assistant Secretary for Preparedness and Response (ASPR), has successfully developed vaccine products, and is actively engaged in the development of several drug candidates for smallpox therapies, which require access to the Variola virus to satisfy regulatory requirements for product approvals.

Justification: WHO is the only eligible applicant; it is the only organization that is allowed by international agreements to address the issues outlined in this proposal. WHO is the directing and coordinating authority for health within the United Nations (U.N.) system. It is responsible for providing leadership on global health matters, shaping the health research agenda, setting norms and standards, articulating evidence-based policy options, providing technical support to countries, and monitoring and assessing health trends. In the 21st century, health is a shared responsibility, involving equitable access to essential care and collective defense against transnational threats. States Parties to the U.N. have agreed to international standards on reporting public health incidents of concern under IHR (2005). Additionally, a majority of States Parties have also agreed to specific work-frames for pathogens such as smallpox under the Biological Weapons Convention.

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Additional Information: The agency program contact is George Korch, who can be contacted by phone at (202) 690–5760 or via email at *George.Korch@hhs.gov.*

Dated: August 12, 2013.

Nicole Lurie,

Assistant Secretary for Preparedness and Response.

[FR Doc. 2013–19854 Filed 8–14–13; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–13–0010]

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 Leroy Richardson, at 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

Birth Defects Study To Evaluate Pregnancy exposureS (BD–STEPS) (formerly titled The National Birth Defects Prevention Study (NBDPS)), (OMB 0920–0010, Expiration 04/30/2015)—Revision—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC has been monitoring the occurrence of serious birth defects and genetic diseases in Atlanta since 1967 through the Metropolitan Atlanta Congenital Defects Program (MACDP). The MACDP is a population-based surveillance system for birth defects currently covering three counties in Metropolitan Atlanta.

Since 1997, CDC has funded case-control studies of major birth defects that utilize existing birth defect surveillance registries (including MACDP) to identify cases and study birth defects causes in participating states/municipalities across the United States.

BD–STEPS is a case-control study that is similar to the previous CDC-funded birth defects case-control study, NBDPS, which stopped interviewing participants in 2013. As with NBDPS, control infants will be randomly selected from birth certificates or birth hospital records; mothers of case and control infants will be interviewed using a computer-assisted telephone interview.

The BD–STEPS interview takes approximately forty-five minutes to complete. A maximum of 275 interviews are planned per year per center, 200 cases and 75 controls. With seven centers planned, the maximum interview burden for all centers combined would be approximately 1,444 hours. As with NBDPS, parents in BD–STEPS will be asked to collect deoxyribonucleic acid (DNA) samples from themselves and their infants. The collection of saliva cells by the mother, father and infant takes about 15 minutes per person. For the infant sample, the parent will rub long-handled sponges between the infant's cheek and gum; parents will be asked to swab a total of 5 sponges per infant. The infant's mother and father will be asked to provide their own saliva samples by spitting into a funnel connected to small collection tubes. Collection of the saliva samples takes approximately 2–5 minutes per person, but the estimate of burden is 15 minutes per person to account for reading and understanding the consent form and specimen collection instructions and mailing back the completed kits. The anticipated maximum burden for collection of the saliva samples for all centers combined would be approximately 1,444 hours.

Information gathered from both the interviews and the DNA specimens has been and will continue to be used to study independent genetic and environmental factors as well as gene-environment interactions for a broad range of carefully classified birth defects.

This request is submitted to obtain OMB clearance for three additional years.

There are no costs to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hours)	Total burden hours
Mothers (interview)	Telephone consent and BD–STEPS questionnaire.	1,925	1	45/60	1,444
Mothers, fathers, infants (saliva samples).	Written consent for saliva collection and collection of saliva samples.	5,775	1	15/60	1,444
TOTAL					2,888

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2013–19839 Filed 8–14–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Request for Nominations of Candidates to Serve on the Board of Scientific Counselors, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry (BSC, NCEH/ATSDR)

The Centers for Disease Control and Prevention (CDC) is soliciting nominations for membership on the BSC, NCEH/ATSDR. The BSC, NCEH/ATSDR consists of 16 experts knowledgeable in the field of environmental public health or in related disciplines, who are selected by the Secretary of the U.S. Department of Health and Human Services (HHS). The BSC, NCEH/ATSDR provides advice and guidance to the Secretary, HHS; the Director, CDC; and the Director, NCEH/ATSDR, regarding program goals, objectives, strategies, and priorities in fulfillment of the agencies' mission to protect and promote people's health. The Board provides advice and guidance to help NCEH/ATSDR work more efficiently and effectively with its various constituents and to fulfill its mission in protecting America's health.

Nominations are being sought for individuals who have expertise and qualifications necessary to contribute to the accomplishments of the Board's objectives. Nominees will be selected from experts having experience in preventing human diseases and disabilities caused by environmental conditions. Experts in the disciplines of toxicology, epidemiology, environmental or occupational medicine, behavioral science, risk assessment, exposure assessment, and experts in public health and other related disciplines will be considered. Members may be invited to serve up to four-year terms.

The HHS policy stipulates that committee membership be balanced in terms of points of view represented and the board's function. Consideration is given to a broad representation of geographic areas within the U.S., as well as gender, race, ethnicity, persons with disabilities, and several factors including: (1) The committee's mission; (2) the geographic, ethnic, social, economic, or scientific impact of the advisory committee's recommendations; (3) the types of specific perspectives required, for example, those of consumers, technical experts, the public at-large, academia, business, or other sectors; (4) the need to obtain divergent points of view on the issues before the advisory committee; and (5) the relevance of State, local, or tribal governments to the development of the advisory committee's recommendations. Nominees must be U.S. citizens.

The following information must be submitted for each candidate: Name, affiliation, address, telephone number, and current curriculum vitae. Email addresses are requested if available. Nominations should be sent, in writing, and postmarked by September 30, 2013, to: Sandra Malcom, Committee Management Specialist, NCEH/ATSDR, CDC, 4770 Buford Highway, NE., Mailstop F61, Atlanta, Georgia 30341, Email address: *sym6@CDC.GOV.* Telephone and facsimile submissions cannot be accepted.

Candidates invited to serve will be asked to submit the ''Confidential Financial Disclosure Form (OGE Form 450) for Special Government Employees

Serving on Federal Advisory Committees at the Centers for Disease Control and Prevention.'' This form allows CDC to determine whether there is a statutory conflict between that person's public responsibilities as a Special Government Employee and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded at *http://www.usoge.gov/forms/oge450_pdf/oge450_accessible.pdf.*

This form should not be submitted as part of a nomination.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2013–19809 Filed 8–14–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Evaluation of the Head Start Designation Renewal System

OMB No.: New Collection.

Description: In the fall of 2011, the Administration for Children and Families (ACF) within the US Department of Health and Human Services (HHS) significantly expanded its accountability provisions with the implementation of the Head Start Designation Renewal System (DRS). The DRS is designed to identify which Head Start and Early Head Start grantees are providing high quality, comprehensive services to the children and families in their communities. Where they are not, grantees are denied automatic renewal of their grant and must apply for continuing funding through an open competition process. Determinations are based on seven conditions designed to measure service quality, program operational quality, and fiscal and internal integrity.

The ACF is proposing to conduct an evaluation of the DRS. The purpose of the evaluation is to understand if the DRS is working as intended, as a valid, reliable, and transparent method for identifying high-quality programs that can receive continuing five-year grants without competition and as a system that encourages overall program quality improvement. It also seeks to understand how the system is working, the circumstances in which it works more or less well, and the contextual, demographic, and program factors and program actions associated with how well the system is working. The study will employ a mixed-methods design that integrates and layers administrative and secondary data sources, observational measures, and interviews to develop a rich knowledge base about what the DRS accomplishes and how it does so.

Respondents: Head Start program directors; other program managers including grantee agency directors, center directors, and education services coordinators; Head Start teachers; and members of Head Start governing bodies and local policy councils.

ANNUAL BURDEN ESTIMATES

Instrument (appendix)	Total number of respondents	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
Quality Measures Follow Up Interview: Teachers	560	280	1	0.4	112
Quality Measures Follow Up Interview: Center Directors	300	150	1	1.85	278
Quality Measures Follow Up Interview: Program Directors	70	35	1	1.1	39
DRS Telephone Interview: Program Directors	35	18	1	1.25	23
DRS In-Depth Interview: Agency Directors	15	8	1	1	8
DRS In-Depth Interview: Program Directors	15	8	1	1.5	12
DRS In-Depth Interview: Policy Council/Governing Body	75	38	1	1.5	57
DRS In-Depth Interview: Program Managers	45	23	1	1.5	35
Competition In-Depth Interview: Agency and Program Directors	18	9	1	1.25	12
Competition In-Depth Interview: Policy Council/Governing Body	45	23	1	1.5	35
Competition In-Depth Interview: Program Managers	27	14	1	1.5	21
Competition Data Capture Sheet	500	250	1	0.15	38

Estimated Total Annual Burden Hours: 670.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *OPREinfocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

ACF Reports Clearance Officer.

[FR Doc. 2013–19805 Filed 8–14–13; 8:45 am]

BILLING CODE 4184–22–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Application for Exportation of Articles Under Special Bond

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Application for Exportation of Articles under Special Bond (CBP Form 3495). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Written comments should be received on or before October 15, 2013, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13). The comments should address: (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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Application for Exportation of Articles Under Special Bond.

OMB Number: 1651–0004.

Form Number: CBP Form 3495.

Abstract: CBP Form 3495, *Application for Exportation of Articles Under Special Bond,* is an application for exportation of articles entered under temporary bond pursuant to 19 U.S.C. 1202, Chapter 98, subchapter XIII, Harmonized Tariff Schedule of the United States, and 19 CFR 10.38. CBP Form 3495 is used by importers to notify CBP that the importer intends to export goods that were subject to a duty exemption based on a temporary stay in this country. It also serves as a permit to export in order to satisfy the importer's obligation to export the same goods and thereby get a duty exemption. This form is accessible at: *http://forms.cbp.gov/pdf/CBP_Form_3495.pdf.*

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information being collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 500.

Estimated Number of Responses per Respondent: 30.

Estimated Total Annual Responses: 15,000.

Estimated Time per Response: 8 minutes.

Estimated Total Annual Burden Hours: 2,000.

Dated: August 12, 2013.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2013–19869 Filed 8–14–13; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2013–N177; FXES11130100000–134–FF01E00000]

Endangered and Threatened Wildlife and Plants; Recovery Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following application for a recovery permit to conduct activities with the purpose of enhancing the survival of an endangered species. The Endangered Species Act of 1973, as amended (Act), prohibits certain activities with endangered species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing such permits.

DATES: To ensure consideration, please send your written comments by September 16, 2013.

ADDRESSES: Endangered Species Program Manager, Ecological Services, U.S. Fish and Wildlife Service, Pacific Regional Office, 911 NE. 11th Avenue, Portland, OR 97232–4181. Please refer to the permit number for the application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Colleen Henson, Fish and Wildlife Biologist, at the above address or by telephone (503–231–6131) or fax (503–231–6243).

SUPPLEMENTARY INFORMATION:

Background

The Act (16 U.S.C. 1531 *et seq.*) prohibits certain activities with respect to endangered and threatened species unless a Federal permit allows such activity. Along with our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR Part 17, the Act provides for certain permits, and requires that we invite public comment before issuing these permits for endangered species.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes the permittee to conduct activities (including take or interstate commerce) with respect to U.S. endangered or threatened species for scientific purposes or enhancement of propagation or survival. Our regulations implementing section 10(a)(1)(A) of the Act for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Application Available for Review and Comment

We invite local, State, and Federal agencies, and the public to comment on the following application. Please refer to the appropriate permit number for the application when submitting comments.

Documents and other information submitted with this application are available for review by request from the Endangered Species Program Manager at the address listed in the **ADDRESSES** section of this notice, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552).

Permit Number: TE–13027B

Applicant: Lanai Resorts LLC, Pulama Lanai, Lanai City, Hawaii

The applicant requests a permit to take (harass by survey; locate and monitor nests; capture, band, weigh, and measure; and collect feathers, dead birds, and inviable eggs) the Hawaiian petrel (*Pterodroma sandwichensis*) in conjunction with survey and population monitoring activities on the island of Lanai, Hawaii, for the purpose of enhancing the species' survival.

Public Availability of Comments

All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*)

Dated: August 8, 2013.

Hugh Morrison,

Acting Regional Director, Pacific Region, U.S. Fish and Wildlife Service.

[FR Doc. 2013–19807 Filed 8–14–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2013–N059; FXRS12650400000S3–123–FF04R02000]

Desecheo National Wildlife Refuge, PR; Final Comprehensive Conservation Plan and Finding of No Significant Impact for the Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of the final comprehensive conservation plan and finding of no significant impact for the environmental assessment (Final CCP/FONSI) for Desecheo National Wildlife Refuge (NWR) in the municipality of Mayagüez, Puerto Rico. In the Final CCP/EA, we describe how we will manage this refuge for the next 15 years.

ADDRESSES: You may obtain a copy of the Final CCP/FONSI by writing to: Ms. Susan Silander, via U.S. mail at P.O. Box 510, Boquerón, PR 00622. Alternatively, you may download the document from our Internet Site at *http://southeast.fws.gov/planning* under ''Final Documents.''

FOR FURTHER INFORMATION CONTACT: Ms. Susan Silander at 787/851–7258 (telephone).

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we finalize the CCP process for Desecheo NWR. We started the process through a notice in the **Federal Register** on December 19, 2008 (73 FR 77828). For more about the refuge and planning process, please see that notice.

Desecheo NWR is a 360-acre island located in the Mona Passage, approximately 12 miles west of Rincón, Puerto Rico.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Comments

We made copies of the Draft Comprehensive Conservation Plan and Environmental Assessment (Draft CCP/EA) available for a 30-day public review and comment period via a **Federal Register** notice on July 11, 2012 (77 FR 40893). We provided copies of the Draft CCP/EA to a number of individuals, non-governmental organizations, and government agencies. Several comments were received, mostly dealing with the safety of the refuge regarding the removal of unexploded ordnance.

CCP Alternatives, Including Our Preferred Alternative

We developed three alternatives for managing the refuge (Alternatives A, B, and C), with Alternative C selected for implementation.

Over the 15-year life of the CCP, we will provide the conditions for reestablishment of nesting seabird colonies. Routine monitoring and life-history studies of terrestrial reptiles will be conducted and habitat improvements will be made. We will continue periodic surveys of turtles and implement seasonal surveys of migratory landbirds. We will pursue opportunities for propagation, reintroduction, and removal of threats to the Higo Chumbo cactus.

We will increase monitoring and, if necessary, efforts to remove invasive species. The number of vegetation plots and frequency of monitoring will be increased to improve restoration efforts. Over the 15-year life of the CCP, we will complete the removal of all invasive animal species. We will also develop and implement a plan for monitoring and mitigating the effects of climate change on the refuge.

Under our preferred action, the levels of surveillance and enforcement with partners will be increased, and we will also provide additional equipment to improve enforcement capabilities on the refuge.

We will increase off-site environmental education and outreach to mainland communities and schools, and we will increase the availability of interpretive materials, such as brochures and fact sheets. Subject to safety concerns being met, we will increase on-site interpretation through signage and brochures and provide limited opportunities for refuge-guided wildlife observation and photography. We will continue to respond to special requests for non-wildlife-dependent uses that are appropriate and compatible.

We will continue to work with cooperating agencies and partners to increase safety on the refuge through the removal of unexploded ordnance. Safety will be ensured by only permitting controlled, refuge-guided activities in cleared areas. We will acquire an open-water boat capable of reaching the island to provide for extended visits.

This alternative will add a half-time public use or park ranger position and a half-time manager position to be shared with the Caribbean Islands National Wildlife Refuge Complex.

Authority

This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd et seq.).

Dated: April 25, 2013.

Mike Oetker,

Acting Regional Director.

[FR Doc. 2013–19808 Filed 8–14–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–6691–I; LLAK940000–L14100000–HY0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision to convey certain lands to Oceanside Corporation. The decision approves the surface estate in the lands described below for conveyance pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601, *et seq*). The subsurface estate in these lands will be conveyed to Bristol Bay Native Corporation when the surface estate is conveyed to Oceanside Corporation. The lands are in the vicinity of Perryville, Alaska, and are located in:

Seward Meridian, Alaska

T. 48 S., R. 65 W.,
Sec. 21.
Containing 640 acres.

Notice of the decision will also be published once a week for four consecutive weeks in the *Anchorage Daily News.*

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until September 16, 2013 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4 shall be deemed to have waived their rights. Notices of appeal transmitted by electronic means, such as facsimile or email, will not be accepted as timely filed.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960 or by email at *blm_ak_akso_public_room@blm.gov.* Persons who use a Telecommunications Device for the Deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the BLM during normal business hours. In addition, the FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

Joe J. Labay,

Land Transfer Resolution Specialist, Division of Lands and Cadastral.

[FR Doc. 2013–19838 Filed 8–14–13; 8:45 am]

BILLING CODE 4310–JA–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–879]

Certain Sleep-Disordered Breathing Treatment Systems and Components Thereof; Commission Determination Not To Review an Initial Determination Granting an Amended Motion To Terminate the Remaining Respondents Based on a Consent Order; Issuance of Consent Order and Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 11) of the presiding administrative law judge granting an amended motion to terminate the remaining respondents based on a consent order. The Commission has issued the subject consent order; the investigation is hereby terminated.

FOR FURTHER INFORMATION CONTACT: James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3065. 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 (*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 this investigation on May 1, 2013, based on a complaint filed on March 28, 2013, and supplemented on April 19, 2013, on behalf of ResMed Corporation of San Diego, California; ResMed Incorporated of San Diego, California; and ResMed Limited of Australia. 78 FR 25475 (May 1, 2013). The complaint alleged violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the sale for importation, importation, or sale within the United States after importation of certain sleep-disordered breathing treatment systems and components thereof by reason of infringement of one or more of claims 1, 2, 4, 5, 17 and 28 of U.S. Patent No. 6,216,691; claims 1 and 20 of U.S. Patent No. 6,935,337; claim 15 of U.S. Patent No. 7,159,587; claims 1, 5, 6, 11, 12, 18–20, 35 and 36 of U.S. Patent No. 7,487,772; claims 1–7 of U.S. Patent No. 7,614,398; claims 59, 60, 63, 72–75 of U.S. Patent No. 7,743,767; and claims 17, 21–24, 29, 32–37 of U.S. Patent No. 7,997,267. The Commission's notice of investigation named as respondents Apex Medical Corporation of New Taipei City, Taiwan and Apex Medical USA Corporation of Brea, California (collectively, ''Apex'') and Medical Depot Inc., d/b/a Drive Medical Design & Manufacturing of Port Washington, New York. Medical Depot Inc. has previously been terminated from the investigation on the basis of a consent order.

On July 2, 2013, Apex filed a motion to terminate the investigation based on a consent order, and on July 5, 2013, filed an amended motion based on a consent order stipulation and proposed consent order. On July 16, 2013, Complainants filed a response in opposition, and the the Commission investigative attorney filed a response in support of the motion. On July 17, 2013, the administrative law judge issued Order No. 11, granting the motion to terminate the investigation and staying the procedural schedule. The administrative law judge found termination to be in the public interest. That part of Order No. 11 which terminates the investigation constitutes an initial determination.

There were no petitions for review. Having considered the ID and proposed consent order and the relevant portions of the record, the Commission has determined not to review the subject ID. The Commission has issued the consent order, and the investigation is terminated.

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 Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

Issued: August 9, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–19775 Filed 8–14–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–885]

Certain Portable Electronic Communications Devices, Including Mobile Phones and Components Thereof; Commission Determination Not To Review n Initial Determination Granting Google, Inc.'s Unopposed Motion To Intervene

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 5) of the presiding administrative law judge (''ALJ'') granting Google, Inc.'s unopposed motion to intervene.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3115. 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 this investigation under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, on June 26, 2013, based on a complaint filed by Nokia Corporation of Espoo, Finland and Nokia Inc., of Sunnyvale, California (collectively, ''Nokia''). The complaint, as supplemented, alleges a violation of section 337 by reason of infringement of certain claims of U.S. Patent Nos. 6,035,189 (''the '189 patent''); 6,373,345; 6,711,211 (''the '211 patent''); 7,187,945; 8,140,650 (''the '650 patent''); and 8,363,824. 78 FR 38362 (Jun. 26, 2013). The respondents are HTC Corporation of Taoyuan City, Taiwan, and HTC America, Inc. of Bellevue, Washington (collectively, ''HTC'').

On July 11, 2013, third party Google Inc. (''Google'') filed a motion to intervene as a party in this investigation with respect to three of the six patents, namely the '189, '211 and '650 patents. The motion states that neither complainants Nokia nor respondents HTC oppose the motion.

On July 16, 2013, the ALJ issued an ID (Order No. 5) granting Google's motion. The ALJ found, *inter alia,* that the motion was timely filed and that Google has shown that it has a substantial interest in the investigation. No party petitioned for review. The Commission has determined not to review the ID.

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 sections 210.42–.46 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–.46).

Issued: August 12, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–19825 Filed 8–14–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–796]

Certain Electronic Digital Media Devices and Components Thereof; Commission's Final Determination Finding a Violation of Section 337; Issuance of a Limited Exclusion Order and Cease and Desist Orders; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found a violation of section 337 in this investigation and has issued a limited exclusion order prohibiting respondents Samsung Electronics Co, Ltd. of the Republic of Korea (''SEC''); Samsung Electronics America, Inc. of Ridgefield Park, New Jersey (''SEA''); and Samsung Telecommunications America, LLC of Richardson, Texas (''STA'') (collectively, ''Samsung''), from importing certain electronic digital media devices that infringe one or more of claims 1, 4–6, 10, and 17–20 of U.S. Patent No. 7,479,949 (''the '949 patent'') and claims 1–4 and 8 of U.S. Patent No. 7,912,501 (''the '501 patent''). The Commission has also issued cease and desist orders prohibiting SEA and STA from further importing, selling, and distributing articles that infringe one or more of claims 1, 4–6, 10, and 17–20 of the '949 patent and claims 1–4 and 8 of the '501 patent in the United States. The Commission has found no violation based on U.S. Patent Nos. D618,678 (''the D'678 patent''); D558,757 (''the D'757 patent''); RE 41,922 (''the '922 patent''); and 7,789,697 (''the '697 patent''). The Commission's determination is final, and the investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2392. 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 this investigation on August 5, 2011, based on a complaint filed by Apple Inc. (''Apple'') of Cupertino, California. 76 FR 47610 (Aug. 5, 2011). The complaint alleges 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 electronic digital media devices and components thereof by reason of infringement of certain claims of the '949, the '922, the '697, the '501, the D'757, and the D'678 patents, and U.S. Patent No. 7,863,533 (''the '533 patent''). Samsung was named as a respondent in the Commission's notice of investigation. A Commission investigative attorney (''IA'') participated in the investigation.

On May 3, 2012, the presiding administrative law judge (''ALJ'') issued an initial determination (''ID'') partially terminating the investigation with respect to all claims of the '533 patent; claims 1–3, 11, 12, 15, 16 and 21–27 of the '697 patent; and claim 3 of the '949 patent (Order No. 17) (not reviewed by the Commission, May 3, 2012).

On October 24, 2012, the ALJ issued his final ID in this investigation finding a violation of section 337 in connection with the claim of the D'678 patent; claims 1, 4–6 and 10–20 of the '949 patent; claims 29, 30 and 33–35 of the '922 patent; and claims 1–4 and 8 of the '501 patent. The ALJ found no violation of section 337 in connection with the claim of the D'757 patent; claims 31 and 32 of the '922 patent; and claims 13 and 14 of the '697 patent. The ALJ also found that the asserted claims were not shown to be invalid. The ALJ further found that a domestic industry in the United States exists that practices the '949, the '922, the '501, the D'757, and the D'678 patents, but not the '697 patent. On November 7, 2012, the ALJ issued his recommended determination on remedy and bonding.

Apple and Samsung filed timely petitions for review of various portions of the final ID, as well as timely responses to the petitions. The IA filed only a response to the petitions for review. On December 3, 2012, Apple and Samsung filed public interest comments pursuant to Commission rule 210.50(a)(4). That same day, non-party Google filed a submission in response to the Notice of Request for Statements on the Public Interest. *See* 77 FR 68829–30 (Nov. 16, 2012).

On January 23, 2013, the Commission determined to review the final ID in its entirety, and remand the investigation to the ALJ with respect to certain issues related to the '922 patent and the '501 patent, as set forth in the Remand Order. 78 FR 6130 (Jan. 29, 2013).

On March 26, 2013, the ALJ issued his remand initial determination (''RID''). The RID found that claims 34 and 35 of the '922 patent are infringed by the text-selection feature of the accused products and that claim 3 of the '501 patent is not infringed by the accused products represented by the Transform SPH–M920. On April 9, 2013, Apple and Samsung petitioned for review of the RID. The IA did not petition for review of the RID. On April 17, 2013, Apple, Samsung and the IA filed their respective responses to the petitions for review.

On May 28, 2013, the Commission determined to review the RID in its entirety. In connection with the Commission's review of the final ID and the RID, the parties were invited to brief certain issues, including issues related to remedy and the public interest. The Commission received responses from Apple, Samsung, and the IA addressing all of the Commission's questions. In response to the remedy and public interest questions posed to the public, the Commission received responses from the following: Americans for Job Security; Associated Carrier Group; Capital Policy Analytics; Congresswoman Eva M. Clayton; Congressmen Hakeem S. Jeffries and Henry C. Johnson, Jr.; Congressmen Bill Pascrell, Jr., Hank Johnson, Albio Sires, Dan Maffei, Terri Sewell, and Steve Israel; Congressman Pete Sessions; CTIA—The Wireless Association; Mr. Dennis C. Vacco, Esq.; Digital Liberty and Property Rights Alliance; Google, Inc.; Health IT Now.org; Hispanic Leadership Fund; Homecare Homebase, LLC; Institute for Policy Innovation; James Valley Telecommunications; Texas State Senator Ken Paxton; Texas State Senator Kirk Watson; The LIBRE Initiative; National Black Chamber of Commerce; National Grange of the Order of Patrons of Husbandry (''National Grange''); The Newborn Coalition; Revol Wireless; Senator Robert Menendez; Sprint Spectrum, L.P.; Taxpayers Protection Alliance; Ting Wireless; Congressman Trent Franks; American Agri-Women *et al.;* and United States Cellular Corporation.

Having examined the record of this investigation, including the ALJ's final ID, RID and submissions from the parties, the Commission has determined that Apple has proven a violation of section 337 based on articles that infringe claims 1, 4–6, 10, and 17–20 of the '949 patent and claims 1–4 and 8 of the '501 patent. Specifically, with respect to the '949 patent, the Commission has determined to affirm the ALJ's constructions of disputed claim terms and his conclusion that Apple has proven a violation of section 337 based on articles that infringe claims 1, 4–6, 10, and 17–20 of the '949 patent. The Commission affirms, with modified reasoning, the ALJ's conclusion that Apple failed to prove that Samsung contributorily infringes claims 11–16 of the '949 patent. The Commission, however, has determined to reverse the ALJ's conclusion that Apple has proven that Samsung induced infringement of claims 11–16 of the '949 patent. With some modifications to the ALJ's analysis, the Commission has also determined that the record supports the ALJ's conclusions that the Continuum SCH–1400 infringes all of the asserted claims of the '501 patent; that the accused Samsung devices represented by Transform SPH–M920 infringe claims 1–2 and 8, but not claims 3 and 4 of the '501 patent; and that the accused Samsung devices represented by Galaxy Tab 7.0 and Galaxy S II do not infringe any of the asserted claims of the '501 patent. The Commission has further determined that the asserted claims of the '949 and the '501 patents have not been proven by Samsung to be invalid and that Apple has proven that a domestic industry exists in the United States relating to articles protected by the '949 and the '501 patents.

In addition, the Commission has determined that Apple has not proven a violation based on alleged infringement of the D'678, the D'757, the '922, and the '697 patents. Specifically, the Commission has determined that the asserted claim of the D'678 patent is valid but not infringed, and that Apple's iPhone, iPhone 4 and iPhone 4S practice the D'678 patent, but not the iPhone 3G and iPhone 3GS. The Commission has also determined that the asserted claim of the D'757 patent is valid but not infringed, and Apple's iPhone 3G and 3GS do not practice the D'757 patent. With some modifications to the ALJ's analysis for the '922 patent, the Commission has determined to affirm the ALJ's constructions of disputed claim terms, and the ALJ's conclusion that Apple failed to prove that Samsung contributorily infringes the asserted claims of the '922 patent. The Commission, however, has determined to reverse the ALJ's conclusion that Apple has proven that Samsung induced infringement of the asserted claims of the '922 patent. With respect to the '697 patent, the Commission has determined to modify the ALJ's construction and application of certain disputed terms in the asserted claims. Under the modified constructions, the Commission has determined that Apple has proven that the accused Samsung devices infringe the asserted claims of the '697 patent and that Apple's domestic industry products practice the '697 patent. The Commission, however, ultimately finds that Apple has not proven a violation of section 337 with respect to the '697 patent because Samsung has proven with clear and convincing evidence that the asserted claims are invalid as anticipated by the YP–T7J media player. The Commission has further determined that Apple has proven a domestic industry exists in the United States relating to articles protected by the D'678, the '922 and the '697 patents, but not the D'757 patent.

The Commission has determined that the appropriate remedy is a limited exclusion order prohibiting Samsung from importing certain electronic digital media devices that infringe one or more of claims 1, 4–6, 10, and 17–20 of the '949 patent and claims 1–4 and 8 of the '501 patent. The Commission has also determined to issue cease and desist orders prohibiting SEA and STA from further importing, selling, and distributing articles that infringe one or more of claims 1, 4–6, 10, and 17–20 of the '949 patent and claims 1–4 and 8 of the '501 patent in the United States. The orders do not apply to the adjudicated design around products found not to infringe the asserted claims of the '949 and the '501 patents as identified in the final ID. The Commission has carefully considered the submissions of the parties and the public and has determined that the public interest factors enumerated in section 337(d)(1) and (f)(1) do not preclude issuance of the limited exclusion order and cease and desist orders.

Finally, the Commission has determined that excluded mobile phones, media players, and tablet computers may be imported and sold in the United States during the period of Presidential review (19 U.S.C. 1337(j)) with the posting of a bond in the amount of 1.25 percent of the entered value. The Commission's order and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance.

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 Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

Issued: August 9, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–19789 Filed 8–14–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–845]

Certain Products Containing Interactive Program Guide and Parental Control Technology; Commission Determination To Review in Its Entirety a Final Initial Determination Finding No Violation of Section 337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in its entirety a final initial determination (''ID'') issued by the presiding administrative law judge (''ALJ''), finding no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in this investigation.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–5468. 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 (*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 this investigation on June 6, 2012, based on a complaint filed by Rovi Corporation; Rovi Guides, Inc.; Rovi Technologies Corporation; Starsight Telecast, Inc.; United Video Properties, Inc.; and Index Systems, Inc. (collectively, ''Complainants''). 77 FR 33487–88. The respondents are LG Electronics, Inc.; LG Electronics U.S.A., Inc. (collectively, ''LGE''); Mitsubishi Electric Corp.; Mitsubishi Electric US Holdings, Inc.; Mitsubishi Electric and Electronics USA, Inc.; Mitsubishi Electric Visual Solutions America, Inc.; Mitsubishi Digital Electronics America, Inc. (collectively, ''Mitsubishi''); Netflix Inc. (''Netflix''); Roku, Inc. (''Roku''); and Vizio, Inc (''Vizio''). The Office of Unfair Import Investigations is not participating in this investigation.

Originally, Complainants asserted numerous claims from seven patents against various respondents. Complainants later moved to terminate the investigation as to three of the seven patents, as to certain claims of one of the remaining four patents, and as to respondents LGE, Mitsubishi, and Vizio. Order No. 9 (Sept. 4, 2012), *not reviewed,* Oct. 2, 2012; Order No 16 (Nov. 6, 2012), *not reviewed,* December 7, 2012; Order Nos. 17 (Dec. 19, 2012) and 19 (Dec. 20, 2012), *not reviewed,* January 18, 2013; Order No. 21 (Jan. 22, 2013), *not reviewed* Feb. 13, 2013; Order Nos. 34 (Feb. 27, 2013) and 36 (Mar. 1, 2013), *not reviewed* (Mar. 22, 2013). What remains in the investigation are respondents Netflix and Roku, as well as claims 1, 6, 13, and 17 of U.S. Patent No. 6,898,762 (''the '762 patent''), claims 13–20 of U.S. Patent No. 7,065,709 (''the '709 patent''); claims 1–3, 10, and 11 of U.S. Patent No. 7,103,906 (''the '906 patent''); and claims 1, 2, 4, 6, 14, 15, 17, and 19 of U.S. Patent No. 8,112,776 (''the '776 patent'').

On June 7, 2013, the presiding ALJ issued his final ID, finding no violation of section 337. Specifically, the ALJ found that none of the accused products met the importation requirement of section 337. While the ALJ found that his importation finding was dispositive, the ALJ made additional findings in the event that the Commission determined that the importation requirement was met. The ALJ found that no party infringed any of the four asserted patents. He also found that the '776 patent is invalid as anticipated and obvious, but that the respondents had failed to show that the other three asserted patents were invalid. The ALJ found a domestic industry for articles protected by each of the patents-in-suit, but found that Complainants had not shown a domestic industry based on substantial investment in licensing the asserted patents. The ALJ also rejected Respondents' patent misuse, implied license, and patent exhaustion defenses.

On June 24, 2013, Complainants filed a petition for review challenging the ALJ's findings that the importation requirement is not met, that Netflix does not induce infringement, and that the economic prong of the domestic industry is not met by Complainants' licensing activity. That same day, the respondents Netflix and Roku filed a joint contingent petition for review arguing additional bases for finding no violation. On July 2, 2013, the parties filed oppositions to each other's petitions.

Having examined the record of this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined to review the final ID in its entirety.

The parties are requested to brief their positions on the issues under review with reference to the applicable law and the evidentiary record. In connection with its review, the Commission is particularly interested in briefing on the following issues:

1. Whether direct infringement being carried out by non-imported Netflix servers and Netflix user interfaces affects whether the Netflix SDK induces infringement at the time of importation. Additionally, explain how the Commission Opinion in *Certain Electronic Devices with Image Processing Systems, Components Thereof, and Associated Software,* Inv. No. 337–TA–724, applies to the accused Netflix SDK for each of the asserted patents.

2. Whether Complainants' licensing of the Netflix Ready Devices pursuant to the LGE and Vizio licenses affects whether the accused Netflix software infringes.

3. Whether Netflix's provision of its SDK pursuant to its agreements with LGE and Vizio constitutes a ''sale'' within the meaning of section 337(a)(1)(B).

4. Identify the specific software that allegedly induces infringement of each of the asserted patents, and explain where such software is present in both the Netflix software allegedly ''sold for importation'' and in the Netflix Ready Devices imported into the United States. Or explain why no such software exists.

5. Explain specifically how the Netflix SDK itself induces infringement of each of the asserted patents. Or explain why the Netflix SDK itself does not induce infringement of each of the asserted patents.

6. Whether Netflix may induce infringement where the direct infringement is carried out by Netflix servers and Netflix user interfaces.

7. For each claim that Netflix is accused of inducing infringement, explain who or what carries out the direct infringement for each claim limitation.

The parties have been invited to brief only the discrete issues described above, with reference to the applicable law and evidentiary record. The parties are not to brief other issues on review, which are adequately presented in the parties' existing filings.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue a cease and desist order that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or a cease and desist order would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. The written submissions must not exceed 75 pages, and must be filed no later than close of business on August 23, 2013. Reply submissions must not exceed 50 pages, and must be filed no later than the close of business on August 30, 2013. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

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 investigation number (''Inv. No. 337–TA–845'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with 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. A redacted non-confidential version of the document must also be filed simultaneously with the any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

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 sections 210.42–46 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–46).

Issued: August 9, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–19790 Filed 8–14–13; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearings of the Judicial Conference Advisory Committees on Rules of Bankruptcy and Civil Procedure

AGENCY: Advisory Committees on Rules of Bankruptcy and Civil Procedure, Judicial Conference of the United States.

ACTION: Notice of proposed amendments and open hearings.

SUMMARY: The Advisory Committees on Rules of Bankruptcy and Civil Procedure have proposed amendments to the following rules and forms:

Bankruptcy Rules 2002, 3002, 3007, 3012, 3015, 4003, 5005, 5009, 7001, 9006, and 9009, and Official Forms 17A, 17B, 17C, 22A–1, 22A–1Supp., 22A–2, 22B, 22C–1, 22C–2, 101, 101A, 101B, 104, 105, 106Sum., 106A/B, 106C, 106D, 106E/F, 106G, 106H, 106Dec., 107, 112, 113, 119, 121, 318, 423, and 427

Civil Rules 1, 4, 6, 16, 26, 30, 31, 33, 34, 36, 37, 55, 84, and Appendix of Forms

Public hearings are scheduled to be held on the amendments to:

- Bankruptcy Rules in Chicago, Illinois, on January 17, 2014, and in Washington, DC, on January 31, 2014;
- Civil Rules in Washington, DC, on November 7, 2013, in Phoenix, Arizona, on January 9, 2014, and in Dallas, Texas, on February 7, 2014.

Those wishing to testify should contact the Secretary at the address below in writing at least 30 days before the hearing. All written comments and suggestions with respect to the proposed amendments may be submitted on or after the opening of the period for public comment on August 15, 2013, but no later than February 15, 2014. Written comments can be submitted electronically, following the instructions provided at: *http://www.uscourts.gov/RulesAndPolicies/rules/proposed-amendments.aspx.* Written comments can also be submitted by mail to Secretary, Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Thurgood Marshall Federal Judiciary Building, Washington, DC 20544. In accordance with established procedures, all comments submitted are available for public inspection.

The text of the proposed rules amendments and the accompanying Committee Notes can be found at the United States Federal Courts' Web site at *http://www.uscourts.gov/rulesandpolicies/rules.aspx/.*

FOR FURTHER INFORMATION CONTACT: Jonathan C. Rose, Secretary, Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Thurgood Marshall Federal Judiciary Building, Washington, DC 20544, Telephone (202) 502–1820.

Dated: August 9, 2013.

Jonathan C. Rose,

Secretary, Committee on Rules of Practice and Procedure, Judicial Conference of the United States.

[FR Doc. 2013–19721 Filed 8–14–13; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Joint Task-Force Networked Media

Notice is hereby given that, on July 10, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Joint Task-Force Networked Media (''JT–NM'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: ABC American Broadcasting Corporation, New York, NY; Advanced Advertising Forum, Watauga, TX; ALC NetworX, Munich, GERMANY; Altera Corp., San Jose, CA; Arista Networks, Santa Clara, CA; AT&T, Dallas, TX; Athlone Institute of Technology, Westmeath, IRELAND; Audinate, Inc., Portland, OR; AVA Networks, Boulder, CO; Avid Technology, Londonderry, NH; Ray Baldock (Individual), Nevada City, CA; David Bancroft (Individual), Reading, UNITED KINGDOM; Barco, Duluth, GA; Bosch Communications, Burnsville, MN; British Broadcast Corporation, London, Surrey, UNITED KINGDOM; BskyB Ltd, Isleworth, UNITED KINGDOM; CBC Radio Canada, Montreal, Quebec, CANADA; CBS, New York, NY; CDG—CineDesignGroup, Rome, ITALY; Ciena, Kanata, Ontario, CANADA; Cinegy, Munich, GERMANY; Cisco, San Jose, CA; Cobalt Digital Inc., Urbana, IL; Coral Sea Studios P/L, Clifton Beach, Queensland, AUSTRALIA; Crystal Solutions, Buford, GA; Peter Dare (Individual), Queensland, AUSTRALIA; CS Meyer, Inc., Grass Valley, CA; Devoncroft Partners, Coronado, CA; Dimension Data, Oberursel, GERMANY; Dimetis GmbH, Dietzenbach, GERMANY; DIRECTV, El Segundo, CA; Discovery Communications, LLC, Oak Hill, VA; Distrito Telefonica, Madrid, SPAIN; Diversified Systems Inc., Kenilworth, NJ; Dolby, Porter Ranch, CA; James Donahue (Individual), Plainville, MA; DVBLink, Inc., Mount Vernon, IA; Bob Edge TV Consulting, Tualatin, OR; Elemental Technologies, Portland, OR; Encompass Digital Media, Los Angeles, CA; Ericsson Television Ltd, Southampton, UNITED KINGDOM; ESPN, Bristol, CT; Evertz, Burlington, Ontario, CANADA; European Broadcasting Union, Le Grand-Saconnex, Geneva, SWITZERLAND; EVS Broadcast Equipment SA, Seraing, BELGIUM; FOX, Los Angeles, CA; Fraunhofer IDMT, Ilmaneu, GERMANY; Fraunhofer FOKUS Research Institute, Berlin, GERMANY; Front Porch Digital, Mt Laurel, NJ; Fujitsu Frontech North America, Toms River, NJ; GIC, Calabasas, CA; GigaContent A/S, Skanderborg, DENMARK; GoPro, San Mateo, CA; Grass Valley, San Francisco, CA; Harmonic Inc., Portland, OR; Harris Broadcast Corporation, Toronto, Quebec, CANADA; HD Consulting, Sewickley, PA; Home Box Office, Norwalk, CT; HRT, Zagreb, CROATIA; IABM, Gloucestershire, UNITED KINGDOM; IneoQuest Technologies, Inc., Mansfield, MA; Internet2, Ann Arbor, MI; intoPIX, Louvain-La-Neuve, BELGIUM; Iowa Public Television, Johnston, IA; IRIB, Tehran, IRAN; IRT GmbH, Munich, GERMANY; ISAN IA, Geneva, SWITZERLAND; Johnson

Interactive, Venice, CA; Lawo Group, Dielsdorf, SWITZERLAND; Level 3 Communications, Broomfield, CO; LTN Global Communications, Savage, MD; Peter Lude (Individual), San Francisco, CA; Macnica Americas, San Jose, CA; Media Links, Inc., Bloomfield, CT; Media Systems Consulting, Santa Clara, CA; Mediahub, Dubendorf, SWITZERLAND; MediAnswers, LLC, Mequon, WI; Mellanox Technologies, Sunnyvale, CA; Microsoft Corp., Redmond, WA; Miranda, Grass Valley, CA; Modern VideoFilm, Burbank, CA; Multimedia Networks and Systems, Delft, NETHERLANDS; NBC Universal, New York, NY; Net Element, Inc., Miami, FL; Net Insight, Stockholm, SE., SWEDEN; Nevion, Oxnard, CA; NHK—Japan Broadcasting Corporation, Shibuya, Tokyo, JAPAN; NineTiles Networks, Ltd., Cambridge, UNITED KINGDOM; Norwegian Broadcasting Corp., Oslo, NORWAY; Luis Nunes (Individual), Annecy, FRANCE; Omron Network Products, Pleasanton, CA; Onstream Media, San Francisco, CA; Pakistan Television Corp., Islamabad, PAKISTAN; Panasonic, Osaka, JAPAN; Paramount Pictures, Los Angeles, CA; Phoenix Satellite Television, Tseung Kwan O, Sai Kung, HONG KONG; Quantel, Newbury, Berkshire, UNITED KINGDOM; Quantum Data Incorporated, Elgin, IL; Radio Telefis Eireann, Dublin, IRELAND; Radio TelevisÃ£o de Portugal, Lisbon, PORTUGAL; RAI Radiotelevisione Italiana, Rome, ITALY; Edward Reuss (Individual), Santa Cruz, CA; Rohde & Schwarz, Munich, GERMANY; Sarnoff Corp., Princeton, NJ; SDVI Corporation, Menlo Park, CA; Semtech Corporation, Burlington, Ontario, CANADA; Skotel Corporation, Brossard, Quebec, CANADA; Society of Motion Pictures and Television Engineers, White Plains, NY; Snell Group, Havant, Hampshire, UNITED KINGDOM; Sony Corporation, Atsugi-shi, Kanagawa, JAPAN; SVT-Sveriges Television, Stockholm, SWEDEN; System Resource, Nevada City, CA; TBT, Inc., Del Mar, CA; TeamCast, Saint-Grégoire Cedex, FRANCE; Technical University of Catalonia, Barcelona, SPAIN; TechNova Consulting LLC, Portland, OR; Telecom Product Consulting, Orange, CT; TelefÃ³nica Germany, Munich, GERMANY; Telestream, Inc., El Granada, CA; Televisio de Catalunya, Sant Joan Despi, Barcelona, SPAIN; TELUS Communication Inc., Toronto, Quebec, CANADA; Thomson Video Networks, Cesson-Sévigné, FRANCE; Tokyo Broadcasting System Television, Inc., Tokyo, JAPAN; Turner Broadcast Systems, Atlanta, GA; TV2, Bergen, NORWAY; University of Southern California, Stanford, CA; Univision, New York, NY; Verizon, New York, NY; Video Services Forum, Somerdale, NJ; Vidovation, Irving, CA; Wheatstone Corporation, New Bern, NC; Xilinx, Inc., San Jose, CA; Yleisradio Oy, Helsinki, FINLAND and ZDF, Mainz, GERMANY.

The general area of JT–NM's planned activity is to ensure interoperability in packet-based systems (networking, equipment and software) for professional media. This includes defining specifications for an agile, on-demand, packet-based network infrastructure designed to support a variety of distributed, automated, professional media (file-and stream-based) workflows for local, regional and global production supporting any standards-based format for interoperability that will facilitate new workflows and reduce total cost of ownership and to speed-up content time-to-market.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013–19851 Filed 8–14–13; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PXI System Alliance, Inc.

Notice is hereby given that, on July 22, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), PXI Systems Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Embedded Planet, Cleveland, OH; and ACQUISYS, Voisins le Bretonneux, FRANCE, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PXI Systems Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On November 22, 2000, PXI Systems Alliance, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 8, 2001 (66 FR 13971).

The last notification was filed with the Department on May 8, 2013. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 5, 2013 (78 FR 33859).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013–19850 Filed 8–14–13; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Telemanagement Forum

Notice is hereby given that, on July 16, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), TeleManagement Forum (''The Forum'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following parties have been added as members to this venture: Agiled, Santiago, CHILE; Apigee Corporation, Palo Alto, CA; Aria Systems, Inc., San Francisco, CA; BAIX Corporation, Cheyenne, WY; BASE Company, Brussels, BELGIUM; beCloud, Minsk, BELARUS; BEISIS, Ceroux Mousty, BELGIUM; Booz & Company NA Inc., New York, NY; Cricket Communications, San Diego, CA; DANATEQ PTE. Ltd., Singapore, SINGAPORE; Desfossés Consultation, Québec, CANADA; EE, Hertfordshire, UNITED KINGDOM; Ethio Telecom, Addis Ababa, ETHIOPIA; Federal University of Paraná, Curitiba, BRAZIL; GET AS, Oslo, NORWAY; Ibis Instruments, Belgrade, SERBIA; Innova Bilisim Cozumleri, Maslak, TURKEY; Intelli Solutions S.A., Athens, GREECE; International IT House, Dubai, UNITED ARAB EMIRATES; IPSCAPE Ltd., Bidford on Avon, UNITED KINGDOM; Join Wireless S.A., Hamm, LUXEMBOURG; Latin America Business Consulting Mexico, S.A. de C.V., Atizapán de Zaragoza, MEXICO; Lebara Services Ltd., London, UNITED KINGDOM; Maveric Systems Ltd., Chennai, INDIA; Modern Times Group

MTG AB, Stockholm, SWEDEN; Moseco Group, Amman, JORDAN; National Network New Media Center of Engineering Technology Research, Institute of Acoustics, CAS, Beijing, PEOPLE'S REPUBLIC OF CHINA; Network Operations and Management Lab, Institute for Network Sciences and Cyberspace, Tsinghua University, Beijing, PEOPLE'S REPUBLIC OF CHINA; Network Rail, Milton Keynes, UNITED KINGDOM; Nominum, Redwood, CA; Nordiska Servercentralen AB, Bromma, SWEDEN; OFFIS e.V., Oldenburg, GERMANY; ParStream, Inc., Redwood City, CA; Renoir Consulting, Oxford, UNITED KINGDOM; Resolvetel Ltd., Henley-on-Thames, UNITED KINGDOM; Rettungsdienst-Kooperation in Schleswig-Holstein (RKiSH) GmbH, Heide, GERMANY; Singer TC GmbH, Schwedeneck, GERMANY; Synopsis S.A., Lima, PERU; Trendium, Boulder, CO; University of Witwatersrand, School of Electrical & Information Engineering, Johannesburg, SOUTH AFRICA; VC4, Alkmaar, NETHERLANDS; VIVA Bahrain, Seef District, BAHRAIN; VMware, Inc., Palo Alto, CA; Vodafone Qatar, Doha, QATAR; and Zettics, Seattle, WA.

The following members have changed their names: France Telecom to France Telecom Orange, Paris, FRANCE; Infosys Technologies Ltd. to Infosys Ltd., Bangalore, INDIA; MDS to Martin Dawes Systems Ltd. (MDS), Warrington, UNITED KINGDOM; INTRACOM S.A. TELECOM SOLUTIONS to Intracom Telecom, PEANIA, GREECE; SPATIALinfo to Synchronoss, Bridgewater, NJ; Net Servicos—Membership to Net Servicos, Chacara Santo Antonio, BRAZIL; Sooth Inc. to Sooth Technology, Pepper Pike, OH; EnStratus Networks (UK) Limted to Enstratius, Edinburgh, UNITED KINGDOM; OSX Telecomunicacoes S.A. (Visent) to Vísent, Brasilia, BRAZIL; and VTH Solutions LLC d/b/a Cignium Technologies to Cignium Technologies, Fort Lee, NJ.

The following members have withdrawn as parties to this venture: 7P Solutions & Consulting AG, Koeln, GERMANY; Belgacom, S.A., Brussels, BELGIUM; Calltrix Ltd., London, UNITED KINGDOM; Cassidian Systems (formerly Cogent Defence and Security Systems), Newport, UNITED KINGDOM; Digicel Fiji, Suva, FIJI; Digicel Group, Kingston, JAMAICA; Digicel Haiti, Port-au-Prince, HAITI; Digicel Jamaica Ltd., Kingston, JAMAICA; Digicel Panama S.A., Panama, PANAMA; Digicel PNG, Brisbane, AUSTRALIA; Digicel Trinidad, Port of Spain, TRINIDAD AND TOBAGO; ECI Telecom Ltd., Petach Tikva, ISRAEL; Equant, Valbonne, FRANCE; EXIS I.T., Athens, GREECE; France Telecom-Orange, Almondsbury, UNITED KINGDOM; HIKESIYA Co., Ltd., Yokohama-City, JAPAN; Innovise ESM Ltd., Slough, UNITED KINGDOM; Layer 7 Technologies, Vancouver, CANADA; Logica, Green Park, UNITED KINGDOM; Momac, Boca Raton, FL; Neuralitic, Montreal, CANADA; Nexio, Warsaw, POLAND; Nextgen Networks Pty Ltd., Melbourne, AUSTRALIA; NextGenTel AS, Bergen, NORWAY; Progress Software, Waltham, MA; QualiSystems, Ganey-Tikva, ISRAEL; Square Hoop Ltd., Stanmore, UNITED KINGDOM; Sykora Data Center, Ostrava, CZECH REPUBLIC; Synaptitude, Vienna, VA; T-Mobile (UK), Hatfield, UNITED KINGDOM; T-Mobile Hungary Communications Company Ltd. by Shares, Budapest, HUNGARY; Tree Technologies Pvt. Ltd., Bangalore, INDIA; and VMware, Inc., Palo Alto, CA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, The Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on April 2, 2013. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 26, 2013 (78 FR 24779).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013–19848 Filed 8–14–13; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cable Television Laboratories, Inc.

Notice is hereby given that, on July 9, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Cable Television Laboratories, Inc. (''CableLabs'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, YouSee A/S, Copenhagen, Denmark, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CableLabs intends to file additional written notifications disclosing all changes in membership.

On August 8, 1988, CableLabs filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 7, 1988 (53 FR 34593).

The last notification was filed with the Department on November 13, 2012. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 18, 2012 (77 FR 74877).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013–19849 Filed 8–14–13; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

Annual Determination of Average Cost of Incarceration

AGENCY: Bureau of Prisons, Justice.

ACTION: Notice.

SUMMARY: The fee to cover the average cost of incarceration for Federal inmates in Fiscal Year 2012 was $29,027.46 ($79.31 per day). (Please note: There were 366 days in FY 2012.) The average annual cost to confine an inmate in a Community Corrections Center for Fiscal Year 2012 was $27,003 ($73.78 per day).

DATES: *Effective Date:* August 15, 2013.

ADDRESSES: Office of General Counsel, Federal Bureau of Prisons, 320 First St. NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, (202) 307–2105.

SUPPLEMENTARY INFORMATION: 28 CFR part 505 allows for assessment and collection of a fee to cover the average cost of incarceration for Federal inmates. We calculate this fee by dividing the number representing Bureau of Prisons facilities' monetary obligation (excluding activation costs) by the number of inmate-days incurred for the preceding fiscal year, and then by multiplying the quotient by 365. In 2012, however, there were 366 days, so we multiply the quotient by 366 for 2012.

Under § 505.2, the Director of the Bureau of Prisons determined that, based upon fiscal year 2012 data, the fee to cover the average cost of incarceration for Federal inmates in Fiscal Year 2012 was $29,027.46 ($79.31 per day). (Please note: There were 366 days in FY 2012.) The average annual cost to confine an inmate in a Community Corrections Center for Fiscal Year 2012 was $27,003 ($73.78 per day).

Charles E. Samuels, Jr.,

Director, Bureau of Prisons.

[FR Doc. 2013–19852 Filed 8–14–13; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF LABOR

Office of the Secretary

Proposed Extension of Information Collection Request Submitted for Public Comment

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the information collection requirements and provide the requested data in the desired format. Currently, the Department is soliciting comments on the information collection requests (ICRs) described in this notice.

DATES: Written comments must be submitted to the office shown in the Addresses section on or before October 15, 2013.

ADDRESSES: Direct all written comments regarding the information collection request and burden estimates to G. Christopher Cosby, Office of Policy and Research, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–5647, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–4745. These are not toll-free numbers. Comments may also be submitted electronically to the following Internet email address: *ebsa.opr@dol.gov.* A copy of the ICRs may be obtained free of charge by contacting G. Christopher Cosby, Office of Policy and Research, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–5647, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–4745, email: *ebsa.opr@dol.gov.* These are not toll-free numbers. The ICRs also are available at refinfo.gov (*http://www.reginfo.gov/public/do/PRAMain*).

SUPPLEMENTARY INFORMATION: This notice seeks public comment on the requests for extension of the Office of Management and Budget (OMB) approval of ICRs described in this notice. The Department is not proposing any changes to the existing ICRs at this time. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICRs and their current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Notice to Employees of Coverage Options under Fair Labor Standards Act Section 18B.

Type of Review: Extension of a currently approved collection of information.

OMB Control Number: 1210–0149.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 6,160,461.

Responses: 72,484,292.

Estimated Total Burden Hours: 374,502.

Estimated Total Burden Cost (Operating and Maintenance): $12,229,992.

Description: Many provisions of the Patient Protection and Affordable Care Act (Affordable Care Act) that become effective beginning in 2014 are designed to expand access to affordable health coverage. These include provisions for coverage to be offered through a Health Insurance Marketplace (Marketplace), premium tax credits to assist individuals in purchasing such coverage, employer notice to employees of coverage options available through the Marketplace, and other related provisions. The Departments of Labor, Health and Human Services (HHS), and the Treasury are working together to develop coordinated regulations and other administrative guidance to assist stakeholders with implementation of the Affordable Care Act.

Beginning January 1, 2014, individuals and employees of small businesses will have access to affordable coverage through a new competitive private health insurance market—the Health Insurance Marketplace. The Marketplace offers one-stop shopping to find and compare private health insurance options. Open enrollment for health insurance coverage through the Marketplace begins October 1, 2013.

Section 1512 of the Affordable Care Act creates a new Fair Labor Standards Act (FLSA) section 18B requiring a notice to employees of coverage options available through the Marketplace. On May 8, 2013, the Department issued Technical Release 2013–2, which provides temporary guidance regarding the notice requirement under FLSA section 18B and announces the availability of the Model Notice to Employees of Coverage Options.

On May 10, 2013, the Office of Management and Budget (OMB) approved the model notice under OMB Control Number 1210–0149 pursuant to the emergency procedures for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35) and 5 CFR 1320.13. OMB approval of the revision currently is scheduled to expire on November 30, 2013.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Annual Funding Notice for Defined Benefit Plans.

Type of Review: Extension of a currently approved collection of information.

OMB Control Number: 1210–0126.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 27,534.

Responses: 77,989,123.

Estimated Total Burden Hours: 977,000.

Estimated Total Burden Cost (Operating and Maintenance): $26,845,755.

Description: On July 6, 2012, President Barrack Obama signed the Moving Ahead for Progress in the 21st Century Act (MAP–21). The new law provides funding interest-rate stabilization for single employer defined benefit (DB) plans, effective for plan years beginning on and after January 1, 2012. To counter the current low interest rates that are triggering significantly larger pension contributions for many plan sponsors, the MAP–21 sets a floor (or ceiling) for the interest rates that single employer

DB plan administrators generally are required to use to calculate contributions. Under the new rules, the generally required interest rates are limited to rates that are within a specified range, or corridor, above or below a 25-year average for the rates.

Employee Retirement Income Security Act of 1974 (ERISA) section 101(f) sets forth the requirements for plan administrators of most single-employer DB plans to furnish annual funding notices to the PBGC, plan participants and beneficiaries, and each labor organization representing such participants or beneficiaries. MAP–21 section 40211(b)(2)(A) has amended ERISA section 101(f)(2), by adding a new subparagraph (D), to require single-employer DB plan administrators to disclose additional information in the annual funding notice for a plan year beginning after December 31, 2011, and before January 1, 2015, regarding the effect of the MAP–21 segment rate stabilization rules on plan liabilities and the plan sponsor's minimum required contributions to the plan. MAP–21 section 40211(b)(2)(B) requires the Department to modify the model annual funding notice required under Pension Protection Act of 2006 (PPA) section 501(c) to include, prominently, the supplemental information required under new ERISA section 101(f)(2)(D).

On March 8, 2013, the Department released EBSA Field Assistance Bulletin (FAB) 2013–01 concerning the new disclosure requirements mandated the MAP–21. The FAB addresses a need for interim guidance pending the adoption of regulations or other guidance under ERISA section 101(f), as amended by the MAP–21. The FAB sets forth technical questions and answers and provides a model supplement that plan administrators may use to discharge their MAP–21 disclosure obligations and provides that, pending further guidance and as a matter of enforcement policy, the Department will treat a single employer DB plan administrator as satisfying MAP–21 requirements if the plan administrator complies with the guidance in the memorandum and otherwise acts in accordance with a good faith and reasonable interpretation of those requirements.

On April 19, 2013, the Office of Management and Budget (OMB) approved the model supplement as a revision to OMB Control Number 1210–0126 under the emergency procedures for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35) and 5 CFR 1320.13. OMB approval of the revision currently is scheduled to expire on December 31, 2013.

Desired Focus of Comments

The Department 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., by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Dated: August 8, 2013.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2013–19755 Filed 8–14–13; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Public Meeting of the Advisory Committee on Apprenticeship (ACA)

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice of a public meeting.

SUMMARY: Pursuant to Section 10 of the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2 § 10), notice is hereby given to announce a public meeting of the Advisory Committee on Apprenticeship (ACA) on Tuesday, September 17, 2013 and Thursday, September 19, 2013. The ACA is a discretionary committee established by the Secretary of Labor, in accordance with FACA, as amended in 5 U.S.C. App. 2, and its implementing regulations (41 CFR parts 101–6 and 102–3). All meetings of the ACA are open to the public.

DATES: The meeting will begin at approximately 1:30 p.m. Eastern Standard Time on Tuesday, September 17, 2013, via webinar, and will continue until approximately 4:00 p.m. The meeting will reconvene on Thursday, September 19, 2013, at the U.S. Department of Labor, at approximately 8:30 a.m. Eastern Standard Time and adjourn at approximately 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Official, Mr. John V. Ladd, Administrator, Office of Apprenticeship, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–5311, Washington, DC 20210, Telephone: (202) 693–2796 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: In order to promote cost savings, the ACA will convene virtually on Tuesday, September 17, 2013, and face-to-face at the U.S. Department of Labor on September 19, 2013. The first day of the meeting will take place via webinar and audio-video conference technology. Web and audio instructions to participate in this meeting will be prominently posted on the OA homepage: *http://www.doleta.gov/oa/*. Members of the public are encouraged to attend the meeting virtually. For members of the public wishing to attend in person, a listening room with limited seating will be made available upon request. The location for the listening room will be: U.S. Department of Labor, Frances Perkins Building, 200 Constitution Avenue NW., Washington, DC 20210. (Please consult the Security Instructions for the Frances Perkins Building below). The second first day of the meeting will take place at the Department of Labor, Frances Perkins Building, 200 Constitution Avenue NW., Washington, DC, 20210, Room, C5515. Members of the public are encouraged to arrive early to allow for security clearance into the Francis Perkins Building.

Security Instructions for June 6, 2013 at the Frances Perkins Building: Meeting participants should use the visitor's entrance to access Frances Perkins Building, one block north of Constitution Avenue on at 3rd and C Streets NW. For security purposes meeting participants must:

1. Present a valid photo ID to receive a visitor badge.

2. Know the name of the event you are attending: the meeting event is the Advisory Committee on Apprenticeship.

3. Visitor badges are issued by the security officer at the Visitor Entrance located at 3rd and C Streets NW. When you receive your visitor badge, the

security officer will retain your photo ID until you return the visitor badge.

4. Laptops and other electronic devices may be inspected and logged for identification purposes.

5. Due to limited parking options, Metro rail is the easiest way to access the Frances Perkins Building.

Notice of Intent to Attend the Meeting: All meeting participants, whether attended either session, virtually or in person, are being asked to submit *a notice of intent to attend* by Wednesday, September 4, 2013, via email to Mr. John V. Ladd at *oa.administrator@dol.gov,* subject line ''September 2013 ACA Meeting.'' Please indicate if you will be attending the meeting on both days. This information is necessary to provide adequate space to accommodate all meeting participants. If individuals have special needs and/or disabilities that will require special accommodations, please contact Kenya Huckaby on (202) 693–3795 or via email at *Huckaby.kenya@dol.gov* no later than Wednesday, September 4, 2013. The webinar will be limited to 200 participants, unless OA receives more than 200 submissions to attend. Any member of the public who wishes to file written data or comments pertaining to the agenda may do so by sending the data or comments to Mr. John V. Ladd via email at *oa.administrator@dol.gov,* subject line ''September 2013 ACA Meeting,'' or submitting to the Office of Apprenticeship, Employment and Training Administration, U.S. Department of Labor, Room N–5311, 200 Constitution Avenue NW., Washington, DC 20210. Such submissions will be included in the record for the meeting if received by Wednesday, September 4, 2013.

Purpose of the Meeting and Topics To Be Discussed: The primary purpose of the meeting is to discuss and approve final recommendations to improve veterans' access to Registered Apprenticeship (RA); develop a implementation plan for the recently approved *Vision for Registered Apprenticeship in the 21st Century* Report, and begin discussions on the need for concerted efforts to improve the rate of women's participation in Registered Apprenticeship. The meeting agenda will include the following:

- Follow-up Discussion from the June 2013 Meeting
- Deliberation on Proposed Recommendations to the Secretary to improve the transition of Veterans into Registered Apprenticeship
- Workgroup Breakout Sessions: (1) Expansion/Quality; (2) Education/Partnerships; and (3) Increasing Opportunities
- Workgroup Report Outs: Proposed Priorities, Metrics, and Work plan for the Year Ahead
- Discuss Women's Participation in Registered Apprenticeship.
- Other Matters of Interest to the Apprenticeship Community
- Public Comment
- Adjourn

The agenda may be updated should priority items come before the ACA between the time of this publication and the scheduled date of the ACA meeting. All meeting updates will be posted to the Office of Apprenticeship's homepage: *http://www.doleta.gov/oa/.* Any member of the public who wishes to speak at the meeting should indicate the nature of the intended presentation and the amount of time needed by furnishing a written statement to the Designated Federal Official, Mr. John V. Ladd, by, Wednesday, September 4, 2013. The Chairperson will announce at the beginning of the meeting the extent to which time will permit the granting of such requests.

Signed at Washington, DC, this 30th day of July 2013.

Eric Seleznow,

Acting Assistant Secretary for the Employment and Training Administration.

[FR Doc. 2013–19847 Filed 8–14–13; 8:45 am]

BILLING CODE 4510–FR–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Affirmative Decisions on Petitions for Modification Granted in Whole or in Part

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44 govern the application, processing, and disposition of petitions for modification. This **Federal Register** Notice notifies the public that MSHA has investigated and issued a final decision on certain mine operator petitions to modify a safety standard.

ADDRESSES: Copies of the final decisions are posted on MSHA's Web site at *http://www.msha.gov/indexes/petition.htm.* The public may inspect the petitions and final decisions during normal business hours in MSHA's Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2349, Arlington, Virginia 22209. All visitors must first stop at the receptionist desk on the 21st Floor to sign-in.

FOR FURTHER INFORMATION CONTACT: Roslyn B. Fontaine, Office of Standards, Regulations and Variances at 202–693–9475 (Voice), *fontaine.roslyn@dol.gov* (Email), or 202–693–9441 (Telefax), or Barbara Barron at 202–693–9447 (Voice), *barron.barbara@dol.gov* (Email), or 202–693–9441 (Telefax). [These are not toll-free numbers].

SUPPLEMENTARY INFORMATION:

I. Introduction

Under section 101 of the Federal Mine Safety and Health Act of 1977, a mine operator may petition and the Secretary of Labor (Secretary) may modify the application of a mandatory safety standard to that mine if the Secretary determines that: (1) an alternative method exists that will guarantee no less protection for the miners affected than that provided by the standard; or (2) that the application of the standard will result in a diminution of safety to the affected miners.

MSHA bases the final decision on the petitioner's statements, any comments and information submitted by interested persons, and a field investigation of the conditions at the mine. In some instances, MSHA may approve a petition for modification on the condition that the mine operator complies with other requirements noted in the decision.

II. Granted Petitions for Modification

On the basis of the findings of MSHA's investigation, and as designee of the Secretary, MSHA has granted or partially granted the following petitions for modification:

- *Docket Number:* M–2011–007–C.

FR Notice: 76 FR 22149 (April 20, 2011).

Petitioner: Rosebud Mining Company, P.O. Box 1025, Northern Cambria, Pennsylvania 15714.

Mines: Beaver Valley Mine, MSHA Mine I.D No. 36–08725, located in Beaver County, Pennsylvania. Bergholz Mine, MSHA Mine I.D No. 33–04565, located in Jefferson County, Ohio. Dutch Run Mine, MSHA Mine I.D No. 36–08701; Darmac No. 2 Mine, MSHA I.D. No. 36–08135; and Logansport Mine, MSHA I.D. No. 36–08841, located in Armstrong County, Pennsylvania. Harmony Mine, MSHA Mine I.D No. 36–09477, located in Clearfield County, Pennsylvania. Rossmoyne Mine, MSHA Mine I.D No. 36–09075; Knob Creek Mine, MSHA I.D. No. 36–09394; Starford Mine, MSHA I.D. No. 36–09637, located in Indiana County, Pennsylvania. Tusky Mine, MSHA I.D.

No. 33–04509, located in Tuscarawas County, Ohio. Twin Rocks Mine, MSHA I.D. No. 36–08836, located in Cambria County, Pennsylvania.

Regulation Affected: 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.35(a)(5)(i) (Portable trailing cables and cords).

• *Docket Number:* M–2011–016–C.

FR Notice: 76 FR 37835 (June 28, 2011).

Petitioner: Midland Trail Energy, LLC, 3301 Point Lick Drive, Charleston, West Virginia 25306.

Mine: Campbells Creek No. 4 Deep Mine, MSHA I.D. No. 46–08437, located in Kanawha County, West Virginia.

Regulation Affected: 30 CFR 77.214(b) (Refuse piles; general).

• *Docket Number:* M–2011–033–C.

FR Notice: 76 FR 64385 (October 18, 2011).

Petitioner: ACI Tygart Complex, 1200 Tygart Drive, Grafton, West Virginia 26354.

Mine: Tygart #1 Mine, MSHA I.D. No. 46–09192, located in Taylor County, West Virginia.

Regulation Affected: 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.35 (Portable trailing cables and cords).

• *Docket Number:* M–2011–034–C.

FR Notice: 76 FR 69765 (November 9, 2011).

Petitioner: Greenfields Coal Company, LLC, 550 North Eisenhower Drive, Suite B, Beckley, West Virginia 25801.

Mine: Alpheus Refuse Site, MSHA Mine I.D. No. 46–08438, located in McDowell County, West Virginia.

Regulation Affected: 30 CFR 77.214(a) (Refuse piles; general).

• *Docket Number:* M–2011–035–C.

FR Notice: 76 FR 69765 (November 9, 2011).

Petitioner: West Virginia Mine Power, Inc., P.O. Box 574, Rupert, West Virginia 25984–0574.

Mine: Midland Trail Mine No. 2, MSHA I.D. No. 46–08909, located in Greenbrier County, West Virginia.

Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray system).

• *Docket Number:* M–2011–039–C.

FR Notice: 77 FR 812 (January 6, 2012).

Petitioner: Midland Trail Energy, LLC, 42 Rensford Star Route, Charleston, West Virginia 25306.

Mine: Blue Creek No. 1 Mine, MSHA I.D. No. 46–09297, located in Kanawha County, West Virginia.

Regulation Affected: 30 CFR 75.503 (Permissible electric face equipment; maintenance).

• *Docket Number:* M–2011–004–M.

FR Notice: 76 FR 37831 (June 28, 2011).

Petitioner: Troy Mine, Inc., P.O. Box 1660, Highway 56 South Mine Road, Troy, Montana 59935.

Mine: Troy Mine, MSHA I.D. No. 24–01467, located in Lincoln County, Montana.

Regulation Affected: 30 CFR 57.11052(d) (Refuge areas).

• *Docket Number:* M–2012–065–C.

FR Notice: 77 FR 27088 (May 8, 2012).

Petitioner: ICG Tygart Valley, LLC, 1200 Tygart Drive, Grafton, West Virginia 26354.

Mine: Tygart #1 Mine, MSHA I.D. No. 46–09192, located in Taylor County, West Virginia.

Regulation Affected: 30 CFR 75.1700 (Oil and gas wells).

• *Docket Number:* M–2012–067–C.

FR Notice: 77 FR 27093 (May 8, 2012).

Petitioner: Sunrise Coal, LLC, 1183 East Canvasback Drive, Terre Haute, Indiana 47802.

Mine: Carlisle Mine, MSHA I.D. No. 12–02349, located in Sullivan County, Indiana.

Regulation Affected: 30 CFR 75.705 (Work on high-voltage lines; deenergizing and grounding).

• *Docket Number:* M–2012–068–C.

FR Notice: 77 FR 27093 (May 8, 2012).

Petitioner: Little Buck Coal Company #2, 33 Pine Lane, Pine Grove, Pennsylvania 17963.

Mine: Buck Mt. Slope Mine, MSHA I.D. No. 36–09860, located in Schuylkill County, Pennsylvania.

Regulation Affected: 30 CFR 75.1200(d) and (i) (Mine maps).

• *Docket Number:* M–2012–069–C.

FR Notice: 77 FR 27094 (May 8, 2012).

Petitioner: Little Buck Coal Company #2, 33 Pine Lane, Pine Grove, Pennsylvania 17963.

Mine: Buck Mt. Slope Mine, MSHA I.D. No. 36–09860, located in Schuylkill County, Pennsylvania.

Regulation Affected: 30 CFR 75.1202 and 75.1202–1(a) (Temporary notations, revisions, and supplements).

• *Docket Number:* M–2012–076–C.

FR Notice: 77 FR 30556 (May 23, 2012).

Petitioner: Mountain Coal Company, LLC, P.O. Box 591, 5174 Highway 133, Somerset, Colorado 81434.

Mine: West Elk Mine, MSHA I.D. No. 05–03672, located in Gunnison County, Colorado.

Regulation Affected: 30 CFR 75.1002 (Installation of electric equipment and conductors; permissibility).

• *Docket Number:* M–2012–095–C.

FR Notice: 77 FR 37935 (June 25, 2012).

Petitioner: Bledsoe Coal Corporation, Route 2008, Box 351A, Big Laurel, Kentucky 40808.

Mine: Mine No. 4, MSHA I.D. No. 15–11065, located in Leslie County, Kentucky.

Regulation Affected: 30 CFR 77.214(a) (Refuse piles; general).

• *Docket Number:* M–2012–096–C.

FR Notice: 77 FR 38325 (June 27, 2012).

Petitioner: Mountain Coal Company, LLC, P.O. Box 591, 5174 Highway 133, Somerset, Colorado 81434.

Mine: West Elk Mine, MSHA I.D. No. 05–03672, located in Gunnison County, Colorado.

Regulation Affected: 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.35(a)(5)(i) (Portable trailing cables and cords).

• *Docket Number:* M–2012–172–C.

FR Notice: 78 FR 3033 (January 15, 2013).

Petitioner: South Central Coal Company, Inc., P.O. Box 6, Spiro, Oklahoma 74959.

Mine: P8 North Mine, MSHA I.D. No. 34–02080, located in Le Flore County, Oklahoma.

Regulation Affected: 30 CFR 75.1700 (Oil and gas wells).

• *Docket Number:* M–2012–008–M.

FR Notice: 77 FR 59674 (September 28, 2012).

Petitioner: U.S. Silica Company, 2496 Hancock Road, Berkeley Springs, West Virginia 25411.

Mine: Berkeley Plant, MSHA I.D. No. 46–02805, located in Morgan County, West Virginia.

Regulation Affected: 30 CFR 56.13020 (Use of compressed air).

Dated: August 9, 2013.

George F. Triebsch,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 2013–19768 Filed 8–14–13; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below to modify the application of existing mandatory safety standards codified in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations and Variances on or before September 16, 2013.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.
2. *Facsimile:* 202–693–9441.
3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: George F. Triebsch, Director, Office of Standards, Regulations and Variances. Persons delivering documents are required to check in at the receptionist's desk on the 21st floor. Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (Email), or 202–693–9441 (Facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

(1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

(2) That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket No: M–2013–029–C.

Petitioner: Brooks Run Mining Company, LLC, 208 Business Street, Beckley, West Virginia 25801.

Mine: Cucumber Mine, MSHA I.D. No. 46–09066, located in McDowell County, West Virginia.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of achieving the results of the existing standard. The petitioner states that:

(1) This petition will apply only to trailing cables supplying three-phase, 575-volt power for permissible pumps.

(2) The maximum length of the 575-volt trailing cables supplying power for permissible pumps will be 4,000 feet.

(3) All circuit breakers used to protect trailing cables exceeding the trailing cables approval length or Table 9 in Appendix I to Subpart D (specifications for portable cables longer than 500 feet) of 30 CFR part 18 will have an instantaneous trip unit calibrated to trip at 70 percent of phase-to-phase short-circuit current. The trip setting of these circuit breakers will be sealed or locked, and the circuit breakers will have permanent, legible labels. Each label will identify the circuit breaker as being suitable for protecting the trailing cables. This label will be maintained to remain legible.

(4) In instances where a 70 percent instantaneous set point will not allow a pump to start due to motor inrush, a thermal magnetic breaker will be no greater than 70 percent of the available short-circuit current and the instantaneous setting will be adjusted one setting above the motor inrush trip point. This setting will also be sealed or locked.

(5) Replacement instantaneous trip units used to protect pump trailing cables exceeding required lengths of cables will be calibrated to trip at 70 percent of the available phase-to-phase short-circuit current. This setting will be sealed or locked.

(6) Permanent warning labels will be installed and maintained on the covers of the power center to identify the location of each sealed or locked short-circuit protection device. These labels are intended to warn miners not to change or alter these short-circuit settings.

(7) All pump installations with cable lengths that are specified in Table 9 in Appendix I to 30 CFR part 18 subpart D will have short-circuit surveys conducted and paragraphs (1)–(5) will be implemented. A copy of each pump short-circuit survey will be available at the mine site for inspection.

(8) The alternative method will not be implemented until miners who have been designated to examine the integrity of seals or locks, verify the short-circuit setting, and follow proper procedures for examining trailing cables for defects and damage have received the elements of training in paragraph (9).

(9) Within 60 days after this petition is granted, proposed revisions for approved 30 CFR part 48 training plans will be submitted to the District. The proposed training will include the following elements:

(a) Training in mining methods and operating procedures that will protect the trailing cables against damage.

(b) Training in the proper procedures for examining the trailing cables to ensure the cables are in a safe operating condition.

(c) Training in hazards of setting the instantaneous circuit breakers too high to adequately protect the trailing cables.

(d) Training in how to verify the circuit interrupting device(s) protecting the trailing cable(s) are properly set and maintained.

The petitioner further states that the procedures of 30 CFR 48.3 for approval of proposed revisions to already approved training cables will apply.

The petitioner asserts that the proposed alternative method will guarantee no less than the same measure of protection to the miners as would be provided by the existing standard.

Docket No: M–2013–030–C.

Petitioner: Newtown Energy, Inc., P.O. Box 189, Comfort, West Virginia 25049.

Mine: Peerless Rachel Mine, MSHA I.D. No. 46–09258, 4449 Left Fork of Joe's Creek, Comfort, West Virginia, located in Boone County, West Virginia.

Regulation Affected: 30 CFR 75.1700 (Oil and gas wells).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance with respect to oil and gas wells.

1. The petitioner proposes, prior to mining through any oil or gas well at its Peerless Rachel Mine, to provide the District Manager (DM) a declaration stating that all mandatory procedures for cleaning out, preparing, and plugging each gas or oil well have been completed. The declaration will be accompanied by down-hole logs.

2. The techniques and procedures in this petition are limited to oil and gas wells that have a maximum depth of 5,000 feet or less.

a. The petitioner proposes to use the following procedures when cleaning out and preparing oil and gas wells prior to plugging or replugging:

(1) Clean out the well from the surface to at least 200 feet below the base of the

lowest mineable coal seam. Remove material from the entire diameter of the well, wall to wall, to the extent feasible and practicable.

(2) Remove all of the casing in the well or, if it is not possible to remove all of the casing, fill the annulus between the casings and between the casings and the well walls with expanding cement (minimum 0.5 percent expansion on setting) and ensure that these areas contain no voids. If the casing cannot be removed, cut or mill it at all mineable coal seam levels and perforate or rip it at least every 50 feet from at least 200 feet below the base of the lowest mineable coal seam up to 100 feet above the uppermost mineable coal seam. When multiple casing and tubing strings are present in the coal horizon(s), perforate or rip any casing that remains and fill with expanding cement. Keep an acceptable casing bond log for each casing and tubing string used in lieu of ripping or perforating multiple strings.

(3) Place a mechanical bridge plug in the well, if a cleaned-out well emits excessive amounts of gas. Place the mechanical bridge plug in a competent stratum at least 200 feet below the base of the lowest mineable coal seam, but above the top of the uppermost hydrocarbon-producing stratum.

(4) Prepare down-hole logs for each well. The logs will consist of a caliper survey and be suitable for determining the top, bottom, and thickness of all coal seams and potential hydrocarbon-producing strata and the location for a bridge plug. In addition, maintain a journal describing the length and type of each material used to plug the well; the length of casings removed, perforated or ripped, or left in place; any sections where casing was cut or milled; and other pertinent information concerning cleaning and sealing the well.

(5) Properly place mechanical bridge plugs to isolate the hydrocarbon-producing stratum from the expanding cement plug, if the upper-most hydrocarbon-producing stratum is within 300 feet of the base of the lowest mineable coal seam. Nevertheless, place a minimum of 200 feet of expanding cement below the lowest mineable coal seam.

b. The petitioner proposes to use the following procedures for plugging or replugging oil or gas wells to the surface:

(1) Pump expanding cement slurry down the well to form a plug that runs from at least 200 feet below the base of the lowest mineable coal seam to the surface. Place the expanding cement in the well under a pressure of at least 200 pounds per square inch. Portland cement or a lightweight cement mixture may be used to fill the area from 100 feet above the top of the uppermost mineable coal seam. A gel that supports the wall of the borehole and increases the density of the expanding cement may be used to provide the placement pressure.

(2) Embed steel turnings or other small magnetic particles in the top of the cement near the surface to serve as a permanent magnetic monument of the well. In the alternative, extend a 4½-inch or larger casing, set in cement, at least 36 inches above the ground level with the American Petroleum Institute (API) well number either engraved or welded on the casing. When the hole cannot be marked with a physical monument (e.g., prime farmland), use high-resolution GPS coordinates (one-half meter resolution) to locate the hole.

c. The petitioner proposes to use the following procedures for plugging or replugging oil and gas wells for subsequent use as degasification boreholes:

(1) Set a cement plug in the well by pumping expanding cement slurry down the tubing to provide at least 200 feet of expanding cement below the lowest mineable coal seam. Place the expanding cement in the well under a pressure of at least 200 pounds per square inch. Extend the top of the expanding cement at least 30 feet above the top of the coal seam being mined.

(2) Securely grout a suitable casing into the bedrock of the upper portion of the degasification well to protect it. The remainder of this well may be cased or uncased.

(3) Cement the annulus between the degasification casing and the borehole wall from a point immediately above the slots or perforations in the pipe to the surface.

(4) Clean out the degasification casing to its total length.

(5) Fit the top of the degasification casing with a wellhead, equipped as required by the DM in the approved ventilation plan. Such equipment may include check valves, shut-in valves, sampling ports, flame arrestor equipment, and security fencing.

(6) After the area of the coal mine that is degassed by a well is sealed or the coal mine is abandoned, seal the degas holes using the following procedures:

(i) Insert a tube to the bottom of the drill hole or, if not possible, to at least 100 feet above the coal seam. Remove any blockage to ensure that the tube is inserted to this depth.

(ii) Set a cement plug in the well by pumping Portland cement or a lightweight cement mixture down the tubing until the well is filled to the surface.

(iii) Embed steel turnings or other small magnetic particles in the top of the cement near the surface to serve as a permanent magnetic monument of the well. In the alternative, extend a 4½-inch or larger casing, set in cement, at least 36 inches above the ground level with the API well number engraved or welded on the casing.

d. The petitioner proposes to use the following procedures for preparing and plugging or replugging oil or gas wells that cannot be completely cleaned out:

(1) Drill a hole adjacent and parallel to the well to a depth of at least 200 feet below the lowest mineable coal seam.

(2) Locate any casing that may remain in the well using a geophysical sensing device.

(3) If the well contains casings, drill into the well from the parallel hole and perforate or rip all casings at intervals of at least 5 feet from 10 feet below the coal seam to 10 feet above the coal seam. Beyond that distance, perforate or rip all casings at least every 50 feet from at least 200 feet below the base of the lowest mineable coal seam up to 100 feet above the seam being mined. Fill the annulus between the casings and between the casings and the well wall with expanding cement (minimum of 0.5% expansion on setting), and ensure that these areas contain no voids. When multiple casing and tubing strings are present in the coal horizons, rip or perforate any casing that remains and fill with expanding cement. Provide an acceptable casing bond log for each casing and tubing used in lieu of ripping or perforating multiple strings.

(4) Use a horizontal hydraulic fracturing technique to intercept the original well where there is sufficient casing in the well to allow use of the method outlined in subparagraph (3) above. Fracture the original well in at least six places from at least 200 feet below the base of the lowest mineable coal seam to a point at least 50 feet above the seam being mined at intervals to be agreed on by the petitioner and the DM after considering the geological strata and the pressure within the well. Pump expanding cement into the fractured well in sufficient quantities and in a manner that fills all intercepted voids.

(5) Prepare down-hole logs for each well. The logs will consist of a caliper survey and be suitable for determining the top, bottom, and thickness of all coal seams and potential hydrocarbon-producing strata and the location for the bridge plug. Maintain a journal describing the length and type of each material used to plug the well; length of

casing(s) removed, perforated, ripped, or left in place; and other pertinent information concerning sealing the well.

(6) After plugging the well, plug the open portions of both holes from the bottom to the surface with Portland cement or a lightweight cement mixture.

(7) Embed steel turnings or other small magnetic particles in the top of the cement near the surface to serve as a permanent magnetic monument of the well. In the alternative, extend a 4½-inch or larger casing, set in cement, at least 36 inches above the ground level.

e. The petitioner proposes to use the following procedures after approval has been granted by the DM to mine through a plugged or replugged well:

(1) Prior to cutting-through a plugged well, notify the DM or designee, representative of the miners, and the appropriate State agency in sufficient time for them to have a representative present.

(2) Install drivage spads at the last open crosscut near the place to be mined to ensure intersection of the well when mining through wells using continuous mining equipment. The drivage spads will not be more than 50 feet from the well. Install distance markers along the headgate on 5-feet centers for 20 feet in advance of the well when using longwall-mining methods.

(3) Firefighting equipment, including fire extinguishers, rock dust, and sufficient fire hose to reach the working face area of the mine-through (when either the conventional or continuous mining method is used), will be available and operable during each well mine-through. Locate the fire hose in the last open crosscut of the entry or room. Maintain the water line to the belt conveyor tailpiece along with a sufficient amount of fire hose to reach the farthest point of penetration on the section.

(4) Keep available at the last open crosscut, a supply of roof support and ventilation materials sufficient to ventilate and support around the well on cut-through. In addition, keep emergency plugs available in the immediate area of the cut-through.

(5) Maintain the quantity of air required by the approved mine ventilation plan for both continuous and longwall mining.

(6) Check equipment for permissibility if it will be in by the last open crosscut during mine-through and service it on the shift prior to mining through the well.

(7) Calibrate the methane monitors on the longwall, continuous mining machine, or cutting machine and loading machine on the shift prior to mining through the well.

(8) When mining is in progress, test methane levels with a hand-held methane detector at least every 10 minutes from the time that mining with the continuous mining machine is within 20 feet of the well until the well is intersected and immediately prior to mining through it or from the time that mining with longwall mining equipment is within 10 feet of the well. No individual is allowed on the return side during the actual cutting process until the mine-through has been completed and the area examined and declared safe.

(9) Keep the working place free from accumulations of coal dust and coal spillages, and place rock dust on the roof, rib, and floor to within 20 feet of the face when mining through the well when using continuous or conventional mining methods. Conduct rock dusting on longwall sections on the roof, rib, and floor up to both the headgate and tailgate gob.

(10) Deenergize all equipment when the wellbore is intersected and thoroughly examine the place and determined it safe before resuming mining. No open flame is permitted in the area until adequate ventilation has been established around the wellbore.

(11) In rare instances, torches may be used for inadequately or inaccurately cut or milled casings at the coal seam level. No open flame is permitted in the area until adequate ventilation has been established around the wellbore and methane levels are less than 1.0 percent in all areas that will be exposed to flames and sparks from the torch. Apply a thick layer of rock dust to the roof, face, floor, ribs, and any exposed coal within 20 feet of the casing prior to any use of torches.

(12) After a well has been intersected and the working place determined safe, continue mining inby the well at a distance sufficient to permit adequate ventilation around the area of the wellbore.

(13) No person will be permitted in the area of the cut-through operation except those actually engaged in the mining operation, mine management, representative of the miners, personnel from MSHA, and personnel from the appropriate State agency.

(14) A certified official will directly supervise the cut-through operation and only the certified official in charge will issue instructions concerning the cut-through operation.

(15) Locate non-sparking (brass) tools on the working section in the event they are needed to expose and examine cased wells.

(16) Alert all personnel in the mine to the planned intersection of the well prior to their going underground if the planned intersection is to occur during their shift. Repeat this warning for all shifts until the well has been mined through. Mining may be conducted in other working sections during the intersection of the well.

(17) The responsible person required in 30 CFR 75.1501 will be responsible for well intersection emergencies. The responsible person will review the well intersection procedures prior to any planned intersection.

Within 60 days after this petition becomes final, the petitioner will submit proposed revisions for its approved part 48 training plan to the DM.

Within 30 days after this petition becomes final, the petitioner will submit proposed revisions for its approved mine emergency evacuation and firefighting plan required in 30 CFR 75.1501. The petitioner will revise the plans to include the hazards and evacuation procedures to be used for well intersections. All underground miners will be trained in this revised plan within 30 days of the DM's approval of the revised evacuation plan. Such training may be done in a weekly safety meeting or other type of appropriate setting.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure or protection afforded by the existing standard.

Docket No: M–2013–031–C.

Petitioner: Oak Grove Resources, LLC, 8360 Taylor's Ferry Rd., Hueytown, Alabama 35023.

Mine: Oak Grove Mine, MSHA I.D. No. 01–00851, located in Jefferson County, Alabama.

Regulation Affected: 30 CFR 75.507 (Power connection points).

Modification Request: The petitioner requests a modification of the existing standard to permit nonpermissible pumps to be used in boreholes in areas of the Oak Grove Mine where water has accumulated and that are not on intake air. The petitioner states that:

(1) Nonpermissible pumps will be located within the boreholes and the electrical components of the pump will always be separated from the mine atmosphere. The pump electric motors will be under water continuously.

(2) The three-phase 480, 2,400, or 4,160 voltage alternating-current electric power circuits for the pump(s) will be designed and installed to:

(a) Contain either a direct or a derived neutral that will be grounded through a suitable resistor at the source transformer or power center. A grounding circuit originating at the grounded side of the grounding resistor must extend along with the power conductors and serve as the grounding conductor for the frame of the pump(s) and all associated electric equipment that may be supplied power from this circuit. The borehole casing will be bonded to the system grounding medium.

(b) Contain a grounding resistor that limits the ground-fault current to not more than 6.5 amperes. The grounding resistor must be rated for the maximum fault current available and must be insulated from ground for a voltage equal to the phase-to-phase voltage of the system.

(3) The following protections for the pump power circuits will be provided by a suitable circuit interrupting device of adequate interrupting capacity with devices to provide protection against undervoltage, grounded phase, short circuit, and overload.

(a) The undervoltage protection device will operate on a loss of voltage to prevent automatic restarting of the equipment.

(b) The grounded phase protection device will be set not to exceed 50 percent of the current rating of the neutral grounding resistor.

(c) The short circuit protection device will not be set to exceed the required short circuit protection for the power cable or 75 percent of the minimum available phase-to-phase short circuit current, whichever is less.

(d) Each power circuit will contain a disconnecting device located on the surface and installed in conjunction with the circuit breakers to provide visual evidence that the power is disconnected.

(e) The disconnecting device(s) will include a means to visually determine if the pump power circuit(s) are disconnected and will be provided with a means to lock, tag-out, and ground the system(s).

(f) The disconnecting device(s) will be designed to prevent entry unless the disconnect handle is in the ''off'' position and the circuit is grounded.

(g) The disconnecting device(s) will be clearly identified and provided with warning signs stating, ''Danger. Do not enter unless the circuit is opened, locked, tagged-out, and grounded.''

(4) The three-phase alternating current system will be provided with a low resistance grounding medium for the grounding of the lightning/surge arrestors for the high-voltage pump power circuit(s) that is separated from the neutral grounding medium by a distance of not less than 25 feet.

(5) The electric control circuit(s) for the pumps will meet the following requirements:

(a) The control circuit will be equipped with a probe circuit that determines a high and low water level.

(b) The low water probe will be located not less than 30 feet above the pump inlet and motor and electrical connections of the pump(s). When the water level reaches the low water probe, the pump(s) will cease operation and the pump(s) will not start in either the manual or the automatic mode.

(c) When the water level reaches the high water probe, the pump will start operation.

(d) The high and low water probes must consist of redundant electronic pressure transducers that are suitable for submersible pump control applications.

(e) All probe circuits will be protected by MSHA-approved intrinsically safe barriers.

(f) The grounded-phase protective circuit for pump(s) will be able to be tested by injecting a test current through the grounded phase current transformer.

(g) A remote control and monitoring system can be used with the pump system for condition monitoring and for remote startup and shutdown control of the pumps. The remote control and monitoring system will not allow reset of the pump power system when fault conditions (e.g., grounded phase, short circuit, or overload) exist on the system.

(h) Splices and connections made in submersible pump cables will be made in a workmanlike manner and will meet the requirements of 30 CFR 75.604.

(6) The surface pump control and power circuit(s) will be examined as required by 30 CFR 77.502.

(7) The power cable to the submersible pump motor(s) will be suitable for this application, have a current carrying capacity not less than 125 percent of the full load motor current of the submersible pump motor, and have an outer jacket suitable for a wet location. The power cable must be supported at the entrance to the borehole and throughout its length. The power pump cable will be secured, and with clamps, spaced approximately 25 feet apart, affixed to the discharge pipe casing.

(8) The pump installations will comply with all applicable 30 CFR requirements.

Within 60 days after this petition is granted, the petitioner will submit to the DM proposed revisions for their proposed part 48 training plan. These revisions will specify task training for all qualified mine electricians who perform electric work, monthly electrical examinations as required by 30 CFR 77.502, refresher training regarding the alternative method outlined in this petition, and the terms and conditions stated in the Proposed Decision and Order. The procedures of 30 CFR 48.3 for approval of proposed revisions to already approved training plans will apply.

The petitioner asserts that use of the proposed system described in this petition would prevent exposure of miners to unnecessary hazards, thereby increasing the measure of protection to the miners. Such submersible pumps have performed readily and are superior to the underground pumping systems that they replaced.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection to all miners as would be provided by the existing standard.

Docket No: M–2013–032–C.

Petitioner: Wolf Run Mining Company, Rt. 3, Box 146, Philippi, West Virginia 26416.

Mine: Sentinel Mine, MSHA I.D. No. 46–04168, located in Barbour County, West Virginia.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to allow the use of battery-powered nonpermissible surveying equipment in or inby the last open crosscut. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transit distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in or inby the last open crosscut will be examined prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following:

(i) Checking the instrument for any physical damage and the integrity of the case;

(ii) Removing the battery and inspecting for corrosion;

(iii) Inspecting the contact points to ensure a secure connection to the battery;

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections; and

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in or inby the last open crosscut.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn outby the last open crosscut.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment must be changed out or charged in fresh air outby the last open crosscut.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket No: M–2013–033–C.

Petitioner: Wolf Run Mining Company, Rt. 3, Box 146, Philippi, West Virginia 26416. .

Mine: Sentinel Mine, MSHA I.D. No. 46–04168, located in Barbour County, West Virginia.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to allow the use of battery-powered nonpermissible surveying equipment in return airways, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used in return airways. Such nonpermissible surveying equipment includes, but is not limited to, portable battery-operated total station surveying equipment, mine transit distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in return airways will be examined prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case;

(ii) Removing the battery and inspecting for corrosion;

(iii) Inspecting the contact points to ensure a secure connection to the battery;

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections; and

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in return airways.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn out of the return airways.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as required in 30 CFR 75.320.

(g) Batteries in the surveying equipment will be changed out or charged in fresh air out of the return.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the DM. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket No: M–2013–034–C.

Petitioner: Wolf Run Mining Company, Rt. 3, Box 146, Philippi, West Virginia 26416. .

Mine: Sentinel Mine, MSHA I.D. No. 46–04168, located in Barbour County, West Virginia.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to allow the use of battery-powered nonpermissible surveying equipment within 150 feet of pillar workings, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372, 75.1002(a), and 75.1200, use of the most practical and accurate surveying equipment is necessary. To ensure the safety of the miners in active mines and to protect miners in future mines that may mine in close proximity to these same active mines, it is necessary to determine the exact location and extent of the mine workings.

(2) Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used within 150 feet of pillar workings. Such nonpermissible surveying equipment includes, but is not limited to, portable battery-operated total station surveying equipment, mine transit distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used within 150 feet of pillar workings will be examined prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case;

(ii) Removing the battery and inspecting for corrosion;

(iii) Inspecting the contact points to ensure a secure connection to the battery;

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections; and

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment within 150 feet of pillar workings.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn further than 150 feet from pillar workings.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as required in 30 CFR 75.320.

(g) Batteries in the surveying equipment will be changed out or charged in fresh air more than 150 feet from pillar workings.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the DM. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners and that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Dated: August 9, 2013.

George F. Triebsch,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 2013–19767 Filed 8–14–13; 8:45 am]

BILLING CODE 4510–43–P

MORRIS K. UDALL AND STEWART L. UDALL FOUNDATION

Sunshine Act Meetings

TIME AND DATE: Electronic meeting to be held via email exchanges Tuesday, August 27, 2013, 8:00 a.m. (PDT), through Friday, August 30, 2013.

PLACE: Executive Session held via email.

STATUS: This special meeting of the Board of Trustees, to be held Electronically (in accordance with Foundation Operating Procedures), is closed to the public since it is necessary for the Board to consider items in Executive Session.

MATTERS TO BE CONSIDERED: Discuss and vote on the candidate for Executive Director of the Morris K. Udall and Stewart L. Udall Foundation, Philip J. Lemanski, as proposed by the Executive Committee as appointed and acting as the required Selection Committee.

CONTACT PERSON FOR MORE INFORMATION: Stephanie Zimmt-Mack, General Counsel, 130 South Scott Avenue, Tucson, AZ 85701, (520) 901–8500.

Dated: August 9, 2013.

Elizabeth E. Monroe,

Executive Assistant, Morris K. Udall and Stewart L. Udall Foundation, and Federal Register Liaison Officer.

[FR Doc. 2013–19812 Filed 8–14–13; 8:45 am]

BILLING CODE 6820–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 13–095]

Notice of Intent To Grant Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant Exclusive License.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive license in the United States to practice the inventions described and claimed in U.S. Patent No. 7,790,787; NASA Case No. KSC–12890 entitled ''Aerogel/Polymer Composite Materials;'' U.S. Patent No. 7,309,738; NASA Case No. KSC–12697 entitled ''Approach for Achieving Flame Retardancy While Retaining Physical Properties in a Compatible Polymer Matrix;'' and U.S. Patent No. 7,968,648; KSC–12697–3 entitled ''Approach for Achieving Flame Retardancy While Retaining Physical Properties in a Compatible Polymer Matrix;'' to AeroPlastic LP, having its principal place of business at 1325 White Drive, Titusville, FL 32780. The patent rights in these inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of the Chief Counsel, Mail Code CC–A, NASA John F. Kennedy Space Center, Kennedy Space Center, FL 32899. Telephone: 321–867–2076; Facsimile: 321–867–1817.

FOR FURTHER INFORMATION CONTACT: Shelley Ford, Patent Counsel, Office of the Chief Counsel, Mail Code CC–A, NASA John F. Kennedy Space Center, Kennedy Space Center, FL 32899. Telephone: 321–867–2076; Facsimile: 321–867–1817. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov/.*

Sumara M. Thompson-King,

Deputy General Counsel.

[FR Doc. 2013–19795 Filed 8–14–13; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Establish an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: Under the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501 et seq.), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public or other Federal agencies to comment on this proposed information collection.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Foundation, including whether the information will have practical utility; (b) the accuracy of the Foundation's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments on this notice must be received by October 15, 2013, to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to address below.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 1265, Arlington, Virginia 22230; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–(800) 877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

SUPPLEMENTARY INFORMATION:

Title of Collection: Computer and Information Science and Engineering Reporting Requirements.

OMB Number: 3145–NEW.

Expiration Date of Approval: Not applicable.

Type of Request: Intent to seek approval to establish an information collection.

Abstract

Proposed Project

The National Science Foundation's Directorate for Computer and Information Science and Engineering (CISE), through its Expeditions in Computing (EIC), Secure and Trustworthy Cyberspace (SaTC) Frontier, Cyber-Physical Systems (CPS) Frontier, and Future Internet Architecture (FIA) programs, supports an integrated, interdisciplinary research environment to advance fundamental computing, communications, and information science and engineering; educate a globally competitive and diverse workforce from K–12 on; and join academe and industry in partnership to achieve these goals. Projects funded through these four programs represent some of the largest single investments made by CISE and form the centerpiece of the directorate's award portfolio. Through these awards, the recipients conduct world-class research, creating new knowledge that is meaningfully linked to society.

Specifically, EIC, SaTC and CPS Frontier, and FIA projects constitute near center-scale activities that catalyze far-reaching research explorations motivated by deep scientific questions or hard problems in the computing and information fields, and/or by compelling applications that promise significant societal benefits. They stimulate significant research and education outcomes that, through effective knowledge transfer mechanisms, promise significant scientific, economic, and/or other societal benefits.

These projects foster research climates that nurture creativity and informed risk-taking, and value complementary research and education contributions such that each whole project is greater than the sum of its parts; draw upon well-integrated, diverse teams of investigators from one or more disciplines within computer and information science and engineering, as well as investigators from other fields where necessary; stimulate effective knowledge transfer; and demonstrate experimental systems or support shared experimental facilities (including instruments, platforms and/or testbeds), where necessary, to enable discovery and learning.

The EIC, SaTC and CPS Frontier, and FIA projects enable and foster excellent education, integrate research and education, speed knowledge/technology transfer through partnerships between academe and industry, and prepare a more competitive future workforce. They capitalize on diversity through participation in project activities and demonstrate leadership in the involvement of groups underrepresented in computer and information science and engineering.

Awardees will be required to submit annual project reports on progress and plans, which will be used as a basis for performance review and determining the level of continued funding. Such reporting requirements will be included as terms and conditions in the award letter.

Each project's annual report will address the reporting components specified in the Research Performance Progress Report (RPPR; *http://www.nsf.gov/bfa/dias/policy/rppr/*). However, the significant size and complexity of the set of awards noted above (up to $10 million per project over five years, with as many as 20 PIs and 40 students/postdocs per project across multiple institutions) warrants additional detail to ensure adequate oversight and proper stewardship of funds. Thus, in contrast to the RPPR format, there will be no length limitations for any sections of the report.

Use of the Information: The data collected will be used for NSF internal reports, historical data, performance review by peer site visit teams, program level studies and evaluations, and for securing future funding for continued maintenance and growth of the EIC, SaTC and CPS Frontiers, and FIA programs.

Estimate of Burden: 75 hours per project for 30 projects across the four programs for a total of 2250 hours plus.

Respondents: Academic institutions.

Estimated Number of Responses per Report: One from each of the 30 projects.

Dated: August 12, 2013.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2013–19810 Filed 8–14–13; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0288]

Interim Staff Guidance on Changes During Construction

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft interim staff guidance; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing this notice for use of, and to solicit public comment on the draft Interim Staff Guidance (ISG) COL–ISG–025 ''Interim Staff Guidance on Changes During Construction.'' This ISG provides guidance to the NRC staff on the Preliminary Amendment Request (PAR) review process available to the initial combined license (COL) licensees through a license condition for use as an elective precursor to the license amendment process.

DATES: Submit comments by October 29, 2013. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comment by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0288. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: 3WFN, 06A44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Earl Libby, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0522, email: *Earl.Libby@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2011–0288 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0288.
- *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 COL–ISG–025 ''Interim Staff Guidance on Changes during Construction under 10 CFR Part 52'' is available electronically under ADAMS Accession Number ML13045A125.
- *Federal Rulemaking Web site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0288.

B. Submitting Comments

Please include Docket ID NRC–2011–0288 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

Background

The NRC staff is issuing this second notice for use of, and to solicit public comments on, draft COL–ISG–025 (ADAMS Accession No. ML13045A125). Previously, on January 11, 2012, the NRC staff issued notice for the use of, and to solicit public comments on, the prior draft COL–ISG–025 (ADAMS Accession No. ML111530026) (Docket ID: NRC–2011–0288). The NRC staff is revising COL–ISG–025 to update the PAR review process, clarify the information that should be included with a PAR submittal, and include the staff consideration of comments received on the prior version of the ISG.

This ISG provides guidance to the staff on the PAR review process available to the initial Part 52 of Title 10 of the *Code of Federal Regulations* (10 CFR), COL licensees through a license condition for use as an elective precursor to the license amendment process. The PAR process facilitates the installation and testing of plant changes during construction. The NRC staff continues to use and evaluate the PAR process during the construction of the nuclear power plants licensed under 10 CFR Part 52 and will finalize this ISG for inclusion in either in a new Regulatory Guide (RG) or in the next major revision of RG 1.187, ''Guidance for Implementation of 10 CFR 50.59, Changes, Tests, and Experiments,'' November 2000 (ADAMS Accession No. ML003759710).

Backfitting and Issue Finality

Licensees may voluntarily follow the PAR process described in this draft ISG. Because the PAR process in this ISG is internal guidance to the NRC staff, it is not a matter for which either nuclear power plant applicants or licensees are protected under the Backfit Rule in 10 CFR 50.109 or the issue finality provisions under 10 CFR Part 52. A more detailed discussion of backfit and issue finality is included in the ISG.

Comments on the Prior Draft Interim Staff Guidance

A. Overview of Public Comments

The NRC issued the prior draft COL–ISG–025, *Changes During Construction under 10 CFR Part 52,* in the **Federal Register** on January 11, 2012 (77 FR 1749). The period for submitting comments on the draft COL–ISG–025 closed 75 days later.

The Commission received one comment submission containing seven comments on the Draft ISG from the Nuclear Energy Institute (NEI) (ADAMS Accession No. ML12089A019).

The comment summaries and the NRC's response for this submission are addressed below:

Comment Identification Format

All comments are identified uniquely by using the format [X]–[Y], where:

[X] Represents the comment submission identification number; and,

[Y] Represents the comment number, which the NRC assigned to the comment.

B. Comment Identification and Comment Response

NEI Comment 1–1: Editorial and Clarification. Insert on page 1, para. 2, second sentence, an apostrophe in ''licensee's.'' Additionally, to be clear about how the process works, revise the end of the same sentence as follows, ''. . . including ((strikeout) an applicability determination evaluation), the safety-security interface evaluation, the construction impacts evaluation and the 10 CFR 50.59-like *review (including applicability determination,* screening, *and* evaluation, *as applicable*).''

NRC Response: The NRC staff agrees in part with this comment to group and sequence the licensee's plant change review processes as they are generally conducted by licensees. The ISG–025 was changed on page 1, second paragraph to read as follows: ''The licensee's evaluation process comprises several successive steps, including the safety-security interface evaluation, the construction impacts evaluation and the 10 CFR 50.59 and 10 CFR 50–59-like evaluation (including applicability determination, screening, and evaluation, as applicable).''

NEI Comment 1–2: When not referring to a specific element of the 10 CFR 50.59-like process (such as applicability determination, screening or evaluation), the ISG should refer to the 10 CFR 50.59-like process ''review'' process. Revise on page 2, para. 1, the first sentence as follows: ''When the licensee's ((strikeout) screening evaluation) *10 CFR 50.59-like review* process determines . . .''

NRC Response: The staff does not agree with this comment. The 10 CFR 50.59-like process is an evaluation as established in the appendices of 10 CFR Part 52 at Section VIII.B.5.b which is invoked from Section VIII.B.5.a which states ''. . . [W]hen evaluating the proposed departure . . .''

NEI Comment 1–3: This paragraph discusses the use of the PAR and LAR processes to describe proposed plant changes or modifications that are solely due to a change in Tier 1 or Tier 2* information and are not because the change represents a potential safety issue. Like 10 CFR 50.59, the 10 CFR 50.59-like process is not a ''safety'' evaluation, but rather a review to determine if prior NRC approval is required. Re-word on page 2, para. 3, the last part of the first sentence of paragraph three as follows: ''. . . and not because the change ((strikeout) represents a potential safety issue) *has been determined to require prior NRC approval.''*

NRC Response: The NRC staff agrees with this comment that the 10 CFR 50.59 process and the 10 CFR 50.59-like process of 10 CFR Part 52, Appendices Section VIII are to determine if prior NRC approval of a plant change is required before implementing that change. The ISG–025 was changed on page 2, paragraph 3 to read as follows. ''The PAR and related LAR requests may describe proposed plant changes or modifications that require a license amendment (and possible exemption) because they describe a change to Tier 1 or Tier 2 information and, as part of the certification of the referenced design, such changes were determined to require prior NRC approval. This is analogous to Technical Specification changes under 10 CFR Parts 50 and 52, which always require a license amendment.''*

NEI Comment 1–4: Clarification. Insert on page 3, para. 2, ''Appendix C,'' after ''NEI 96–07.''

NRC Response: The NRC staff agrees with this comment because the change specifically identifies the applicable industry guidance for the preparation and submittal of PAR submissions to the NRC. The ISG–25 was changed on page 3, paragraph 2 to read as follows: ''NEI 96–07, Appendix C provides guidance on the preparation and submittal of PAR submissions.''

NEI Comment 1–5: Given the similar preliminary nature of the ''no significant hazards consideration'' determination and the preliminary determination of categorical exclusion from environmental review, we recommend the focus of the staff's PAR review be on the reasonableness of the preliminary determinations, not their adequacy. Adequacy of these licensee (final) determinations is determined as part of the [license amendment request] LAR review. Modify ISG–025 page 4, para. 4 and page 5, para. 1 & 2, to reflect that the PM [Project Manager] shall review the reasonableness of the PAR's preliminary ''no significant hazards consideration'' determination.

NRC Response: The NRC staff removed the provision for including a no significant hazards consideration determination (10 CFR 50.92) as well as a categorical exclusion from environmental review (10 CFR 51.22(c)) from the PAR submission; therefore this comment is no longer relevant. These two analyses, the no significant hazards consideration determination and the basis for categorical exclusion from environmental review, are both contained within the related LAR and are reviewed by the staff during the acceptance review of the related LAR. This action lowers the aggregate reporting burden on a licensee that elects to use the PAR process.

NEI Comment 1–6: It may be determined later that it might be best to endorse NEI 96–07, Appendix C via a separate regulatory guide for new plants, so that RG 1.187 remains focused on 10 CFR Part 50 licensees. We expect that the best approach will be determined based on further discussions of Appendix C. Modify page 6, para. 3, ISG–25 under Final Resolution Method to allow the option for a separate regulatory guide to be used to endorse NEI 96–07, Appendix C.

NRC Response: The NRC staff agrees with this comment that a separate RG may be developed in the future that is specific to 10 CFR Part 52 licensees and could maintain the RG 1.187 applicability to 10 CFR Part 50 licensees. The ISG–025 was changed on page 6, paragraph 3 to read as follows: ''Final Resolution Method: This issue will be resolved either in a new RG or in the next revision to RG 1.187, ''Guidance for Implementation for 10 CFR 50.59, Changes, Tests, and Experiments'' (ADAMS Accession No. ML003759710).''

NEI Comment 1–7: In various NRC-industry meetings on ISG–025, the NRC staff has said that licensees should use the PAR process when approval of the LAR is needed within one year of submittal of the LAR. It is recommended that this timing aspect be addressed in ISG–025.

NRC Response: The NRC staff does not agree with this comment. A PAR may be voluntarily submitted by a licensee at any time prior to, concurrent with or after the submittal of the related LAR (although the NRC cannot issue a PAR notification until the LAR is submitted). The 1-year time frame discussed is the expected processing time allocated to the staff's detailed technical review of a LAR. No change was made to the ISG as a result of this comment.

Other Changes to Draft Interim Staff Guidance

In addition to the changes made in response to public comments, as discussed above, this draft ISG–025 contains one substantial change which was derived from the lessons learned from the NRC staff's administrative practices during the past year of processing PARs and LARs for the new nuclear power plants under construction.

The criteria for issuing a PAR notification are dependent upon the staff's acceptance of the related LAR for detailed technical review. The staff will not issue the determination on the PAR until after the staff has accepted the related LAR for detailed technical review. This repositioning of the staff's determination reduces the regulatory burden on licensees by recognizing that the licensee's proposed basis for the no—significant hazards determination and the categorical exclusion from the National Environmental Policy Act evaluation is contained in the related LAR.

Because these two aspects are evaluated by the staff during the acceptance review of the related LAR, the provision for the licensee to submit this information in the PAR, and the staff's examination of this information during its consideration of the PAR were removed from COL–ISG–025.

This draft COL–ISG–025 clarifies that the staff will not issue a determination on the PAR until two conditions are satisfied; (1) The licensee submits the related LAR and, (2) the staff has accepted the related LAR for detailed technical review.

Dated in Rockville, Maryland, this 7th day of August 2013.

For the Nuclear Regulatory Commission.

Joseph Colaccino,

Chief, Policy Branch, Division of Advanced Reactors and Rulemaking, Office of New Reactors.

[FR Doc. 2013–19865 Filed 8–14–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–133; NRC–2013–0187]

Pacific Gas and Electric Company, Humboldt Bay Power Plant, Unit 3, Notice of Public Meeting on the License Termination Plan; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Application for license amendment; public meeting; correction.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is correcting a notice that was published in the **Federal Register** on August 7, 2013 (78 FR 48203), that provided notice that the NRC staff will conduct a public meeting to discuss and accept public comments on the Humboldt Bay Power Plant, Unit 3, License Termination Plan. This document is necessary to correct an incorrect NRC Docket ID appearing in the heading of the notice.

FOR FURTHER INFORMATION CONTACT: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch, Office of Administration, Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–287–0949; email: *Cindy.Bladey@nrc.gov.*

Correction

In the **Federal Register** (FR) on August 7, 2013, in FR Doc. 2013–19054, on page 48203, the NRC Docket ID in the heading is corrected to read ''[Docket No. 50–133; NRC–2013–0187].''

Dated at Rockville, Maryland, this 9th day of August 2013.

For the Nuclear Regulatory Commission.

Cindy Bladey,

Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 2013–19784 Filed 8–14–13; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2013–43; Order No. 1804]

Negotiated Service Agreement

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the modification of Global Plus 1C negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 16, 2013.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

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III. Commission Action
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I. Introduction

On August 8, 2013, the Postal Service filed notice, pursuant to 39 CFR 3015.5, that it has entered into a modification of the Global Plus 1C agreement approved in Docket No. CP2013–43 (Modification One).[1] Modification One consists of rate changes to Annex 3 Prices for Commercial ePacket service and a new paragraph, in Article 6, addressing the Postal Service's obligation to provide its contracting partner, on a periodic basis, with a list of countries for which Commercial ePacket service is available. Notice at 1, Attachment 1 at 2. This Order provides the public with notice of Modification One, invites comments, and takes other administrative steps.

II. Contents of Filing

In addition to the Notice, the Postal Service filed three attachments in support of Modification One:

- Attachment 1—a redacted copy of Modification One;
- Attachment 2—a certification of compliance with 39 U.S.C. 3633(a); and
- Attachment 3—a redacted copy of Governors' Decision No. 11–6, authorizing the new product.

The Postal Service also filed unredacted copies of the attachments

[1] Notice of the United States Postal Service of Filing Modification to Global Plus 1C Negotiated Service Agreement, August 8, 2013 (Notice). The Commission approved the underlying agreement in Order No. 1642, Order Approving Additional Global Plus 1C Negotiated Service Agreement, January 28, 2013.

and the supporting financial workpapers under seal.

III. Commission Action

The Commission reopens Docket No. CP2013–43 to consider issues raised by the Notice. The Commission invites comments from interested persons on whether Modification One is consistent with 39 U.S.C. 3632, 3633, 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than August 16, 2013. The public portions of the Postal Service's filing can be accessed via the Commission's Web site (*http://www.prc.gov*). Information on the Commission's treatment of non-public materials, including how to request access to them, appears in 39 CFR part 3007.

Allison J. Levy, previously designated to serve as Public Representative in this proceeding, will continue in that capacity.[2]

IV. Ordering Paragraphs

It is ordered:

1. The Commission reopens Docket No. CP2013–43 for consideration of matters raised by the Postal Service's Notice.

2. Allison J. Levy, previously designated to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding, will continue in that capacity.

3. Comments from interested persons are due no later than August 16, 2013.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2013–19802 Filed 8–14–13; 8:45 am]

BILLING CODE 7710–FW–P

[2] *See* Order No. 1624, Notice and Order Concerning an Additional Global Plus 1C Contract, January 16, 2013.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70155; File No. SR–NYSE–2013–57]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Section 902.03 of the Listed Company Manual To Specify How the Initial Application Fee Is Treated for Certain Issuers That Do Not Immediately List a Security for Which They Already Paid an Initial Application Fee

August 9, 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 July 31, 2013, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Section 902.03 of the Listed Company Manual (the ''Manual'') to specify how the Initial Application Fee is treated for certain issuers that do not immediately list a security for which they already paid an Initial Application Fee. In addition to the substantive changes proposed herein, the Exchange also proposes to make certain non-substantive changes to Section 902.03. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Section 902.03 of the Manual to specify how the Initial Application Fee is treated for certain issuers that do not immediately list a security for which they already paid an Initial Application Fee. In addition to the substantive changes proposed herein, the Exchange also proposes to make certain non-substantive changes to Section 902.03.

Background

Section 902.03 of the Manual provides for an Initial Application Fee of $25,000 that is charged to an issuer that applies to list certain securities on the Exchange.[3]

An issuer applying to list a security on the Exchange is subject to a preliminary free confidential review by NYSE Regulation, Inc. (''NYSER''), in which NYSER determines the issuer's qualification for listing. As set forth in Section 702.02 of the Manual, if NYSER determines in connection with this preliminary confidential review that the issuer is qualified for listing, the issuer is informed that it has been cleared as eligible to list and that the Exchange will accept a formal Original Listing Application from the issuer. It is the Exchange's practice to notify the issuer of its eligibility clearance and the conditions to its listing by means of a letter (the ''pre-clearance'' letter).[4]

For an issuer subject to the Initial Application Fee, payment of the Initial Application Fee is a prior condition to eligibility clearance being granted. As a practical matter, the Exchange anticipates that an issuer would pay the Initial Application Fee after NYSER has completed its preliminary confidential review and has determined that the issuer is eligible to submit a formal Original Listing Application, but before

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 68470 (December 19, 2012), 77 FR 76116 (December 26, 2012) (SR–NYSE–2012–68). Certain issuers are not required to pay an Initial Application Fee. *See* Section 902.03.

[4] The Exchange has submitted a rule filing to the SEC that would revise the sections of the Manual describing the listing application process and would delete Section 702.02. However, new Sections 104.00 and 702.00 will describe the eligibility clearance process in a manner that is substantively the same as that provided in this filing. *See* 34–69565 (May 13, 2013), 78 FR 29165 (May 17, 2013) (SR–NYSE–2013–33). *See also* 34–69878 (June 27, 2013) (extending until August 15, 2013 the Commission's time to take action on the listing application filing).

the ''pre-clearance'' letter has been issued. To enable an issuer to make an informed decision about whether to submit an Initial Application Fee, promptly after making a determination that an issuer is eligible to list but subject to the payment of the Initial Application Fee, the Exchange shall inform such issuer in writing that it is entitled to receive a clearance letter upon payment of the Initial Application Fee.[5]

The Initial Application Fee is applied toward the applicable Listing Fees for an issuer that lists on the Exchange. If an issuer pays an Initial Application Fee in connection with the application to list a security but does not immediately list such security, the issuer is not required to pay an additional Initial Application Fee if it subsequently lists such security, so long as (i) the issuer has a registration statement regarding such security on file with the Commission, or, (ii) if the issuer has withdrawn its registration statement, the issuer refiles a registration statement regarding such security within 12 months of the date of such withdrawal.

The Initial Application Fee is non-refundable. It is designed to allow the Exchange to recover, in part, the costs associated with processing and evaluating an issuer's application, irrespective of whether the relevant issuance qualifies for listing or whether such issuer decides to list on the Exchange, and to provide a disincentive for impractical applications by issuers.[6]

Emerging Growth Companies and Foreign Private Issuers

As noted above, if an issuer pays an Initial Application Fee in connection with the application to list a security but does not immediately list such security, the issuer is not required to pay an additional Initial Application Fee if it subsequently lists such security, so long as:

(i) The issuer has a registration statement regarding such security on file with the Commission, or,

(ii) if the issuer withdrew its registration statement, the issuer refiled a registration statement regarding such security within 12 months of the date of such withdrawal.

The Exchange proposes to amend Section 902.03 of the Manual to add two additional circumstances in which an issuer will not be required to pay a subsequent Initial Application Fee, in order to address issuers that do not file a publicly-available registration statement with the Commission. Specifically, pursuant to Section 6(e) of the Securities Act of 1933 (the ''Securities Act''),[7] an ''emerging growth company'' (as defined in Section 2(a)(19) of the Securities Act[8] and Section 3(a)(80) of the Act[9]) may submit a draft registration statement to the Commission for confidential, nonpublic review. Additionally, a foreign private issuer (as defined in Rule 3b–4(c) under the Act[10]) is also eligible to submit a draft registration statement as an emerging growth company or pursuant to a nonpublic submission policy of the Commission's Division of Corporation Finance.[11]

The Exchange proposes to add two additional provisions that specify that, if an issuer pays an Initial Application Fee in connection with the application to list a security but does not immediately list such security, and the issuer is an emerging growth company and/or foreign private issuer and has submitted a draft registration statement to the Commission for confidential, nonpublic review pursuant to Section 6(e) of the Securities Act or the foreign issuer nonpublic submission policy of the Commission's Division of Corporation Finance (a ''Confidential Submission''), the issuer will not be required to pay an additional Initial Application Fee if it subsequently lists a security, so long as:

(a) the issuer has submitted to the Commission through the Commission's electronic submission system a Confidential Submission within the previous 120 days (for purposes of this rule, a ''Current Confidential Submission'') and the issuer provides evidence of such Current Confidential Submission to the Exchange; or

(b) if the Confidential Submission has ceased to be a Current Confidential Submission, then, within 12 months of the date such Confidential Submission ceased to be a Current Confidential Submission the issuer resubmits a Confidential Submission regarding such security and the issuer provides evidence of such Confidential Submission to the Exchange, or publicly files a registration statement regarding such security.

Non-Substantive Change

In addition to the substantive changes proposed herein, the Exchange also proposes non-substantive changes to remove obsolete text from Section 902.03 of the Manual (i) stating that the Initial Application Fee became effective January 1, 2013, and (ii) referring to payment of Listing Fees for a security that transfers from another market.[12] Additionally, the Exchange proposes to specify that, as is the case today, the Initial Application is non-refundable.

The Exchange notes that the proposed change is not otherwise intended to address any other issues surrounding Initial Application Fees and that the Exchange is not aware of any problems that issuers would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[14] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

Generally, the Exchange believes that the proposed change is reasonable because it will ensure that a company that submits a confidential, nonpublic, draft registration statement to the Commission for review but does not immediately list the security, for which it has paid an Initial Application Fee will be treated the same as an issuer that has filed a public registration statement. The proposed rule change is reasonable because it protects issuers entitled to avail themselves of the ability to make a Confidential Submission by ensuring that they are not required to pay the Initial Application Fee twice.

The Exchange also believes that the proposed change is equitable and not unfairly discriminatory because it will maintain the effectiveness of an already-paid Initial Application Fee for an issuer that submits a confidential, nonpublic draft registration statement to the Commission for review, but does not

[5] The purpose of this notification is to assure any such issuer that it will not have to pay a non-refundable Initial Application Fee subject to any risk that it will not subsequently receive a clearance letter.

[6] *See* Securities Exchange Act Release No. 68470 (December 19, 2012), 77 FR 76116 (December 26, 2012) (SR–NYSE–2012–68).

[7] 15 U.S.C. 77f(e). *See* Section 106 of the Jumpstart Our Business Startups Act (the ''JOBS Act''), available at *http://www.gpo.gov/fdsys/pkg/BILLS-112hr3606enr/pdf/BILLS-112hr3606enr.pdf.*

[8] 15 U.S.C. 77b(a)(19).

[9] 15 U.S.C. 78c(a)(80).

[10] 17 CFR 240.3b–4(c).

[11] The policy is available at *http://www.sec.gov/divisions/corpfin/internatl/nonpublicsubmissions.htm.*

[12] As provided in Section 902.02 of the Listed Company Manual, an issuer is not required to pay Listing Fees in connection with transferring the listing of any class of equity securities, any structured product or any closed-end fund from any other national securities exchange.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4) and (5).

immediately list the security, on the same general terms as is currently applicable to an issuer that publicly files its registration statement.

The Exchange believes that the proposed non-substantive changes are reasonable because they will ensure that the description of the Initial Application Fee is clear and accurate. These changes are also equitable and not unfairly discriminatory because they will benefit all issuers and all other readers of the Manual.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is designed to specify how the Initial Application Fee is treated for an issuer that submits a confidential, nonpublic draft registration statement to the Commission for review, but does not immediately list the security. Additionally, the proposed rule change does not impose a burden on competition because it ensures that companies that avail themselves of the ability to make a Confidential Submission are treated the same as issuers that file a public registration statement for purposes of the Initial Application Fee. Therefore, there is no disincentive to make a Confidential Submission as opposed to publicly filing a registration statement.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6) thereunder.[16]

The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Doing so will allow the Exchange to immediately specify in its rules how the Initial Application Fee is treated for an issuer that makes a Confidential Submission with respect to a security but does not immediately list the security, which is similar to the current treatment for public filers for purposes of paying the Initial Application Fee. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[17]

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 under Section 19(b)(2)(B) of the Act [18] to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2013–57 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2013–57. 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 at 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2013–57, and should be submitted on or before September 5, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–19783 Filed 8–14–13; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[17] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78s(b)(2)(B).

[19] 17 CFR 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments and Notice of Public Hearing Concerning China's Compliance With WTO Commitments

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments and notice of public hearing concerning

China's compliance with its WTO commitments.

SUMMARY: The interagency Trade Policy Staff Committee (TPSC) will convene a public hearing and seek public comment to assist the Office of the United States Trade Representative (USTR) in the preparation of its annual report to the Congress on China's compliance with the commitments made in connection with its accession to the World Trade Organization (WTO).

DATES: Persons wishing to testify at the hearing must provide written notification of their intention, as well as a summary of their testimony, by Friday, September 20, 2013. Written comments are also due by Friday, September 20, 2013. A hearing will be held in Washington, DC, on Friday, October 4, 2013.

ADDRESSES: Notifications of intent to testify and written comments should be submitted electronically via the Internet at *http://www.regulations.gov.* For alternatives to on-line submissions, please contact Yvonne Jamison, Trade Policy Staff Committee, at (202) 395–3475.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning written comments or participation in the public hearing, contact Yvonne Jamison at (202) 395–3475. All other questions should be directed to Terrence J. McCartin, Deputy Assistant United States Trade Representative for China Enforcement, at (202) 395–3900, or Katherine C. Tai, Chief Counsel for China Enforcement, at (202) 395–3150.

SUPPLEMENTARY INFORMATION:

1. Background

China became a Member of the WTO on December 11, 2001. In accordance with section 421 of the U.S.-China Relations Act of 2000 (Pub. L. 106–286), USTR is required to submit, by December 11 of each year, a report to Congress on China's compliance with commitments made in connection with its accession to the WTO, including both multilateral commitments and any bilateral commitments made to the United States. In accordance with section 421, and to assist it in preparing this year's report, the TPSC is hereby soliciting public comment. Last year's report is available on USTR's Internet Web site (*http://www.ustr.gov/webfm_send/3620*).

The terms of China's accession to the WTO are contained in the Protocol on the Accession of the People's Republic of China (including its annexes) (Protocol), the Report of the Working Party on the Accession of China (Working Party Report), and the WTO agreements. The Protocol and Working Party Report can be found on the Department of Commerce Web page, *http://www.mac.doc.gov/china/WTOAccessionPackageNEW.html,* or on the WTO Web site, *http://docsonline.wto.org* (document symbols: WT/L/432, WT/MIN(01)/3, WT/MIN(01)/3/Add.1, WT/MIN(01)/3/Add.2).

2. Public Comment and Hearing

USTR invites written comments and/or oral testimony of interested persons on China's compliance with commitments made in connection with its accession to the WTO, including, but not limited to, commitments in the following areas: (a) Trading rights; (b) import regulation (e.g., tariffs, tariff-rate quotas, quotas, import licenses); (c) export regulation; (d) internal policies affecting trade (e.g., subsidies, standards and technical regulations, sanitary and phytosanitary measures, government procurement, trade-related investment measures, taxes and charges levied on imports and exports); (e) intellectual property rights (including intellectual property rights enforcement); (f) services; (g) rule of law issues (e.g., transparency, judicial review, uniform administration of laws and regulations) and status of legal reform; and (h) other WTO commitments. In addition, given the United States' view that China should be held accountable as a full participant in, and beneficiary of, the international trading system, USTR requests that interested persons specifically identify unresolved compliance issues that warrant review and evaluation by USTR's China Enforcement Task Force.

Written comments must be received no later than Friday, September 20, 2013.

A hearing will be held on Friday, October 4, 2013, in Room 1, 1724 F Street NW., Washington, DC 20508. If necessary, the hearing will continue on the next business day. Persons wishing to testify orally at the hearing must provide written notification of their intention by Friday, September 20, 2013. The intent to testify notification must be made in the ''Type Comment'' field under docket number USTR–2013–0026 on the regulations.gov Web site and should include the name, address and telephone number of the person presenting the testimony. A summary of the testimony should be attached by using the ''Upload File'' field. The name of the file should also include who will be presenting the testimony. Remarks at the hearing should be limited to no more than five minutes to allow for possible questions from the TPSC.

All documents should be submitted in accordance with the instructions in section 3 below.

3. Requirements for Submissions

Persons submitting a notification of intent to testify and/or written comments must do so in English and must identify (on the first page of the submission) ''China's WTO Compliance.''

In order to ensure the timely receipt and consideration of comments, USTR strongly encourages commenters to make on-line submissions, using the *www.regulations.gov* Web site. To submit comments via *www.regulations.gov,* enter docket number USTR–2013–0026 on the home page and click ''search.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice and click on the link entitled ''Comment Now!'' (For further information on using the *www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on ''How to Use This Site'' on the left side of the home page.)

The *www.regulations.gov* Web site allows users to provide comments by filling in a ''Type Comment'' field, or by attaching a document using an ''Upload File'' field. USTR prefers that comments be provided in an attached document. If a document is attached, it is sufficient to type ''See attached'' in the ''Type Comment'' field. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If the submission is in an application other than those two, please indicate the name of the application in the ''Type Comment'' field.

For any comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters ''BC.'' Any page containing business confidential information must be clearly marked ''BUSINESS CONFIDENTIAL'' on the top of that page. Filers of submissions containing business confidential information must also submit a public version of their comments. The file name of the public version should begin with the character ''P.'' The ''BC'' and ''P'' should be followed by the name of the person or entity submitting the comments. Filers submitting comments containing no business confidential information should name their file using the name of the person or entity submitting the comments.

Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the submission itself, not as separate files.

As noted above, USTR strongly urges submitters to file comments through *www.regulations.gov,* if at all possible. Any alternative arrangements must be made with Yvonne Jamison in advance of transmitting the comments. Ms. Jamison should be contacted at (202) 395–3475. General information concerning USTR is available at *www.ustr.gov.*

Comments will be placed in the docket and open to public inspection, except business confidential information. Comments may be viewed on the *www.regulations.gov* Web site by entering the relevant docket number in the search field on the home page.

Douglas M. Bell,

Chair, Trade Policy Staff Committee.

[FR Doc. 2013–19846 Filed 8–14–13; 8:45 am]

BILLING CODE 3290–F3–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments and Notice of Public Hearing Concerning Russia's Implementation of Its WTO Obligations

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments and notice of public hearing concerning Russia's implementation of its obligations as a Member of the World Trade Organization (WTO).

SUMMARY: The interagency Trade Policy Staff Committee (TPSC) will convene a public hearing and seek public comment to assist the Office of the United States Trade Representative (USTR) in the preparation of its annual report to Congress on Russia's implementation of its obligations as a Member of the WTO.

DATES: Written comments are due by 11:59 p.m., Thursday, September 12, 2013. Persons wishing to testify orally at the hearing must provide written notification of their intention, as well as a summary of their testimony, by 11:59 p.m., Thursday, September 12, 2013. The hearing will be held on Friday, September 27, 2013, beginning at 9:30 a.m. in Rooms 1 & 2, 1724 F Street NW., Washington, DC 20508.

ADDRESSES: Written comments and notifications of intent to testify should be submitted electronically via the Internet at *www.regulations.gov.* If you are unable to provide submissions at *www.regulations.gov,* please contact Yvonne Jamison, TPSC, at (202) 395–3475, to arrange for an alternative method of transmission.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning written comments, please contact Yvonne Jamison at (202) 395–3475. All other questions regarding this notice should be directed to Betsy Hafner, Deputy Assistant United States Trade Representative for Russia and Eurasia, at (202) 395–9124.

SUPPLEMENTARY INFORMATION:

1. Background

Russia became a Member of the WTO on August 22, 2012, and on December 21, 2012, following the termination of the application of the Jackson-Vanik amendment to Russia and the extension of permanent normal trade relations to the products of Russia, the United States and Russia both filed letters with the WTO withdrawing their notices of non-application and consenting to have the WTO Agreement apply between them. In accordance with section 201(a) of the Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitskiy Rule of Law Accountability Act of 2012 (Pub. L. 112–208), USTR is required to submit, by December 21 of each year, a report to Congress on the extent to which Russia is implementing the WTO Agreement, including the Agreement on the Application of Sanitary and Phytosanitary Measures and the Agreement on Trade Related Aspects of Intellectual Property Rights. The Report must also assess Russia's progress on acceding to the Information Technology Agreement (ITA) and the Government Procurement Agreement (GPA). In addition, to the extent that USTR finds that Russia is not implementing fully the WTO Agreement or is not making adequate progress in acceding to the ITA or the GPA, USTR must describe in the report the actions it plans to take to encourage Russia to improve its implementation and/or increase its accession efforts. In accordance with section 201(a), and to assist it in preparing this year's report, the TPSC is hereby soliciting public comment.

The terms of Russia's accession to the WTO are contained in the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement) and the Protocol on the Accession of the Russian Federation to the WTO (including its annexes) (Protocol). The Report of the Working Party on the Accession of the Russian Federation (Working Party Report) provides detail and context to the commitments listed in the Protocol. The Protocol and Working Party Report can be found on USTR's Web page, *http://www.ustr.gov/webfm_send/3224* or on the WTO Web site, *http://docsonline.wto.org* (document symbols: WT/ACC/RUS/70, WT/MIN(11)/2, WT/MIN(11)/24, WT/L/839, and WT/ACC/RUS/70/Add.1, WT/ACC/RUS/70/Add.2.

2. Public Comment and Hearing

USTR invites written comments and/or oral testimony of interested persons on Russia's implementation of the commitments made in connection with its accession to the WTO, including, but not limited to, commitments in the following areas: (a) Import regulation (e.g., tariffs, tariff-rate quotas, quotas, import licenses); (b) export regulation; (c) subsidies; (d) standards and technical regulations; (e) sanitary and phytosanitary measures; (f) trade-related investment measures; (g) taxes and charges levied on imports and exports; (h) other internal policies affecting trade; (i) intellectual property rights (including intellectual property rights enforcement); (j) services; (k) rule of law issues (e.g., transparency, judicial review, uniform administration of laws and regulations); and (l) other WTO commitments.

Written comments must be received no later than 11:59 p.m., Thursday, September 12, 2013.

A hearing will be held on Friday, September 27, 2013, in Rooms 1 & 2, 1724 F Street NW., Washington, DC 20508. If necessary, the hearing will continue on the next business day. Persons wishing to testify at the hearing must provide written notification of their intention by 11:59 p.m., September 12, 2013. The intent to testify notification must be made in the ''Type Comment'' field under docket number USTR–2013–0025 on the *www.regulations.gov* Web site and should include the name, address and telephone number of the person presenting the testimony. A summary of the testimony should be attached by using the ''Upload File'' field. The name of the file should also include who will be presenting the testimony. Remarks at the hearing should be limited to no more than five minutes to allow for possible questions from the TPSC.

3. Requirements for Submissions

Persons submitting a notification of intent to testify and/or written comments must do so in English and must identify (on the first page of the submission) ''Russia's WTO Implementation.'' In order to be assured of consideration, comments should be submitted by 11:59 p.m., September 12, 2013.

In order to ensure the timely receipt and consideration of comments, USTR strongly encourages commenters to make on-line submissions, using the *www.regulations.gov* Web site. To submit comments via *www.regulations.gov,* enter docket number USTR–2013–0025 on the home page and click ''search.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice and click on the link entitled ''Comment Now!'' (For further information on using the *www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on ''How to Use This Site'' on the left side of the home page).

The *www.regulations.gov* Web site allows users to provide comments by filling in a ''Type Comment'' field, or by attaching a document using an ''Upload File'' field. USTR prefers that comments be provided in an attached document. If a document is attached, it is sufficient to type ''See attached'' in the ''Type Comment'' field. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If the submission is in an application other than those two, please indicate the name of the application in the ''Type Comment'' field.

For any comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters ''BC''. Any page containing business confidential information must be clearly marked ''BUSINESS CONFIDENTIAL'' on the top of that page. Filers of submissions containing business confidential information must also submit a public version of their comments. The file name of the public version should begin with the character ''P''. The ''BC'' and ''P'' should be followed by the name of the person or entity submitting the comments or reply comments. Filers submitting comments containing no business confidential information should name their file using the name of the person or entity submitting the comments.

Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the submission itself, not as separate files.

As noted, USTR strongly urges submitters to file comments through *www.regulations.gov,* if at all possible. Any alternative arrangements must be made with Yvonne Jamison in advance of transmitting a comment. Ms. Jamison should be contacted at (202) 395–3475. General information concerning USTR is available at *www.ustr.gov.* Comments will be placed in the docket and open to public inspection, except business confidential information. Comments may be viewed on the *www.regulations.gov* Web site by entering the relevant docket number in the search field on the home page.

Douglas M. Bell,

Chair, Trade Policy Staff Committee.

[FR Doc. 2013–19859 Filed 8–14–13; 8:45 am]

BILLING CODE 3290–F3–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Request To Release Airport Property

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on request to release airport property at the Ottumwa Regional Airport (OTM), Ottumwa, Iowa.

SUMMARY: The FAA proposes to rule and invites public comment on the release of land, Lot #2, at the Ottumwa Regional Airport, Ottumwa, Iowa, under the provisions of 49 U.S.C. 47107(h)(2).

DATES: Comments must be received on or before September 16, 2013.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Lynn D. Martin, Airports Compliance Specialist, Federal Aviation Administration, Airports Division, ACE–610C, 901 Locust Room 364, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to: Tom Francis, Airport Manager, C/O Ottumwa Regional Airport 14802 Terminal St. Ottumwa, IA 50501, 641–683–0619.

FOR FURTHER INFORMATION CONTACT: Lynn D. Martin, Airports Compliance Specialist, Federal Aviation Administration, Airports Division, ACE–610C, 901 Locust Room 364, Kansas City, MO 64106, (816) 329–2644, *lynn.martin@faa.gov.*

The request to release property may be reviewed, by appointment, in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release approximately 2.39 acres of airport property, Lot #2, at the Ottumwa Regional Airport (OTM) under the provisions of 49 U.S.C. 47107(h)(2). On January 2, 2013, the Airport Manager at the Ottumwa Regional Airport requested from the FAA that approximately 2.39 acres of property, Lot #2, be released for sale to Bridge City Truck Repair for use as a truck repair and maintenance operation. On July 16, 2013, the FAA determined that the request to release property at the Ottumwa Regional Airport (OTM) submitted by the Sponsor meets the procedural requirements of the Federal Aviation Administration and the release of the property does not and will not impact future aviation needs at the airport. The FAA may approve the request, in whole or in part, no sooner than thirty days after the publication of this Notice.

The following is a brief overview of the request:

Ottumwa Regional Airport (OTM) is proposing the release of one parcel, Lot #2, containing 2.39 acres, more or less. The release of land is necessary to comply with Federal Aviation Administration Grant Assurances that do not allow federally acquired airport property to be used for non-aviation purposes. The sale of the subject property will result in the land at the Ottumwa Regional Airport (OTM) being changed from aeronautical to non-aeronautical use and release the lands from the conditions of the Airport Improvement Program Grant Agreement Grant Assurances. In accordance with 49 U.S.C. 47107(c)(2)(B)(i) and (iii), the airport will receive fair market value for the property, which will be subsequently reinvested in another eligible airport improvement project for general aviation facilities at the Ottumwa Regional Airport.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon appointment and request, inspect the application, notice and other documents determined by the FAA to be related to the application in person at the Ottumwa Regional Airport.

Issued in Kansas City, MO, on August 7, 2013.

Jim A. Johnson,

Manager, Airports Division.

[FR Doc. 2013–19844 Filed 8–14–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 12, 2013.

The Department of the Treasury will submit the following information collection requests 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 September 16, 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.*

Bureau of the Fiscal Service

OMB Number: 1535–0121.

Type of Review: Extension without change of a currently approved collection.

Title: U.S. Treasury Securities State and Local Government Series—Early Redemption Request.

Form: PD F 5377.

Abstract: The information is used to process early redemption requests for the owners of State and Local Government Series Securities.

Affected Public: State, Local, and Tribal Governments.

Estimated Annual Burden Hours: 247.

OMB Number: 1535–0131.

Type of Review: Revision of a currently approved collection.

Title: Application for Disposition of Series I Savings Bonds after the Death of the Registered Owner(s).

Form: PD F 5394.

Abstract: The information is necessary to distribute Treasury securities and/or payments to the entitled person(s) when the decedent's estate was formally administered through the court and has been closed, or the estate is being settled in accordance with State statute without the necessity of the court appointing a legal representative.

Affected Public: Individuals or Households.

Estimated Annual Burden Hours: 9,250.

OMB Number: 1535–0092.

Type of Review: Extension without change of a currently approved collection.

Title: Subscription for Purchase and Issue of U.S. Treasury Securities—State and Local Government Series.

Form: PD F 4144, 4144–1, 4144–2, 4144–6, 4144–7, and 4144–5.

Abstract: The information is necessary to establish and maintain the accounts for owners of securities of State and Local Government Series.

Affected Public: State, Local, and Tribal Governments.

Estimated Annual Burden Hours: 2,713.

OMB Number: 1535–0127.

Type of Review: Revision of a currently approved collection.

Title: Offering of U.S. Mortgage Guaranty Insurance Company Tax and Loss Bonds.

Abstract: Regulations governing the issue, reissue, and redemption of U.S. Mortgage Guaranty Insurance Company Tax and Loss Bonds.

Affected Public: Private sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 13.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2013–19804 Filed 8–14–13; 8:45 am]

BILLING CODE 4810–39–P

FEDERAL REGISTER

Vol. 78 Thursday,
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Part II

Environmental Protection Agency

40 CFR Part 80
Regulation of Fuels and Fuel Additives: 2013 Renewable Fuel Standards; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2012–0546; FRL–9834–5]

RIN 2060–AR43

Regulation of Fuels and Fuel Additives: 2013 Renewable Fuel Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under section 211(o) of the Clean Air Act, the Environmental Protection Agency is required to set the renewable fuel percentage standards each November for the following year. Today's action sets the annual percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel, and renewable fuels that apply to all motor vehicle gasoline and diesel produced or imported in the year 2013. In general the standards are designed to ensure that the applicable national volumes of renewable fuel specified in the statute are used. For cellulosic biofuel, the statute specifies that EPA is to project the volume of production and must base the cellulosic biofuel standard on that projected volume if it is less than the applicable volume set forth in the Act. Today EPA is finalizing a cellulosic biofuel volume for 2013 that is below the applicable volume specified in the Act. EPA is also leaving the applicable volumes of advanced biofuel and total renewable fuel at the statutory levels for 2013 based on its assessment of the availability of renewable fuel for compliance purposes.

DATES: This final rule is effective on August 15, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2012–0546. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Julia MacAllister, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; Telephone number: 734–214–4131; Fax number: 734–214–4816; Email address: *macallister.julia@epa.gov*, or the public information line for the Office of Transportation and Air Quality; telephone number (734) 214–4333; Email address *OTAQ@epa.gov.*

SUPPLEMENTARY INFORMATION:

General Information

Does this action apply to me?

Entities potentially affected by this final rule are those involved with the production, distribution, and sale of transportation fuels, including gasoline and diesel fuel or renewable fuels such as ethanol and biodiesel. Potentially regulated categories include:

Category	NAICS [1] Codes	SIC [2] Codes	Examples of potentially regulated entities
Industry	324110	2911	Petroleum Refineries.
Industry	325193	2869	Ethyl alcohol manufacturing.
Industry	325199	2869	Other basic organic chemical manufacturing.
Industry	424690	5169	Chemical and allied products merchant wholesalers.
Industry	424710	5171	Petroleum bulk stations and terminals.
Industry	424720	5172	Petroleum and petroleum products merchant wholesalers.
Industry	454319	5989	Other fuel dealers.

[1] North American Industry Classification System (NAICS).
[2] Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this final action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your activities will be regulated by this action, you should carefully examine the applicability criteria in 40 CFR part 80. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section.

Outline of This Preamble

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2. Advanced Biofuel and Total Renewable Fuel in 2013
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VIII. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act
IX. Statutory Authority

I. Executive Summary

The Renewable Fuel Standard (RFS) program began in 2006 pursuant to the requirements in Clean Air Act (CAA) section 211(o) which were added through the Energy Policy Act of 2005 (EPAct). The statutory requirements for the RFS program were subsequently modified through the Energy Independence and Security Act of 2007 (EISA), resulting in the publication of major revisions to the regulatory requirements on March 26, 2010.[1]

The national volumes of renewable fuel to be used under the RFS program each year (absent an adjustment or waiver by EPA) are specified in CAA section 211(o)(2). The volumes for 2013 are shown in Table I–1.

TABLE I–1—REQUIRED APPLICABLE VOLUMES IN THE CLEAN AIR ACT FOR 2013

[Bill gal]

Cellulosic biofuel	[a] 1.0
Biomass-based diesel	[b] ≥1.0
Advanced biofuel	[a] 2.75
Renewable fuel	[a] 16.55

[a] Ethanol-equivalent volume.
[b] Actual volume. The ethanol-equivalent volume would be 1.5 if biodiesel is used to meet this requirement.

Under the RFS program, EPA is required to determine and publish annual percentage standards for each compliance year by November 30 of the previous year.[2] The percentage standards are used by obligated parties (refiners and importers) to calculate their individual compliance obligations. The percentage standards are applied to the volume of gasoline and/or diesel fuel that each obligated party produces or imports during the specified calendar year to determine the volumes of renewable fuel that must be used as transportation fuel, heating oil or qualifying fuel oil, or jet fuel. The percentage standards are calculated so as to ensure use in transportation fuel of the national ''applicable volumes'' of four types of biofuel (cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuel) that are either set forth in the Clean Air Act or established by EPA in accordance with the Act's requirements.

The cellulosic biofuel industry is transitioning from research and development (R&D) and pilot scale to commercial scale facilities, leading to increases in production capacity. Construction has begun on several facilities with multiple facilities having progressed to the start-up phase. Based on information from the Energy Information Administration (EIA), detailed information from biofuel production companies and a consideration of various potential uncertainties, as well as the comments we received on the Notice of Proposed Rulemaking (NPRM),[3] we are projecting that 6 million ethanol-equivalent gallons of cellulosic biofuel will be available in 2013.

We have evaluated the types of advanced biofuels that can be produced or imported in 2013, including biodiesel, renewable diesel, biogas, heating oil, sugarcane ethanol, and others. While there is some uncertainty in the projected availability of advanced biofuel in 2013, we have determined that volumes to meet the statutory applicable volume of 2.75 bill gal should be sufficiently available. In addition, the combination of available volumes of advanced and non-advanced biofuel[4] from both domestic and foreign sources, the ability of the transportation sector to consume some quantity of ethanol in blend levels higher than E10, and carryover Renewable Identification numbers (RINs) from 2012 has led us to conclude that the statutory volumes for both advanced biofuel and total renewable fuel can be met in 2013. As a result, we are not reducing the national applicable volumes in the statute for either advanced biofuel or total renewable fuel volume of 16.55 bill gal.

A. Purpose of This Action

EPA is today setting annual percentage requirements for obligated parties for cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuel for 2013. Table I.A–1 lists the statutory provisions and associated criteria relevant to determining the national applicable volumes used to set the annual percentage standards in today's final rule.

TABLE I.A–1—STATUTORY PROVISIONS FOR DETERMINATION OF APPLICABLE VOLUMES

Applicable volumes	Clean Air Act reference	Criteria provided in statute for determination of applicable volume
Cellulosic biofuel in 2013.	211(o)(7)(D)(i)	Required volume must be lesser of volume specified in CAA 211(o)(2)(B)(i)(III) or EPA's projected volume.

[1] 75 FR 14670

[2] The delay in the release of this final rule is addressed in more detail in Section I.C below.

[3] 78 FR 9282, February 7, 2013.

[4] Non-advanced is composed primarily of corn ethanol, but may also include such things as biodiesel produced in facilities that are grandfathered under § 80.1403.

TABLE I.A–1—STATUTORY PROVISIONS FOR DETERMINATION OF APPLICABLE VOLUMES—Continued

Applicable volumes	Clean Air Act reference	Criteria provided in statute for determination of applicable volume
Advanced biofuel in 2013.	211(o)(7)(D)(i)	If applicable volume of cellulosic biofuel is reduced to the projected volume, EPA may reduce advanced biofuel and total renewable fuel by the same or lesser volume. No other criteria specified.
Total renewable fuel in 2013.	211(o)(7)(D)(i)	If applicable volume of cellulosic biofuel is reduced to the projected volume, EPA may reduce advanced biofuel and total renewable fuel by the same or lesser volume. No other criteria specified.

EPA must annually determine the projected volume of cellulosic biofuel production for the following year. If the projected volume of cellulosic biofuel production is less than the applicable volume specified in section 211(o)(2)(B)(i)(III) of the statute, EPA must lower the applicable volume used to set the annual cellulosic biofuel percentage standard to the projected volume of production available during the year. In today's final rule, we present our analysis of cellulosic biofuel production and final projected volume for 2013. The analyses that led to the 2013 applicable volume requirement were based on our evaluation of EIA's projection for 2013, individual producers' production plans and progress to date, and comments received in response to the NPRM.

When we lower the applicable volume of cellulosic biofuel below the volume specified in CAA 211(o)(2)(B)(i)(III), we also have the authority to reduce the applicable volumes of advanced biofuel and total renewable fuel by the same or a lesser amount. Today's action includes our consideration of the 2013 volume requirements for these biofuels.

In today's final rule we have also set the annual percentage standards (shown in Section I.B.3 below) that will apply to all producers and importers of gasoline and diesel in 2013. The percentage standards are based on the 2013 applicable volumes for the four types of renewable fuel and a projection of volumes of gasoline and diesel consumption in 2013 from the Energy Information Administration (EIA).

B. Summary of Major Provisions in This Notice

1. Cellulosic Biofuel Volume for 2013

The cellulosic biofuel industry in the United States continues to make advances in its progress towards large scale commercial production. Ongoing research and development work has resulted in increasing product yields, while at the same time lowering enzyme and catalyst costs. New supply chains have been developed, and several companies have reached contract agreements to provide the necessary feedstock for large scale cellulosic biofuel production facilities. Companies are continuing to invest significant sums of money to further refine cellulosic biofuel production technology and to construct the first commercial scale facilities. From 2007 through the second quarter of 2012 over $3.4 billion was invested in advanced biofuel production companies by venture capitalists alone.[5] For more information on the current status of the cellulosic biofuel industry in the United States and the advances being made, see Section II.B.

2013 is also expected to be a year of transition for the cellulosic biofuel industry, as several companies are shifting their focus from technology development to commercialization. This transition began in 2012 with the production of the first cellulosic RINs under the current regulations and the completion of construction at commercial scale production facilities from INEOS Bio and KiOR. KiOR announced the shipment of the first renewable transportation fuel produced from their Columbus, MS facility on March 18, 2013. INEOS Bio is expected to begin producing fuel from their Vero Beach, FL facility in the summer of 2013. Abengoa, one of the largest producers of ethanol in the United States, is planning to begin producing cellulosic ethanol at commercial scale later in 2013 or early 2014. Several others companies, including DuPont and Poet, expect to be constructing their first commercial scale facilities in 2013, with the intention of beginning production in 2014. If these facilities are able to operate as anticipated, it would represent significant further progress in the commercial viability of cellulosic biofuel production.

As part of estimating the volume of cellulosic biofuel that would be made available in the U.S. in 2013, we researched all potential production sources by company and facility. This included sources that were still in the planning stages, those that were under construction, and those that are already producing some volume of cellulosic ethanol, cellulosic diesel, or some other type of cellulosic biofuel. Facilities primarily focused on research and development were not the focus of our assessment as production from these facilities represents very small volumes of cellulosic biofuel, and these facilities typically have not generated RINs for the fuel they have already produced. From this universe of potential cellulosic biofuel sources we identified the subset that could be producing commercial volumes of qualifying cellulosic biofuel for use in 2013. To arrive at a projected volume for each facility, we took into consideration EIA's projections and factors such as the current and expected state of funding, the status of the technology utilized, progress towards construction and production goals, and other significant factors that could potentially impact fuel production or the ability of the produced fuel to qualify for cellulosic biofuel Renewable Identification Numbers (RINs) in 2013. Further discussion of these factors can be found in Section II.B.

In our assessment we focused on domestic sources of cellulosic biofuel. At the time of this final rule no internationally-based cellulosic biofuel production facilities have registered under the RFS program and therefore no volume from international producers has been included in our projections for 2013. Of the domestic sources, we estimated that up to four facilities may produce commercial scale volumes of cellulosic biofuel available for use as renewable fuel in the U.S. in 2013. Two of these four facilities have made sufficient progress to project that commercial scale production from these two facilities will occur in 2013, and we have therefore included production from them in our projected available volume for 2013. All four facilities are listed in Table I.B.1–1 along with our estimate of the projected 2013 volume for each.

[5] Solecki M, Dougherty A, Epstein B. Advanced Biofuel Market Report 2012: Meeting U.S. Fuel Standards. Environmental Entrepreneurs. September 6, 2012. Available Online *http://www.e2.org/ext/doc/E2AdvancedBiofuelMarketReport2012.pdf.*

TABLE I.B.1–1—EPA PROJECTED AVAILABLE CELLULOSIC BIOFUEL PLANT VOLUMES FOR 2013

Company	Location	Fuel type	Capacity (mill gal per year)	First production	Projected 2013 available volume [a]
Abengoa	Hugoton, KS	Ethanol	24	1Q 2014 [b]	0
Fiberight	Blairstown, IA	Ethanol	6	1Q 2014 [b]	0
INEOS Bio	Vero Beach, FL	Ethanol	8	Mid 2013	0–1
KiOR	Columbus, MS	Gasoline and Diesel	11	March 18, 2013	5–6
Total			49		6

[a] Volumes listed in million ethanol-equivalent gallons.
[b] Start-up dates for these facilities are projections.

The EIA projections,[6] variation in expected start-up times, along with the facility production capacities, company production plans, the progress made in the first half or 2013, and a variety of other factors have all been taken into account in predicting the actual volume of cellulosic biofuel that will be available for use in 2013. For more detailed information on our projections of cellulosic biofuel in 2013 and the companies we expect to produce this volume see Section II.

2. Advanced Biofuel and Total Renewable Fuel in 2013

The statute authorizes EPA to reduce the applicable volume of advanced biofuel and total renewable fuel specified in the statute if we reduce the applicable volume of cellulosic biofuel for a given year below the statutory applicable volume specified in Section 211(o)(2)(B)(i)(III). As shown in Table I.B.1–1, for 2013 we have projected cellulosic biofuel production at 6 million ethanol-equivalent gallons, significantly less than the applicable volume of 1.0 bill gal set forth in the statute. Therefore, we have also evaluated whether to lower the applicable volumes for advanced biofuel and total renewable fuel. The statute provides no explicit criteria or direction for making this determination. As in the proposed rule, we have focused our evaluation for this final rule on the availability of renewable fuels that would qualify as advanced biofuel and renewable fuel, the ability of those fuels to be consumed, and carryover RINs from 2012. We also considered the many comments received on our proposed approach, including suggested alternative approaches. Comments related to the advanced biofuel standard and our responses to those comments are discussed in Section III of this preamble.

The CAA specifies an applicable volume of 2.75 bill gal of advanced biofuel for 2013. To determine whether to lower this volume, we considered the sources that are expected to satisfy any advanced biofuel mandate including: cellulosic biofuel, biomass-based diesel, other domestically-produced advanced biofuels, and imported sugarcane ethanol.

As described in Section II, we project that 6 mill gallons of cellulosic biofuel will be available in 2013. This volume will fulfill 0.006 bill gal of the 2.75 bill gal advanced biofuel requirement.

We established an applicable volume of 1.28 bill gal for 2013 biomass-based diesel in a separate action,[7] an increase from the 1.0 bill gal minimum provided in the statute. We expect that this requirement will be fulfilled primarily with biodiesel.[8] Since biodiesel has an Equivalence Value of 1.5, 1.28 billion physical gallons of biodiesel will provide 1.92 billion ethanol-equivalent gallons that can be counted towards the advanced biofuel standard of 2.75 bill gal. Additional volumes of biomass-based diesel are also possible based on our assessment of available feedstocks and production capacity, potentially up to 500 mill gal ethanol-equivalent.

As described in more detail in Section III, we have projected that domestic advanced biofuels are expected to grow steadily through 2013, and would include renewable diesel that does not qualify to be biomass-based diesel,[9] heating oil, biogas used as CNG, and ethanol. We are projecting that up to about 250 mill gal of such domestic advanced biofuels could be available in 2013, which will count towards the 2.75 bill gal advanced biofuel requirement.

After taking into account cellulosic biofuel, biomass-based diesel, and domestic advanced biofuel described above, the volume of imported sugarcane ethanol that will be needed to meet the statutory advanced biofuel volume of 2.75 bill gal could be significantly below the 670 mill gal that we projected would be needed in the NPRM. The U.S. imported a total of 575 mill gal of ethanol in 2012, and most projections indicate that Brazilian sugarcane crop yields will be significantly better in the coming harvest (2013/2014, which began in April 2013) in comparison to the previous harvest. Since there is a high likelihood that the total volume of all advanced biofuels that can be produced or imported in 2013 is above the 2.75 bill gal statutory volume, we do not believe that the advanced biofuel requirement should be reduced.

We believe there will be sufficient volumes of conventional renewable fuel including corn ethanol, combined with advanced biofuel, to satisfy the 16.55 bill gallon applicable volume of total renewable fuel specified in the Act. For instance, current corn ethanol production capacity is 14.5 bill gal, compared to the 13.8 bill gal needed to meet the RFS requirements in 2013.[10] There will also be a significant number of carryover RINs available from 2012 that can be used in lieu of actual volume in 2013 and which are sufficient in number to address limitations in consumption of ethanol blends higher than E10 or limitations in volumes brought about through the 2012 drought. Therefore, as discussed in more detail in Section III below, we are not reducing the advanced biofuel volume requirement of 2.75 bill gal or the total renewable fuel volume requirement of 16.55 bill gal.

[6] EPA received a letter from Adam Sieminski, EIA administrator on October 18, 2012 containing cellulosic biofuel projections for 2013 and a letter updating to these projections from A. Michael Schaal, Director of the office of Petroleum, Natural Gas, and Biofuels Analysis, EIA on May 8, 2013. Both of these letters are discussed in further detail in Section II.

[7] 77 FR 59458, September 27, 2012.

[8] Some quantity of renewable diesel is also likely to be used towards satisfying the biomass based diesel standard

[9] Biomass-based diesel is defined in the statute to exclude renewable fuel that is co-processed with petroleum. Thus, fuel derived from biogenic waste oils or fats that is made through co-processing with petroleum does not qualify as biomass-based diesel but could, assuming other definitional requirements are satisfied, qualify as advanced biofuel.

[10] Based on facilities registered as corn ethanol producers under the RFS program.

However, we believe that delaying the compliance demonstration for the 2013 compliance period would alleviate some of the concerns that obligated parties have regarding the tardiness of the final rule and its effect on their decisions regarding RIN acquisition. Therefore, we are extending the RFS compliance deadline for the 2013 RFS standards from February 28, 2014 to June 30, 2014.

As described in the NPRM, we recognize that ethanol will likely continue to predominate in the renewable fuel pool in the near future, and that for 2014 the ability of the market to consume ethanol as E15–E85 is constrained in a number of ways. We believe that it will be challenging for the market to consume sufficient quantities of ethanol sold in blends greater than E10 and to produce sufficient volumes of non-ethanol biofuels (biodiesel, renewable diesel, biogas, etc.) to reach the mandated 18.15 bill gal for 2014. Given these challenges, EPA anticipates that adjustments to the 2014 volume requirements are likely to be necessary based on the projected circumstances for 2014, taking into account the available supply of cellulosic biofuel, the availability of advanced biofuel, the E10 blendwall, and current infrastructure and market-based limitations to the consumption of ethanol in gasoline-ethanol blends above E10. As discussed in Section III.E below, EPA will discuss options and approaches for addressing these issues, consistent with our statutory authorities, in the forthcoming NPRM for the 2014 standards.

3. Applicable Volumes Used to Set the Annual Percentage Standards for 2013

The renewable fuel standards are expressed as a volume percentage and are used by each refiner, blender or importer to determine its renewable fuel volume obligations. The applicable percentages are set so that if each regulated party meets the percentages, and if EIA projections of gasoline and diesel use for the coming year are accurate, then the amount of renewable fuel, cellulosic biofuel, biomass-based diesel, and advanced biofuel actually used will meet the volumes required on a nationwide basis.

To calculate the percentage standards for 2013, we have used the projected volume of 6 million ethanol-equivalent gallons of cellulosic biofuel and the volume of biomass-based diesel of 1.28 bill gal that we established in a separate action. The applicable volumes used in this final rule for advanced biofuel and total renewable fuel for 2013 are those specified in the statute. These volumes are shown in Table I.B.3–1.

TABLE I.B.3–1—VOLUMES USED TO DETERMINE THE 2013 PERCENTAGE STANDARDS [a]

Cellulosic biofuel	6 mill gal.
Biomass-based diesel	1.28 bill gal.
Advanced biofuel	2.75 bill gal.
Renewable fuel	16.55 bill gal.

[a] All volumes are ethanol-equivalent, except for biomass-based diesel which is actual.

Four separate standards are required under the RFS program, corresponding to the four separate volume requirements shown in Table I.B.3–1. The specific formulas we use in calculating the renewable fuel percentage standards are contained in the regulations at 40 CFR § 80.1405 and repeated in Section IV.B.1. The percentage standards represent the ratio of renewable fuel volume to projected non-renewable gasoline and diesel volume. The projected volume of transportation gasoline and diesel used to calculate the standards in today's rule was derived from EIA projections.[11] EPA has approved a single small refinery/small refiner exemption for 2013, so an adjustment has been made to the standards to account for this exemption. The final standards for 2013 are shown in Table I.B.3–2. Detailed calculations can be found in Section IV, including the projected 2013 gasoline and diesel volumes used.

TABLE I.B.3–2—FINAL PERCENTAGE STANDARDS FOR 2013

	Percent
Cellulosic biofuel	0.004
Biomass-based diesel	1.13
Advanced biofuel	1.62
Renewable fuel	9.74

4. Applicable Percentage Standard for Cellulosic Biofuel in 2012

On January 25, 2013, the United States Court of Appeals for the District of Columbia Circuit responded to a challenge to the 2012 cellulosic biofuel standard. The Court found that in establishing the applicable volume of cellulosic biofuel for 2012, EPA had used a methodology in which ''the risk of overestimation [was] set deliberately to outweigh the risk of underestimation.'' The Court held EPA's action to be inconsistent with the statute because EPA had failed to apply a ''neutral methodology'' aimed at providing a prediction of ''what will actually happen,'' as required by the statute. As a result of this ruling, the court vacated the 2012 cellulosic biofuel standard. In today's final rule we have revised the regulations to eliminate the applicable standard for cellulosic biofuel for 2012 in light of the court's decision and the very small number or cellulosic biofuel RINs produced in 2012. All of the money paid by obligated parties to purchase cellulosic waiver credits to comply with the cellulosic biofuel standard in 2012 has been refunded. This change does not impact any other applicable 2012 standard.

5. Administrative Actions

By November 30 of each year we are required to make several administrative announcements which facilitate program implementation in the following calendar year. These announcements include the cellulosic biofuel waiver credit price and the status of the aggregate compliance approach to land-use restrictions under the definition of renewable biomass for both the U.S. and Canada. Since we did not make these announcements for 2013 by November 30 of 2012, we presented our proposed assessments of these administrative actions in the February 7, 2013 NPRM. In today's action we are providing the final announcements for these administrative actions.

When EPA reduces the applicable volume of cellulosic biofuel for 2013 below the volume specified in the statute, EPA is required to offer biofuel waiver credits to obligated parties that can be purchased in lieu of acquiring cellulosic biofuel RINs. These waiver credits are not allowed to be traded or banked for future use, are only allowed to be used to meet the 2013 cellulosic biofuel standard, and cannot be applied to deficits carried over from 2012. Moreover, unlike cellulosic biofuel RINs, waiver credits may not be used to meet either the advanced biofuel standard or the total renewable fuel standard. For the 2013 compliance period, we have determined that cellulosic biofuel waiver credits can be made available to obligated parties for end-of-year compliance should they need them at a price of $0.42 per credit.

As part of the RFS regulations, EPA established an aggregate compliance approach for renewable fuel producers who use planted crops and crop residue from U.S. agricultural land. This compliance approach relieved such producers (and importers of such fuel) of the individual recordkeeping and reporting requirements otherwise required of producers and importers to verify that such feedstocks used in the

[11] Letter, A. Michael Schaal, Director, Office of Petroleum, Natural Gas, and Biofuels Analysis, U.S. Energy Information Administration, to Christopher Grundler, Director, Office of Transportation and Air Quality, U.S. EPA, May 8, 2013.

production of renewable fuel meet the definition of renewable biomass. EPA determined that 402 million acres of U.S. agricultural land was available in 2007 (the year of EISA enactment) for production of crops and crop residue that would meet the definition of renewable biomass, and determined that as long as this total number of acres is not exceeded, it is unlikely that new land has been devoted to crop production based on historical trends and economic considerations. We indicated that we would conduct an annual evaluation of total U.S. acreage that is cropland, pastureland, or conservation reserve program land, and that if the value exceed 402 million acres, producers using domestically grown crops or crop residue to produce renewable fuel would be subject to individual recordkeeping and reporting to verify that their feedstocks meet the definition of renewable biomass. Based on data provided by the USDA, we have estimated that U.S. agricultural land reached 384 million acres in 2012, and thus did not exceed the 2007 baseline acreage.

On September 29, 2011, EPA approved the use of a similar aggregate compliance approach for planted crops and crop residue grown in Canada. The Government of Canada utilized several types of land use data to demonstrate that the land included in their 124 million acre baseline is cropland, pastureland or land equivalent to U.S. Conservation Reserve Program land that was cleared or cultivated prior to December 19, 2007, and was actively managed or fallow and nonforested on that date (and is therefore RFS2 qualifying land). The total agricultural land in Canada in 2012 is estimated at 120.9 million acres. The total acreage estimate of 120.9 million acres does not exceed the trigger point for further investigation.

C. Effective Date

Under CAA 211(o)(3)(B)(i), EPA must determine and publish the applicable percentage standards for the following year by November 30. EPA did not meet this statutory deadline for the 2013 standards. The NPRM was published on February 7, 2013 and the comment period closed on April 7, 2013. Nevertheless, we believe that the applicable percentage standards we are finalizing in today's rulemaking should apply, as proposed, to all gasoline and diesel produced in 2013, including that produced prior to the effective date of this final rule.

Some commenters asserted that this approach would provide insufficient notice and lead time to obligated parties, and result in prohibited retroactive rulemaking. However, as discussed below, application of the standards to the entire year's production is reasonable given the structure of the statute, advance notice to obligated parties, compliance mechanisms under the program, and sufficiency of lead time for obligated parties to achieve compliance. Moreover, we have considered the alternative approaches suggested by commenters, and have determined that they are inappropriate as they would not satisfy the statutory requirements.

In response to the NPRM, several obligated parties commented that the rulemaking process to establish the applicable 2013 standards should be abandoned due to its tardiness, and instead EPA should focus only on promulgating the applicable standards for 2014. Other commenters requested that we make the applicable 2013 standards apply only to gasoline and diesel produced or imported after the publication of the final rule, thereby effectively reducing the volume of renewable fuel to be used in 2013 by an amount proportional to the months in 2013 prior to the publication date. Alternatively, some commenters suggested that we apply the 2012 standards to 2013. All of these suggested approaches would result in 2013 standards requiring substantially less renewable fuel use than specified in the statute.

Under the statute, the renewable fuel obligations apply on a calendar year basis. The national volumes are established for each calendar year, and EPA's regulations must ensure these national volumes are met on an annual average basis. The renewable volume obligation is based on a projection of gasoline and diesel production for the calendar year, and the renewable fuel obligation for that calendar year is to be expressed as a percentage of the transportation fuel a refiner or importer sells or introduces into commerce for that calendar year.

EPA acknowledges that today's rule is being finalized later than the statutory deadline of November 30, 2012. However, this delay does not deprive EPA of authority to issue standards for calendar year 2013. As the United States Court of Appeals for the District of Columbia Circuit noted in its review of EPA's delayed 2010 RFS standards, the statute does not specify a consequence for a situation where EPA misses the deadline, *NPRM* v. *EPA,* 630 F.3d 145, 152–158 (2010), and courts have declined to treat a statutory direction that an agency ''shall'' act within a specified time period as a jurisdictional limit that precludes action later. Id. at 154 (citing *Barnhart* v. *Peabody Coal,* 537 U.S. 149, 158 (2003)). Moreover, the statute here requires that EPA regulations ''ensure'' that transportation fuel sold or introduced into commerce ''on an annual average basis, contains at least the applicable volume of renewable fuel'' specified in the statute. Id. at 152–153. Therefore EPA believes it has authority to issue RFS standards for calendar year 2013 notwithstanding EPA's delay in issuing this final rule, and that it must issue standards that ''ensure'' that the volumes specified for 2013 are satisfied. EPA has not chosen any of the alternative approaches suggested by commenters, because none of the proffered solutions would ensure that the volumes Congress specified for 2013 would be used.

EPA is mindful that the precise contours of obligated parties' responsibilities for gasoline and diesel fuel produced in 2013 could not be known before issuance of this final rule. However, EPA believes that imposition in the final rule of an obligation related to production of gasoline or diesel that occurred prior to the effective date of this rule is reasonable. First, as noted above, EPA is required under the statute to ensure that applicable volumes specified in the statute for 2013 are satisfied, so it must take action notwithstanding the late date. The statute also provides that the national volumes are to be achieved on ''an annual average basis.'' The standards for obligated parties are based on a projection from the Energy Information Administration of gasoline and diesel use for each calendar year, and the obligation for refiners and importers is to be expressed as an applicable percentage obligation for a calendar year. Thus, applying the standards to production in calendar year 2013 is most consistent with the statute.

Second, obligated parties have been provided reasonable notice that EPA would act in approximately the manner specified in the final rule. EPA established the required volume of biomass-based diesel in a separate rulemaking and, as proposed, has not lowered the applicable volumes of total renewable fuel and advanced biofuel below the applicable volumes specified in the statute. EPA has, as proposed, substantially lowered the required volume of cellulosic fuel below the level specified in the statute. Indeed, EPA's final rule requires use of less cellulosic biofuel than it proposed, so any change between the proposed and final rules in this regard operates to relieve burden on obligated parties. Regulated parties also had the benefit of knowing how EPA has previously approached standards that are finalized after the beginning of the calendar year. In the March 2010 final rule revising the RFS program regulations, we set the standards for 2010 and made them applicable to all gasoline and diesel produced in 2010 despite the fact that the rulemaking was not published until March 26, 2010. This approach was challenged and upheld in *NPRM* v. *EPA,* 630 F.3d 394 (DC Cir. 2010). Thus, EPA believes that obligated parties had sufficient notice.

Third, the parties have adequate lead time to comply with the 2013 RFS standards notwithstanding EPA's delay in issuing the rule. Because compliance is achieved by obligated parties purchasing an appropriate number of RINs from producers or blenders of the renewable fuel, obligated parties do not need lead time for construction or investment purposes. They are not changing the way they produce gasoline or diesel, do not need to design or install new equipment, or take other actions that require longer lead time. Obtaining the appropriate amount of RINs involves contractual or other arrangements with renewable fuel producers or other holders of RINs. Indeed renewable fuel producers have been generating 2013 RINs since the beginning of the calendar year. Obligated parties have been acquiring RINs since the beginning of 2013 in anticipation of the publication of the final applicable standards in today's rule. There is also a significant quantity of 2012 RINs that can be used for compliance with the 2013 standards. To facilitate compliance, and provide additional lead time, EPA is extending the date by which compliance with the 2013 standards must be demonstrated to June 30, 2014. EPA chose this date both to provide additional time for a compliance demonstration, and because we anticipate issuing a final rule establishing the 2014 RFS standards as soon as possible before that date. Establishing a 2013 compliance deadline on a date that occurs after promulgation of the final rule setting the 2014 standards should allow obligated parties to take their 2014 obligations into consideration as they determine how to utilize RINs for 2013 compliance.

In response to stakeholder concerns about the lateness of this final rule, EPA considered, but rejected, the option of issuing numerically higher percentage standards based on just the 2013 production of gasoline and diesel fuel that took place after issuance of the final rule. Such an approach would not provide for standards allowing compliance on an ''annual average basis,'' based on ''an applicable percentage for a calendar year,'' as envisioned by the statute. Also, EPA believes application of the standards in this manner would be unfair because it could result in some producers or importers having substantially greater or lesser obligations, based on variable production or import volumes over the year, than would be the case if the standards were based on a full year's production. In essence, such an approach would provide a temporal window with no RFS obligation, and some parties might receive either a windfall or a substantially greater burden than they would have if EPA had issued its standards on time. This would be exacerbated by the fact that EPA did not take comment on this alternative, so obligated parties would not have been on notice of this potential approach. EPA rejected this approach for these reasons.

D. Impacts of Final Actions

Analyses for the March 26, 2010 RFS final rule indicated the GHG benefits from cellulosic biofuels compared to the petroleum-based fuels they displace are well above the 60 percent reduction threshold. Therefore, EPA expects that the increase in cellulosic biofuel use that EPA has projected for 2013 over prior year production levels will have directionally beneficial GHG emissions impacts.

For advanced biofuel and total renewable fuel, we are not reducing the applicable volumes below the applicable volumes set forth in the statute. All of the impacts of the biofuel volumes specified in the statute were addressed in the RFS final rule published on March 26, 2010.[12] Today's rulemaking simply sets the percentage standards for obligated parties for 2013 advanced biofuel and total renewable fuel, where the impacts of the national volumes of those fuels were previously analyzed.

II. Projection of Cellulosic Biofuel Volume for 2013

In order to project the national production volume of cellulosic biofuel in 2013, we considered the EIA projections and collected information on individual facilities that have the potential to produce qualifying volumes for use as transportation fuel, heating oil, or jet fuel in the U.S. in 2013. In light of the delay in issuing the standards for 2013 we also sought and received an updated estimate of cellulosic biofuel production from EIA to inform our final standards. We also considered the comments we received in response to the NPRM. This section describes the volumes that we project will be produced or imported in 2013 as well as some of the uncertainties associated with those volumes.

Despite significant advances in cellulosic biofuel production technology in recent years, RIN-generating production of biofuel from cellulosic feedstocks in 2010 and 2011 was zero despite our projections that the industry was positioned to produce about 6 mill gal in each of those years.[13] In 2010 the majority of the cellulosic biofuel shortfall was met through the use of RINs generated under the initial RFS regulations, and since there were excess cellulosic RINs many of these RINs were carried over into the 2011 compliance year. The remaining cellulosic biofuel requirements in 2011 were met through the purchase of cellulosic biofuel waiver credits.[14] A discussion of the reasons for this disparity between our projections and subsequent production is provided in Section II.B below.

In 2012 the first cellulosic RINs were generated under the current RFS regulations at two small pilot facilities. However, cellulosic biofuel production once again fell short of our projections in 2012. The 2012 cellulosic standard was challenged in court and based on the decision in that case the 2012 cellulosic biofuel standard was vacated.[15] This decision is discussed further in the following sections.

A. Statutory Requirements

The national volumes of cellulosic biofuel to be used under the RFS program each year through 2022 are specified in CAA 211(o)(2). For 2013, the statute specifies a cellulosic biofuel applicable volume of 1.0 bill gal. The statute requires that if EPA determines, based on EIA's estimate, that the projected volume of cellulosic biofuel production for the following year is less

[12] 75 FR 14672.

[13] In the first half of 2010 when the initial RFS program was still effective, some cellulosic biomass ethanol was produced and the RINs generated were valid for demonstrating compliance with the 2010 and 2011 RFS cellulosic biofuel standards. However, the cellulosic biomass ethanol that was produced was not made from cellulosic feedstocks, but rather was categorized as cellulosic because it was produced in plants using waste materials to displace 90% or more of fossil fuel use under the then-effective definition of cellulosic biomass ethanol in CAA Section 211(o)(1)(A). See also 40 CFR § 80.1101(a)(2).

[14] 4,248,338 cellulosic waiver credits were purchased for 2011 compliance according to the EPA Moderated Transaction System (EMTS) Web site (information retrieved from the Web site on December 11, 2012) at a cost of $1.13 per credit. The ethanol-equivalent volume of cellulosic biofuel projected for 2011 and used to calculate the percentage standard for that year was 6.0 mill gal.

[15] See *API* v. *EPA,* 706 F.3d 474 (D.C. Cir. 2013).

than the applicable volume shown in Table II.A–1, then EPA is to reduce the applicable volume of cellulosic biofuel to the projected volume available during that calendar year.

In addition, if EPA reduces the required volume of cellulosic biofuel below the level specified in the statute, the Act also indicates that we may reduce the applicable volumes of advanced biofuels and total renewable fuel by the same or a lesser volume. Our consideration of the 2013 volume requirements for advanced biofuels and total renewable fuel is presented in Section III.

The United States Court of Appeals for the District of Columbia Circuit recently interpreted the statutory requirements for EPA's cellulosic biofuel projections, in the context of considering a challenge to the 2012 cellulosic biofuel standard. The Court found that in establishing the applicable volume of cellulosic biofuel for 2012, that EPA had used a methodology in which ''the risk of overestimation [was] set deliberately to outweigh the risk of underestimation.'' The Court held EPA's action to be inconsistent with the statute because this provision required EPA to apply a ''neutral methodology'' aimed at providing a prediction of ''what will actually happen''. In all other respects the Court upheld EPA's methodology for making cellulosic biofuel projections. For example, the Court agreed with EPA that the statute requires that EPA treat the EIA estimate with ''great respect,'' but ''allowing deviation consistent with that respect''. The Court also upheld EPA's reasoned reliance on information provided by prospective cellulosic biofuel producers in formulating its projections. For a further discussion of the changes we have made to our approach in evaluating the information that forms the basis for our projection of cellulosic biofuel see Section C below.

B. Status of the Cellulosic Biofuel Industry

As in previous years, cellulosic biofuel production in the United States in 2012 was limited to small-scale research and development, pilot, and demonstration-scale facilities. Companies such as Abengoa, Blue Sugars, DuPont, KiOR, Poet, and others successfully operated small-scale facilities in 2012. Two of these companies, Blue Sugars and KiOR, generated a small number of RINs for the fuel they produced. Several of these facilities, including all that were part of our 2012 volume projections, are discussed in more detail in Section II.C below. While there were numerous small-scale facilities producing cellulosic biofuel in 2012, the total volume of fuel produced was very small. Two commercial scale facilities that were expected to begin fuel production in 2012 experienced unexpected delays in commissioning, while a third was delayed due to difficulties raising required funds.[16] Although information is not available to EPA to quantify the total volume of cellulosic biofuel produced in 2012 at these research and development, pilot, and demonstration scale facilities if they do not generate RINs, based on generally available information we believe that total production in the United States was likely less than one mill gal across the industry.

While cellulosic biofuel production in the United States remains limited, the industry continues to make significant progress towards producing cellulosic biofuel at prices competitive with petroleum fuels. From 2007 through the second quarter of 2012 venture capitalists invested over $3.4 billion in advanced biofuel companies in North America.[17] Recent advancements in enzyme and catalyst technologies are allowing cellulosic biofuel producers to achieve greater yields of biofuel per ton of feedstock. These advancements have led to lower operational costs as they have driven down the cost for feedstock, energy, and other important inputs on a per gallon basis. For example, the estimated cost of producing cellulosic ethanol using an enzymatic hydrolysis process in 2007 was $4–$8 per gallon.[18] By 2012 the estimated cost of cellulosic ethanol production using the same process had fallen to $2–$3.50 per gallon.[19] The U.S. Department of Energy (DOE) similarly reports that advancements in cellulosic ethanol technology have resulted in a decrease in modeled costs from approximately $4 per gallon (minimum ethanol selling price) in 2007 to approximately $2.50 per gallon in 2011.[20] The same technological advances have also lowered the capital costs of cellulosic biofuel production facilities per gallon of annual fuel production, as more gallons of biofuel can be produced at a facility without additional equipment or increased feedstock requirements.

Another area where significant progress has been made is feedstock supply for commercial scale cellulosic biofuel production facilities. This issue has often been raised as a factor that could hinder the development of the cellulosic biofuel industry as many of the proposed facilities rely on feedstocks, such as agricultural residues or energy crops, for which supply chains have not previously existed. Over the past several years both Abengoa and Poet have been working with farmers in the regions surrounding their first commercial scale facilities to ensure the availability of the necessary feedstock. Because corn cobs and stover are only seasonally available, using them as a feedstock for a cellulosic biofuel production facility would require significant feedstock storage facilities. In the last two years Abengoa and Poet completed construction of large scale feedstock storage facilities to ensure adequate supply to their cellulosic biofuel production facilities throughout the year. Both companies successfully completed fall biomass harvests in 2011 and have contracted with local farmers to provide feedstock for their cellulosic ethanol facilities. This supply chain will not only provide feedstock for their first commercial scale facilities, but also a model that can be re-created at future production facilities.

Several cellulosic biofuel producers are planning to use pre-commercial thinnings, tree residue from tree plantations or the cellulosic portions of yard waste as feedstock.[21] This material has many qualities that make it desirable as a cellulosic biofuel feedstock. It tends to be relatively inexpensive and is readily available in some regions of the United States. It is also available year round rather than seasonally, significantly reducing the need for large scale feedstock storage facilities. Securing a sufficient quantity of this feedstock for a commercial scale facility, however, can be challenging. In the summer of 2011 KiOR announced it had signed a feedstock agreement with Catchlight Energy to provide all the necessary feedstock for their first commercial scale facility. While KiOR plans to transition to planted trees for

[16] For more information see Section II.C below.

[17] Solecki M, Dougherty A, Epstein B. Advanced Biofuel Market Report 2012: Meeting U.S. Fuel Standards. Environmental Entrepreneurs. September 6, 2012. Available Online *http://www.e2.org/ext/doc/E2AdvancedBiofuelMarketReport2012.pdf.*

[18] Nielsen, Peder Holk. ''The Path to Commercialization of Cellulosic Ethanol—A Brighter Future.'' PowerPoint Presentation. Conference Call. February 22, 2012. Available Online *http://www.novozymes.com/en/investor/events-presentations/Documents/Cellic3_conf_call_220212.pdf.*

[19] Nielsen, Peder Holk. ''The Path to Commercialization of Cellulosic Ethanol—A Brighter Future.'' PowerPoint Presentation. Conference Call. February 22, 2012.

[20] Department of Energy. Biomass Multi-Year Program Plan. April 2012. DOE/EE–0702. Available Online *http://www1.eere.energy.gov/biomass/pdfs/mypp_april_2012.pdf.*

[21] Pre-commercial thinnings and tree residue from tree plantations must come from non-federal lands and meet the definition of a renewable biomass definition and be eligible to generate RINs.

future facilities, KiOR now has secured sufficient feedstock such that they can produce cellulosic biofuel and cellulosic RINs using an existing pathway at their first commercial scale facility. INEOS Bio also has a long term agreement with Indian River County to provide separated yard waste which will serve as the feedstock for their first facility.

Another feedstock for cellulosic biofuel production is separated municipal solid waste (MSW). MSW is already being collected and transported to a centralized facility, is consistently available throughout the year, and can be obtained for a very low, or even negative, cost. MSW often contains contaminants, however, that may make it challenging to process for some cellulosic biofuel technologies. EPA also requires that waste separation plans be submitted and approved prior to any company generating RINs using separated MSW as a feedstock. In June 2012 EPA approved the first waste separation plan under the RFS program for Fiberight's facility in Blairstown, Iowa.

In the early years of the cellulosic biofuel industry several small start-up companies announced plans to build large commercial scale facilities that were scheduled to begin production in the past few years. The construction of many of these facilities was dependent on the companies raising additional funding, either from venture capitalists, government grants, or loans backed by government guarantees. So far, few of the companies that made these early announcements have been able to successfully raise the necessary funds and begin construction. Securing this funding proved difficult, and when it did not materialize the projects were delayed or cancelled. However, recently significant progress has also been made by some companies towards funding the construction of their first commercial scale facilities.

The funding profiles of the companies included in our projected volume for 2013, as well as for many of the companies targeting production in 2014, are markedly different than those of the companies that were expected to produce the majority of cellulosic biofuel in 2010 and 2011. Many of these projects have already received, and in several cases have closed on loan guarantees and grants offered by DOE or USDA. Other companies have filed for and successfully executed IPOs. Several cellulosic ethanol projects are being self-financed by large companies such as Abengoa and Poet with significant experience in the biofuel, petrochemical, and specialty chemical markets. This solid financial backing has allowed these companies to proceed with construction. Both of the facilities included in our final volume for 2013 have already completed the construction of their first commercial production facilities. KiOR's facility has begun producing RINs and INEOS Bio announced that it started commercial production on July 31, 2013. There is therefore far less uncertainty as to likely production from these two facilities than has been present for EPA's earlier projections. The next section provides additional details on the funding and construction status of the projects included in our projected cellulosic biofuel production volumes for 2013.

If these first commercial scale cellulosic biofuel production facilities are successful, the potential exists for a rapid expansion of the industry in subsequent years. Having successful commercial scale facilities would not only provide useful information to help maximize the efficiency of future facilities, but would also significantly decrease the technology and scale-up risks associated with cellulosic biofuel production facilities and could lead to increased access to project funding. Fiberight and ZeaChem both plan to build larger-scale facilities (~25 mill gal per year) as soon as they are able to raise the necessary funds. INEOS Bio plans to expand production by building additional units near sources of inexpensive feedstock ranging in size from 8 to 50 mill gal of ethanol per year. They are currently exploring expansion possibilities in the United States and internationally. KiOR has plans for a second commercial scale facility to be built in Natchez, MS, that will be approximately three times larger (~30 mill gal per year) than their Columbus, MS, plant and plans to break ground at their second facility after their first is fully operational. Abengoa currently anticipates construction of additional cellulosic ethanol facilities at multiple locations, likely including co-locating with some of their existing starch facilities in the US. Poet has a similar expansion strategy to build cellulosic ethanol plants at their grain ethanol facilities, license their technology for use at other grain ethanol facilities, and build cellulosic ethanol facilities that use feedstocks such as agricultural residue or energy crops. Poet's goal is to be involved in the production of 3.5 bill gal of cellulosic ethanol per year by 2022. Several other companies are also targeting 2014 for the start-up of cellulosic biofuel production facilities and would likely look to build additional facilities relatively quickly if their first facilities operate successfully. While many of these expansion plans are still in the early stages and are subject to change, they do point to the potential for cellulosic biofuel production to increase very significantly in future years once the initial plants become operational.

C. Cellulosic Biofuel Volume Assessment for 2013

In 2012 the first cellulosic biofuel RINs under the current regulations were generated. Small quantities of RINs, a total of approximately 22,000, were generated by Blue Sugars and KiOR from their respective demonstration facilities. The small volumes of fuel produced from these two facilities are typical for R&D and pilot facilities whose primarily purpose is to prove the technology is viable, provide information for scale-up design, and provide fuel for testing purposes rather than to generate income from commercial volumes of fuel. However, national cellulosic biofuel production once again fell far short of the cellulosic biofuel standards. Two of the companies expected to begin producing fuel in 2012 experienced unexpected difficulties in commissioning their commercial scale production facilities following successful demonstration and pilot scale work, resulting in biofuel production being delayed until 2013. A third commercial facility was unable to secure the funds needed to convert an existing corn ethanol production facility to a cellulosic biofuel production facility, despite having secured a conditional loan guarantee from the United States Department of Agriculture (USDA). The remaining facilities that were included in our projected production volume for 2012 were small demonstration facilities that similarly experienced delays or significantly reduced production volumes for a variety of reasons.

There are several factors indicating that larger volumes of cellulosic biofuel will be produced in 2013. Commercial scale cellulosic biofuel projects from INEOS Bio and KiOR are structurally complete, KiOR's facility began producing cellulosic biofuel in the Spring of 2013, and INEOS Bio announced it began production at the end of July. Both facilities plan to achieve steady state production and achieve production rates at or near their nameplate capacities by the end of 2013. Another commercial scale facility backed by Abengoa, a large company with significant experience in biofuel production, is also scheduled to begin producing cellulosic biofuel in late 2013 or early 2014. These facilities are indicative of a shift across the cellulosic biofuel industry from small-scale R&D and demonstration facilities often operated by small start-up companies to large commercial scale facilities backed by large companies, many of which have substantial experience in related industries.

In order to project cellulosic biofuel production for 2013, we tracked the progress of more than 100 biofuel production facilities. From this list of facilities we used publicly available information, as well as information provided by DOE, EIA, and USDA, to make a preliminary determination of which facilities are the most likely candidates to produce cellulosic biofuel and generate cellulosic biofuel RINs in 2013. Each of these companies was investigated further in order to determine the current status of their facilities and their likely cellulosic biofuel production and RIN generation volumes for the coming years. Information such as the funding status of these facilities, current status of the production technologies, announced construction and production ramp-up periods, and annual fuel production targets were all considered when we met with senior level representatives of each company to discuss cellulosic biofuel target production levels for 2013. Throughout this process EPA is in regular contact with EIA to discuss relevant information and assessment of potential cellulosic biofuel producers. Our projection of the cellulosic biofuel production in 2013 is based on the estimate we received from EIA, information we received from EIA, DOE, and USDA, the individual production projections that emerged from these discussions, and comments we received on the NPRM. A brief description can be found below for each of the companies we believe will produce cellulosic biofuel and make it commercially available in 2013.

To project the available volume of cellulosic biofuel, we have continued to obtain information from the potential producers of cellulosic biofuels to help inform our annual projection. We have, however, made several changes to the way that we used the information we gather in projecting cellulosic biofuel production to ensure consistency with the ruling of the DC Circuit Court and help ensure a neutral projection that aims at accuracy. Several of the more significant changes are:

- Volumes from pilot and demonstration scale facilities are not included in our projections. Very few of these facilities are registered to generate RINs, and production volumes at those that are historically have been so small that they have no significant impact on our total volume projection for 2013.
- Facilities with start-up dates near the end of the year are not included in our projections. There is a realistic possibility that minor delays could result in no production of cellulosic biofuel from such facilities in 2013, and even if these facilities start up as expected production volumes from the first month of production are expected to be very small.
- Benchmarks for how quickly new facilities ramp up to full production, and for production volumes during this ramp-up period in a best case scenario have been established and used to assess the reasonableness of the production estimates received from producers. Production projections from companies that exceed the volumes calculated using this benchmark are not considered credible, even as the high end of a possible range of production. While we have considered ramp-up rates for cellulosic biofuel production facilities in the past we have added best case scenario benchmarks to assess the reasonableness of the ramp-up schedules we received from potential biofuel producers.
- In considering all factual information and projections we have weighted uncertainty neutrally, with the aim of providing an accurate projection rather than one intended to provide an incentive for growth in the cellulosic biofuel industry.

In our proposed rule we projected 14 million ethanol-equivalent gallons of cellulosic biofuel production in 2013. Since this time we have considered comments received on the proposed rule, updated information from EIA including a new projection of cellulosic biofuel production for 2013,[22] and updated information from the companies expected to produce cellulosic biofuel. The sections that follow discuss the comments we received, the updated information from EIA, and the current status of the cellulosic production facilities that are relevant in setting the cellulosic biofuel standard for 2013. Based on this information we are setting the cellulosic biofuel standard at 6 million ethanol-equivalent gallons (4 million actual gallons) based on our current projection of cellulosic biofuel production in 2013.[23]

1. Comments on the Proposed Rule

EPA received many comments on the projected available cellulosic biofuel volumes in our proposed rule. Several commenters, including biofuel trade organizations and cellulosic biofuel production companies supported EPA's methodology for projecting available cellulosic biofuel volumes. Some of these commenters further stated that EPA had appropriately assessed the status of the cellulosic biofuel industry and that the projected volume (14 million ethanol-equivalent gallons) was likely to be achieved. Others, while affirming EPA's methodology encouraged EPA to consider new information available since the publication of our proposed rule, particularly delays in the start-up of INEOS Bio and new production guidance from KiOR, and to adjust our projected volume accordingly. EPA has considered this information and believes the volume projected in today's final rule (6 million ethanol-equivalent gallons) accurately represents the volume of cellulosic biofuel likely to be produced in 2013 based on the best available information.

Conversely, EPA also received several comments stating that the projected available volume of cellulosic biofuel should be based on historical production rather that projections of future production. Using this methodology would result in a cellulosic biofuel standard for 2013 near zero. In effect the commenters argued that past production is the best and most sure indicator for future production. Adopting this methodology would be inconsistent with EPA's charge to set the applicable volume for cellulosic biofuel through a neutral projection of the volume projected to be produced that aims at accuracy. Basing this projection solely on past production would not neutrally aim at accuracy, as it would require EPA to ignore significant real world information that is relevant to project production for 2013. It would also require EPA to ignore the production estimates we receive from EIA, which we are required to consider with great respect. Additionally, it would be unusual to base a future projection solely on past performance, effectively assuming no growth in the cellulosic biofuel industry.

Several commenters also stated that the methodology used by EPA in setting the applicable volume for cellulosic biofuel is the same as that used in

[22] Letter from A. Michael Schaal, Director, Office of Petroleum, Natural Gas, and Biofuels Analysis, EIA to Christopher Grundler Director, Office of Transportation and Air Quality, EPA, May 8, 2013.

[23] The difference between actual volume and ethanol-equivalent volume stems from the fact that cellulosic gasoline and diesel fuels generate a greater number of RINs than the actual gallons produced because of their higher energy content. The number of RINs generated per gallon of fuel produced is based on the energy content of the fuel relative to ethanol.

previous years and that this is inappropriate in light of the *API* v. *EPA* decision vacating the 2012 cellulosic biofuel standard. The process used by EPA to gather information on the relevant companies and their likely production is indeed similar. We continue to consider information received directly from potential cellulosic biofuel producers and the cellulosic and advanced biofuel trade associations. As noted above, we have made several changes to how we evaluate this information. We work closely with EIA in developing our volume projection and give their production estimate great weight. Indeed, this year we are projecting the same volume of cellulosic biofuel as the most recent estimate provided by EIA.[24] Consistent with the Court's directive, we are not weighing uncertainty in any element of our projection in a manner that favors a higher or a lower volume projection.

EPA believes the information and methods used to project the production of cellulosic biofuel for 2013 described in the preceding sections appropriately takes neutral aim at accuracy. EPA has established a benchmark for the expected production ramp-up timeframe that has been used to assess the reasonableness of production estimates received from companies. We did not receive any comments suggesting that this benchmark was inappropriate. We have appropriately considered the history of delays for the cellulosic industry as a whole and the companies included in our projection in particular in projecting these volumes. We have not included any volumes from pilot or demonstration scale facilities, nor have we included any volume from companies currently lacking a valid pathway to produce cellulosic biofuel—despite their claims that they can and intend to generate cellulosic biofuel RINs in 2013—due to the highly uncertain nature of this production. Given the timing of this final rule this seems particularly appropriate for 2013. Finally, we have not used best case scenarios for the companies considered in determining our volume projection for 2013, and have not attempted to use this process to either promote or impede growth within the cellulosic biofuel industry. Of the seven companies and potential fuel producing pathways listed in Table II.C.6–1 that have the potential to produce cellulosic RINs in 2013 we have only included two in our volume projection. For the two facilities considered we have reduced their projected volume from the maximum possible production calculated from the start-up date and nameplate capacity taking into account expected ramp-up schedules and delays experienced at the two facilities. After using this information to establish projected ranges of production we selected a combined volume that represents production at the mid-point of our established ranges, as a shortfall in expected production from either company can be made up for by the other companies in Table II.C.6–1 exceeding their projected production. We believe our volume projection of 6 million ethanol-equivalent gallons of cellulosic biofuel in 2013 and the methodology utilized to arrive at this projection are our best assessment of production that will actually happen in 2013.

2. Projections From the Energy Information Administration

Section 211(o)(3)(A) of the Clean Air Act requires EIA to ''. . . provide to the Administrator of the Environmental Protection Agency an estimate, with respect to the following calendar year, of the volumes of transportation fuel, biomass-based diesel, and cellulosic biofuel projected to be sold or introduced into commerce in the United States.'' EIA provided these estimates to us on October 18, 2012.[25] With regard to cellulosic biofuel, the EIA estimated that the available volume in 2013 would be 9.6 million actual gallons (13.1 million ethanol-equivalent gallons). A summary of the commercial scale plants they considered and associated production volumes is shown below in Table II.C.2.

TABLE II.C.2—CELLULOSIC BIOFUEL PLANTS EXPECTED TO GENERATE BIOFUEL RINS FOR 2013

[From EIA]

Mechanical completion	Company	Location	Product	Design capacity	EIA Forecast		
					Utilization (percent)	Actual production (mill gal)	Ethanol-equivalent production (mill gal)
2012	INEOS Bio	Vero Beach, FL	Ethanol	8	50	4.0	4.0
2012	KiOR	Columbus, MS	Liquids	11	50	5.5	9.0
Various	Various Pilot Plants.	Various	Ethanol	1	10	0.1	0.1
Total Capacity and Production for 2013				20	48	9.6	13.1

Several commenters noted a Today in Energy article that appeared on EIA's Web site on February 26, 2013 that stated that cellulosic biofuel production ''could grow to more than 5 mill gal in 2013, as operations ramp up at several plants.''[26] The commenters stated that as this article was more recent than the letter EPA received in October 2012 it represented an updated volume projection from EIA and that EPA should base our volume projection on this smaller volume (5 million actual gallons). A significant amount of time has passed since we received EIA's initial cellulosic biofuel volume projections and any changes in projected volumes since this time should be considered as we determine the appropriate cellulosic biofuel volume projection. To ensure that we are using the most up to date information EPA requested and received from EIA an updated projection of

[24] In their letter to EPA on May 8, 2013, EIA did not specify an ethanol-equivalent volume projection, nor did they specify production volumes from individual companies that would allow EPA to calculate an ethanol-equivalent volume from their projection of physical gallons. However, the EPA and EIA projection of physical gallons of cellulosic biofuel production for 2013 are identical.

[25] Letter from Adam Sieminski, EIA Administrator to Lisa Jackson, EPA Administrator October 18, 2012.

[26] ''Cellulosic biofuels begin to flow but in lower volumes than foreseen by statutory targets.'' *Today in Energy.* EIA, February 26, 2013. http://www.eia.gov/todayinenergy/detail.cfm?id=10131

cellulosic biofuel production in 2013 on May 8, 2013.[27] In this letter EIA projected that 4 million actual gallons of cellulosic biofuel would be produced in 2013.

EIA's projection of cellulosic biofuel production in 2013 is very similar to EPA's projection discussed above and summarized in Section II.C.6 below. The lists of companies (KiOR and INEOS Bio) that EIA and EPA expect to generate cellulosic biofuel RINs in 2013 are the same. EIA's estimate also no longer includes volumes from pilot facilities due to their highly uncertain production and the fact that these facilities are unlikely to generate RINs in 2013 for any fuel they do produce. While the total volume of cellulosic biofuel that EIA expects will be produced in 2013 is identical to the volume projected by EPA (4 million actual gallons), EIA does not specify how much of this production will be ethanol and how much will be renewable hydrocarbons. Because of this EPA is unable to calculate the ethanol-equivalent volume represented by EIA's projection. Since this volume includes renewable gasoline and diesel produced by KiOR, however, EIA's projection represents an implied ethanol-equivalent volume greater than 4 mill gal and is consistent with EPA's 6 million ethanol-equivalent gallon projection.

The approach we have taken in setting the applicable volume for cellulosic biofuel for 2013 is appropriate. Section CAA 211(o)(7)(D) vests the authority for making the projection with EPA. As described in past rulemakings, the statute provides that the projection is ''determined by the Administrator based on the estimate provided [by EIA].'' Congress did not intend that EPA simply adopt EIA's projection without an independent evaluation. EPA's consideration of EIA's estimate in developing this final rule is consistent with EPA's consideration of EIA's estimate in the past rulemakings involving a reduction of the volume standard for cellulosic biofuel. EPA's interpretation and implementation of the obligation to base its projection on the EIA estimate recently was upheld in *API* v. *EPA,* 706 F.3d at 478 (DC Cir. 2013).

3. Current Status of Cellulosic Biofuel Production Facilities

In the January 9, 2012, final rule that established the applicable volume of cellulosic biofuel for 2012, we identified six production facilities that we projected would produce cellulosic biofuel and make that fuel commercially available in 2012. Five of these production facilities are currently structurally complete and one is planning to retrofit an existing corn ethanol plant with construction beginning in the summer of 2013. The current status of each of these facilities, including target production levels for each facility in 2013, is discussed below. Two additional facilities that are expected to begin producing cellulosic biofuel near the end of 2013 or in early 2014 are also discussed.

API

American Process Inc. (API) is developing a project in Alpena, Michigan capable of producing up to 900,000 gallons of cellulosic ethanol per year from pre-commercial thinnings and tree residue from tree plantations. This facility will use a technology developed by API called GreenPower+™. This technology extracts the hemicellulose portion of woody biomass using hot water and hydrolyzes it into sugars. These sugars are then converted to ethanol or other alcohols, while the remaining portion of the woody biomass, containing mostly cellulose and lignin, is processed into wood paneling at a co-located facility. At future, larger-scale facilities API anticipates burning the residual biomass in a boiler to produce steam and electricity as well as cellulosic biofuel.

In January 2010 API received a grant from DOE for up to $18 million for the construction of their demonstration facility. Construction of the Alpena, Michigan facility began in March 2011 and API began commissioning operations at their facility in the summer of 2012. API encountered several unexpected difficulties in commissioning their facility resulting in production delays; however they anticipate production of cellulosic biofuel from this facility in 2013. EPA has not included production from API in our projections due to the facility's history of delays, uncertain start-up date, and small potential production volume.

Fiberight

Fiberight uses an enzymatic hydrolysis process to convert the biogenic portion of separated MSW and other waste feedstocks into ethanol. They have successfully completed five years of development work on their technology at their small pilot plant in Lawrenceville, Virginia. In 2009 Fiberight purchased an idled corn ethanol plant in Blairstown, Iowa with the intention of making modifications to this facility to allow for the production of 6 mill gal of cellulosic ethanol per year from separated MSW and industrial waste streams. These modifications were scheduled to be completed in 2011, but difficulties in securing funding have resulted in construction at this facility being delayed. In January 2012 Fiberight was offered a $25 million loan guarantee from USDA. Closing on this loan would provide substantially all of the remaining funds required for Fiberight to complete the required modifications at their Blairstown facility. Fiberight plans to begin construction in the second quarter 2013. Fiberight expects that it will take approximately 6 months to complete construction and that fuel production will begin in early 2014. Additionally, Fiberight's waste separation plan for this facility was approved in June 2012 allowing Fiberight to generate RINs for the cellulosic ethanol they produce using separated MSW as a feedstock. Fiberight is also currently developing a second commercial scale project based on their MSW ''hub and spoke'' concept. They anticipate that this facility will produce approximately 25 mill gal of cellulosic ethanol per year when fully built out. Since Fiberight currently does not expect cellulosic biofuel production to begin until 2014 no volume from their facility has been included in EPA's projections.

INEOS Bio

INEOS Bio has developed a process for producing cellulosic ethanol by first gasifying cellulosic feedstocks into a syngas and then using naturally occurring bacteria to ferment the syngas into ethanol. In January 2011 USDA announced a $75 million loan guarantee for the construction of INEOS Bio's first commercial facility to be built in Vero Beach, Florida. This loan was closed in August 2011. This was in addition to the grant of up to $50 million INEOS Bio received from DOE in December 2009. At full capacity, this facility will be capable of producing 8 mill gal of cellulosic biofuel as well as 6 megawatts (gross) of renewable electricity from a variety of feedstocks including yard, agricultural, and wood waste. The facility also plans to use a limited quantity of separated MSW as a feedstock after initial start-up.

On February 9, 2011, INEOS Bio broke ground on this facility. INEOS Bio completed construction on this facility in June 2012 and began full commissioning of the facility. In August 2012 INEOS Bio received approval from EPA for their yard waste separation plan

[27] Letter from A. Michael Schaal, Director, Office of Petroleum, Natural Gas, and Biofuels Analysis, EIA to Christopher Grundler Director, Office of Transportation and Air Quality, EPA, May 8, 2013.

and successfully registered their Vero Beach, FL facility under the RFS program. In September 2012 the facility began producing renewable electricity. In April 2013 comments to the proposed rule INEOS Bio stated that their facility was in the final start-up phase and that they expected to produce cellulosic ethanol at full production rates by the end of the year. The company issued a press release on July 31, 2013, stating that they had begun commercial production. For this final rule we project 0–1 mill gal of cellulosic ethanol from INEOS Bio in 2013. Applying the six month straight-line ramp-up period, which we consider a best case scenario as discussed above, with a start-up date in August results in a projection of approximately 1 mill gal in 2013. EPA believes this is a reasonable benchmark to use as a best case scenario when assessing the ramp-up of cellulosic biofuel facilities. When compared to the expected ramp-up rates of grain ethanol facilities, which are generally 1–2 months this is a conservative benchmark, but one we believe is appropriate given the challenges of scaling up new technologies. Given the uncertainty in the first production from INEOS Bio's facility and the history of delays for this facility, EPA believes a further discount to a projected volume of 0–1 mill gal is warranted. [28] INEOS Bio is also exploring several opportunities for additional cellulosic biofuel production facilities, both in the United States and internationally. INEOS Bio is targeting sources of inexpensive feedstock, primarily waste materials, and sees a market for plants with production capacities ranging from 8 to 50 mill gal per year per facility.

KiOR

KiOR is using a technology that converts biomass to a biocrude using a process they call Biomass Fluid Catalytic Cracking (BFCC). BFCC uses a catalyst developed by KiOR in a process similar to Fluid Catalytic Cracking currently used in the petroleum industry. The first stage of this process produces a renewable crude oil which is then upgraded to produce primarily gasoline, diesel, and jet fuel as well as a small quantity of fuel oil, all of which are nearly identical to those produced from petroleum.

KiOR's first commercial scale facility is located in Columbus, Mississippi and is capable of producing approximately 11 mill gal of gasoline, diesel, and jet fuel per year. Construction on this facility began in May 2011 and was completed in September 2012. This facility is funded, in large part, with funds acquired through private equity and supplemented by KiOR's $150 million IPO in June 2011. KiOR announced that the first renewable transportation fuel produced at this facility was shipped to customers on March 18, 2013. KiOR had intended to begin producing fuel at their Columbus facility in 2012. Unexpected difficulties during the commissioning of this facility, due in large part to an interruption in electricity supply to the facility during commissioning resulted in delays in fuel production. KiOR's current expectations at their Columbus facility are for a start-up period lasting 9–12 months. During this period they estimate fuel production will average 30%–50% of the facility capacity after which they plan to approach full production rates at the facility. KiOR's expected production from their Columbus facility in 2013, recently confirmed in their quarterly update on May 9th, 2013, is between 3 and 5 million actual gallons of cellulosic gasoline and diesel. KiOR has feedstock supply agreements in place to supply all of the required feedstock for their Columbus facility with slash and pre-commercial thinning. They also have off-take agreements with several companies for all of the fuel that will be produced. KiOR has also announced plans to begin work on their second commercial scale biofuel production facility in Natchez, Mississippi upon the successful start-up of their first facility. It is unlikely this second facility will begin production of biofuel in 2013. For 2013 our production projection is for 3–4 million actual gallons (5–6 million ethanol-equivalent gallons) of cellulosic biofuel from KiOR's Columbus facility. This volume is significantly lower than the volume of fuel that would be produced assuming our best case scenario benchmark of a 6 month straight-line ramp-up period starting in mid March (~9 million ethanol-equivalent gallons). However, EPA believes this lower projection is appropriate based on the guidance received from KiOR and the progress achieved at their facility to date.

Blue Sugars

Blue Sugars, formerly KL Energy, has developed a process to convert cellulose and hemicellulose into sugars and ethanol using a combined chemical/thermal-mechanical pretreatment process followed by enzymatic hydrolysis, co-fermentation of C5 and C6 sugars, and distillation to fuel-grade ethanol. This production process is versatile enough to allow for a wide variety of cellulosic feedstocks to be used, including woody biomass and herbaceous biomass such as sugarcane bagasse. In August 2010 Blue Sugars announced a joint development agreement with Petrobras America Inc. As part of the agreement Petrobras has invested $11 million to modify Blue Sugars' 1.5 mill gal per year demonstration facility in Upton, Wyoming to allow it to process bagasse and other biomass feedstocks. The modifications to Blue Sugars' facility were completed in the spring of 2011. In April 2012 Blue Sugars generated approximately 20,000 cellulosic biofuel RINs, the first RINs generated under the RFS program for fuel made from cellulosic feedstock. Blue Sugars has indicated, however, that the cellulosic ethanol they produced was exported to Brazil for promotional efforts at the Rio +20 conference in Brazil. These RINs therefore had to be retired and were not be available to obligated parties to meet their cellulosic biofuel requirements in 2012. In October 2012 Western Biomass Energy LLC, a subsidiary of Blue Sugars that owned the Upton, Wyoming demonstration facility, filed for Chapter 11 bankruptcy. This was changed to Chapter 7 bankruptcy on May 2, 2013 and was followed by a Chapter 7 bankruptcy filing for Blue Sugars on May 10th.

ZeaChem

ZeaChem successfully completed construction of their demonstration-scale facility in Boardman, Oregon, in October 2012, allowing for the production of ethanol from sugars derived from cellulose and hemi-cellulose. On March 12, 2013 they announced that they had successfully produced ethanol from cellulosic feedstocks at their biorefinery, which has a nameplate capacity of 250,000 gallons of cellulosic ethanol per year. ZeaChem's production process uses a combination of biochemical and thermochemical technologies to produce ethanol and other renewable chemicals from cellulosic materials. The feedstock is first fractionated into two separate streams, one containing sugars derived from cellulose and hemicellulose and the other containing lignin. The sugars are fermented into an intermediate chemical, acetic acid, using a naturally occurring acetogen.

[28] Given the recent start-up of the INEOS Bio facility, we do not expect that zero gallons would be produced in 2013. However, we have decided to base our projections (including ranges) in million gallon increments in 2013, since uncertainty does not allow a more precise worst-case projection. Our projection for INEOS Bio, therefore, remains between zero and 1 million gallons, recognizing that zero could only occur in the unlikely event that they chose not to generate RINs for volume already produced.

The acetic acid is then converted into ethyl acetate, which can then be hydrogenated into ethanol. The hydrogen necessary for this process is produced by gasifying the lignin stream from the cellulosic biomass.

ZeaChem's process is flexible and is capable of producing a wide range of renewable chemicals and fuels from many different feedstocks. They plan to use both agricultural residues and pre-commercial thinnings and tree residue from tree plantations at their demonstration facility and have contracts in place for these feedstocks, as well as planted trees from tree plantations, at their first commercial scale facility.[29] In January 2012 ZeaChem announced that they had received a $232.5 million conditional loan guarantee offer from USDA for the construction of their first commercial scale facility, which will have a capacity of at least 25 mill gal per year. ZeaChem currently has agreements in place to provide all of the necessary feedstock for this facility. This facility, however, is not expected to begin producing cellulosic biofuel until late 2014 at the earliest. We therefore have not included any volume for this facility in our 2013 projection.

Abengoa

Abengoa has developed an enzymatic hydrolysis technology to convert corn stover and other agricultural waste feedstocks into ethanol. After successfully testing and refining their technology at a pilot scale facility in York, Nebraska as well as in a demonstration-scale facility in Salamanca, Spain, Abengoa is now working towards the completion of their first commercial scale cellulosic ethanol facility in Hugoton, Kansas. Abengoa has contracts in place to provide the majority of feedstocks necessary for this facility for the next 10 years and successfully completed their first biomass harvest in the fall of 2011. Construction at this facility, which began in September 2011, is expected to take approximately 24 months and be completed in the fourth quarter of 2013. All of the major process equipment for this project has been purchased and all of the required permits for construction have been approved. Abengoa's Hugoton facility is being partially funded by a $132 million Department of Energy (DOE) loan guarantee.

When completed, the Hugoton plant will be capable of processing 700 dry tons of corn stover per day, with an expected annual ethanol production capacity of approximately 24 mill gal. Abengoa plans to begin ramping up production at the facility shortly after completing construction in late 2013 and to be producing fuel at rates near the nameplate capacity in the summer of 2014. After successfully proving their technology at commercial scale in Hugoton, Abengoa currently plans to construct additional similar cellulosic ethanol production facilities, either on greenfield sites or co-locating these new facilities with their currently existing starch ethanol facilities around the United States. While this facility could produce a small volume of cellulosic ethanol in 2013, commissioning of the facility is expected to last through the first quarter of 2014, during which only small volumes of ethanol will be produced. Given the small volume potential and high degree of uncertainty of production from this facility in 2013, we have not included any of this volume in our projected available volume for 2013.

Poet

Poet has also developed an enzymatic hydrolysis process to convert cellulosic biomass into ethanol. Poet has been investing in the development of cellulosic ethanol technology for more than a decade and began producing small volumes of cellulosic ethanol at pilot scale at their plant in Scotland, SD in late 2008. In January 2012, Poet formed a joint venture with Royal DSM of the Netherlands called Poet-DSM Advanced Biofuels to commercialize and license their cellulosic ethanol technology.

The joint venture's first commercial scale facility, called Project LIBERTY, will be located in Emmetsburg, Iowa. This facility is designed to process 770 dry tons of corn cobs, leaves, husks, and some stalk per day into cellulosic ethanol. The facility is projected to have an annual production capacity beginning at approximately 20 mill gal per year, increasing over time to 25 mill gal per year. In anticipation of the start-up of this facility, Poet constructed a 22-acre biomass storage facility and had its first commercial harvest in 2010, collecting 56,000 tons of biomass.

Site prep work for Project LIBERTY began in the summer of 2011, and vertical construction of the facility began in the spring of 2012. Poet was awarded a $105 million loan guarantee offer for this project from DOE in July 2011, but with the joint venture decided to proceed without the loan guarantee. This project is expected to be completed in the first half of 2014. After the completion of Project LIBERTY, Poet plans to build additional cellulosic ethanol facilities at many of their existing corn ethanol plants. They are also planning to license their technology for use at other grain ethanol plants, as well as build additional plants that will process wheat straw, rice hulls, woody biomass or herbaceous energy crops. By 2022 Poet has a goal of producing 3.5 bill gal of cellulosic ethanol per year. Given the projected completion date of 2014 for the Emmetsburg, Iowa facility, we have not included any of this volume ion our projected available volume for 2013.

Other Companies

There are several more companies planning to begin producing cellulosic biofuel from commercial scale facilities in 2014 including Cool Planet Biofuels, DuPont, and Ensyn. Along with the companies discussed above, these facilities represent approximately 100 mill gal of additional cellulosic biofuel production capacity. Most of these companies have already begun to develop plans for their successive facilities to follow after the successful completion of their initial projects.

4. Other Potential Sources of Domestic Cellulosic Biofuel

Each of the companies listed in the previous two sections is planning to generate cellulosic biofuel RINs using one of the valid RIN-generating pathways listed in Table 1 to 40 CFR § 80.1426. To generate RINs, each company must comply with all applicable registration, recordkeeping, and reporting requirements in the RFS regulations, including requirements to verify that the feedstocks used are renewable biomass and are sourced from approved land. EPA is not approving any additional feedstocks or processes in today's rule. We are also aware of several companies that may be in a position to produce cellulosic biofuel in 2013 but intend to use a production pathway that is not currently approved for RIN generation. Pathways that are currently under evaluation by EPA include transportation fuels derived from landfill biogas such as CNG, cellulosic ethanol produced from corn kernel fiber and cellulosic heating oil. If these or other cellulosic biofuel pathways are approved by EPA, they may be used to generate on the order of 3 million cellulosic biofuel RINs in 2013. Because EPA has not yet made a final determination on these pathways no volume of cellulosic fuel from these

[29] EPA has not yet approved planted trees from tree plantations as a RIN generating feedstock. Unless and until EPA approves a pathway using planted trees from tree plantations as a feedstock ZeaChem will be unable to generate RINs for any biofuel produced using this feedstock.

pathways has been included in our 2013 cellulosic biofuel projection.

5. Imports of Cellulosic Biofuel

While domestically produced cellulosic biofuels are the most likely source of cellulosic biofuel available in the United States in 2013, imports of cellulosic biofuel produced in other countries may also generate RINs and participate in the RFS program. While the demand provided by the RFS program provides a financial incentive for companies to import cellulosic biofuels into the United States, the combination of local demand, financial incentives from other governments, and transportation costs for the cellulosic biofuel has resulted in no cellulosic biofuel being imported to the United States thus far. We believe this situation is likely to continue in the near future and have not included any cellulosic biofuel imports in our projections of available volume in 2013.

As in the United States, the production of cellulosic biofuels internationally is mostly limited to small-scale research and development, pilot, and demonstration facilities at this time. This is likely to continue to be the case throughout 2013. Two notable exceptions are facilities built and operated by Beta Renewables and Enerkem. Beta Renewables completed construction of their first commercial scale facility located in Crescentino, Italy in the summer of 2012. This facility is currently in a commissioning phase and is designed to produce approximately 20 mill gal of cellulosic ethanol per year. Beta Renewables uses an enzymatic hydrolysis process to produce ethanol from local agricultural residues and herbaceous energy crops.

Enerkem is also in the process of building their first commercial scale facility in Edmonton, Alberta and plans to begin operations in 2013. Enerkem's facility will use a thermochemical process to produce syngas from MSW and then catalytically convert the syngas to methanol. The methanol can then be sold directly or upgraded to ethanol or other chemical products. At full capacity this facility will be capable of producing 10 mill gal of cellulosic ethanol per year. At this point, neither Beta Renewables nor Enerkem have registered their facilities under the RFS program, a necessary step that must be completed before these companies can generate RINs for any fuel they import into the United States. Both are planning to locate additional plants in the United States in the future and are likely to generate RINs for production from domestic facilities in future years.

6. Summary of Volume Projections

The information we have gathered on cellulosic biofuel producers, described above, allows us to project production volumes for each facility in 2013. For the purposes of this final rulemaking we have focused on commercial scale cellulosic biofuel production facilities. We believe our focus on commercial scale facilities is appropriate as the industry transitions from small-scale R&D and pilot facilities to large scale commercial production. It is likely that several small-scale facilities such as API, DuPont, ZeaChem, and others will also produce some cellulosic biofuel in 2013. While RINs may be generated for any cellulosic biofuel produced from these small R&D and pilot facilities, historically many have chosen not to do so for a variety of reasons. We are therefore not including a volume projection from these facilities.

In 2013 as many as seven cellulosic biofuel companies have the potential to produce fuel at commercial scale. Each of these facilities is discussed above, and the facility production targets for each are summarized in Table II.C.6–1 below. Of the two companies from which we are basing our 2013 cellulosic biofuel projection one has already begun producing cellulosic biofuel at their commercial scale facility and the other is expected to begin production soon. This gives us increased confidence in their production capabilities as they have already achieved significant milestones. The other companies that have the potential to produce cellulosic biofuel in 2013, Abengoa, EdeniQ, Ensyn, Fiberight, and companies producing biogas from landfills for transportation use, either do not yet have a valid RIN generating pathway or are not planning on beginning fuel production until late 2013 or early 2014. Even a small delay in their expected production timeline could result in their failure to produce any cellulosic biofuel in 2013 and any volumes of fuel produced are likely to be very small. For this final rule, therefore, we are not projecting production from these facilities in 2013 consistent with EIA's projection. The fact that our projection only includes volumes from facilities that have already completed construction of commercial scale facilities is in large part due to the delay in finalizing the RFS standards for 2013 and is not intended to set a precedent for future rulemakings. Volumes from facilities that have not yet completed construction may be considered in EPA's volume projections in future rulemakings if appropriate under the circumstances, recognizing that EPA's goal is a projection of what will actually happen in the year at issue, taking a neutral aim at accuracy.

When considering together all the potential sources of cellulosic biofuel, the total projected production volume from commercial scale production facilities in the United States in 2013 is 4 million actual gallons (6 million ethanol-equivalent gallons). This is the mid-point of the range of values projected for the two facilities. This number represents EPA's projection of expected cellulosic RIN production in 2013, taking into account the EIA estimates and the many factors described in detail above.

TABLE II.C.6–1—PROJECTED AVAILABLE CELLULOSIC BIOFUEL FOR 2013

Company name	Location	Feedstock	Fuel	Design capacity (MGY)	First production (projected)	2013 Projected available actual volume (Mill gal)	2013 Projected available volume (million ethanol-equivalent gallons)
Abengoa	Hugoton, KS	Corn Stover	Ethanol	24	1st Quarter 2014[b]	0	0
EdeniQ[a]	Various	Corn Kernel Fiber	Ethanol	10	4th Quarter 2013[b]	0	0
Ensyn[a]	Rhinelander, WI; Ontario, CA.	Woody Biomass	Heating Oil	4	Currently Producing	0	0
Fiberight	Blairstown, IA	MSW	Ethanol	6	1st Quarter 2014[b]	0	0
INEOS Bio	Vero Beach, FL	Vegetative Waste	Ethanol	8	Mid 2013[b]	0–1	0–1
KiOR	Columbus, MS	Wood Waste	Gasoline and Diesel.	11	March 18, 2013	3–4	5–6

TABLE II.C.6–1—PROJECTED AVAILABLE CELLULOSIC BIOFUEL FOR 2013—Continued

Company name	Location	Feedstock	Fuel	Design capacity (MGY)	First production (projected)	2013 Projected available actual volume (Mill gal)	2013 Projected available volume (million ethanol-equivalent gallons)
Various[a]	N/A	Landfill Biogas	Biogas	N/A	Currently Producing	0	0
Various Pilot/ Demo Plants.	Various	Various	Various	Various	Various	0	0
Total				49		4	6

[a] Companies do not currently have valid pathways for RIN generation.
[b] Start-up dates for these facilities are projections.

D. Cellulosic Biofuel Volume for 2013

In today's final rule we are setting the applicable volume for cellulosic biofuel for 2013 that is based on EIA's estimate, projected production volumes developed in consultation with the companies expected to produce cellulosic biofuel from commercial scale facilities in 2013, comments we received in response to the NPRM, and EPA's judgment. Many factors have been taken into consideration in developing these projections, such as the EIA estimate, the current status of project funding, the status of the production facility, anticipated construction timelines, the anticipated start-up date and ramp-up schedule, feedstock supply, intent to generate RINs, and many others. Moreover, all of the companies included in our 2013 volume projections have invested a significant amount of time and resources developing their technologies at R&D and demonstration-scale facilities prior to the design and construction of their first commercial scale facilities. The projects have solid financial backing. We believe the sum of these individual projected available volumes (6 million ethanol-equivalent gallons) is a reasonable projection of expected actual production. This projection reflects EPA's best estimate of what will actually happen in 2013.

III. Assessment of Advanced Biofuel and Total Renewable Fuel for 2013

As described in Section I, the volumes of renewable fuel required for use under the RFS program each year (absent an adjustment or waiver by EPA) are generally specified in CAA 211(o)(2) through 2022. For 2013, the applicable volume of advanced biofuel is 2.75 bill gal, and the applicable volume of total renewable fuel is 16.55 bill gal.

In the NPRM, we proposed a reduction in the applicable volume of cellulosic biofuel. Under section 211(o)(7)(D)(i), when EPA reduces the volume of cellulosic biofuel EPA may reduce the applicable volume of total and advanced biofuel by an amount up to the reduction in cellulosic biofuel. We proposed no reduction in the volumes of advanced biofuel and total renewable fuel for 2013. However, we requested comment on whether the advanced biofuel and total renewable fuel requirements should be reduced under section 211(o)(7)(D)(i) to account for uncertainty in availability of advanced biofuel, specifically asking whether a reduction of 200 mill gal would be appropriate. We also requested comment on whether the blendwall [30] would present any difficulty in terms of compliance with the volume requirements in 2013.

No stakeholders supported the specific reduction of 200 mill gal in the advanced biofuel and total renewable fuel volume requirements on which we sought comment in our proposal. Instead, stakeholders were generally in favor of either much larger reductions or no reduction at all. Those requesting much larger reductions most commonly pointed to the authority under the cellulosic waiver authority to reduce advanced biofuel and total renewable fuel by up to the same amount as the reduction in cellulosic biofuel, which was 986 mill gal in the NPRM. Depending on the stakeholder, justifications for such large reductions included cost, availability, and the E10 blendwall. Some went further, suggesting that the required volume of total renewable fuel should be reduced more than 986 mill gal since reductions in advanced biofuel would likely be insufficient to address the E10 blendwall. Of those that cited the E10 blendwall as a reason to reduce the required volumes, most requested that the total volume of ethanol demand created by the standards be no more than 10% of all gasoline, though some conceded that accounting for reasonably achievable volumes of E15–E85 would be appropriate.

[30] In general, the term ''blendwall'' refers to the total volume of ethanol that can be consumed as either E10 or higher ethanol blends given various constraints.

Those stakeholders requesting that the applicable standards be based on the statutory volumes without any reductions typically cited sufficiency of available biofuels and opportunities for growth in consumption of E15–E85. Some also pointed to the need to promote growth in the advanced biofuel and non-ethanol markets and expressed concern that any reductions in the standards would jeopardize investments.

A. Statutory Authorities for Reducing Volumes

1. Cellulosic Waiver Authority

Under CAA section 211(o)(7)(D)(i), if EPA determines that the projected volume of cellulosic biofuel production for the following year is less than the applicable volume provided in the statute, then EPA must reduce the applicable volume of cellulosic biofuel to the projected volume available during that calendar year. Under such circumstances, EPA also has the discretion to reduce the applicable volumes of advanced biofuel and total renewable fuel by an amount not to exceed the reduction in cellulosic biofuel.

Section 211(o)(7)(D)(i) provides that ''For any calendar year in which the Administrator makes such a reduction, the Administrator may also reduce the applicable volume of renewable fuel and advanced biofuels requirement established under paragraph (2)(B) by the same or a lesser volume.'' Thus Congress authorized EPA to reduce the volume of total renewable fuel ''and'' advanced biofuels. As EPA has discussed before, this indicates a clear Congressional intention that EPA may reduce both the total renewable and advanced biofuel volume together, not one or the other.

As described in the May 2009 NPRM for the RFS regulations, we do not believe it would be appropriate to lower the advanced biofuel standard but not the total renewable standard, as doing so would allow conventional biofuels to effectively be used to meet the standards that Congress specifically set for advanced biofuels. See 74 FR 24914–15. We interpret this provision as authorizing EPA to reduce both total renewable fuel and advanced biofuel, by the same amounts, if EPA reduces the volume of cellulosic biofuel. Using this authority the reductions in total renewable fuel and advanced biofuel can be up to but no more than the amount of reduction in the cellulosic biofuel volume.

The National Biodiesel Board (NBB) commented that the language of CAA 211(o)(7)(D)(i) does not require advanced biofuel and total renewable fuel volumes to be reduced together. NBB cited several other legal decisions to support their assertion that advanced biofuel and total renewable fuel could be reduced by different amounts under the cellulosic waiver authority. While we agree that in some other contexts wording similar to that in 211(o)(7)(D)(i) has taken on a different meaning, in none of those other contexts was there a nested set of requirements such as there are in the RFS program. In the RFS program, cellulosic biofuel is also used to satisfy the advanced biofuel standard and the total renewable fuel standard. Similarly, advanced biofuel is used to satisfy the volume obligation for total renewable fuel. Thus any reductions in the applicable volume of cellulosic biofuel will also simultaneously affect the means through which obligated parties comply with these two other standards, and any reductions in advanced biofuel volume will affect the means through which obligated parties comply with the total renewable fuel volume. Congress structured the volumes such that total renewable fuel volume requirements were increasing in coordination with the increase in advanced biofuel. Congress established the volume requirements for advanced biofuel and total renewable fuel as interrelated standards. Therefore it is appropriate to consider a possible reduction in both the advanced biofuel and total renewable fuel applicable volumes when EPA reduces the cellulosic biofuel volume below the applicable volume for cellulosic biofuel set forth in the statute. Thus to the extent circumstances warrant a reduction in advanced biofuel and total renewable fuel based on the reductions in cellulosic biofuel pursuant to section 211(o)(7)(D)(i), we believe it will best reflect the goals and objectives of the Act for the advanced biofuel and total renewable fuel volumes to both be reduced by the same amount, maintaining the volume relationship between the two renewable fuel categories. In this way, if the circumstances in a specific year warrant not reducing the advanced biofuel and total renewable fuel volumes by the amount that the cellulosic biofuel volume is reduced, then to the extent that the shortfall in cellulosic biofuel production is replaced it would be through advanced biofuel, which comes significantly closer to the GHG reductions achieved by cellulosic biofuel. It is important to note, however, that this discussion does not address whether or under what circumstances the advanced and total volume requirements should be reduced under section 211(o)(7)(D)(i), but solely whether any such reductions would be for both categories of fuel under section 211(o)(7)(D)(i).

NBB also argued that any consideration of a reduction in advanced biofuel should be accompanied by an equivalent reduction in total renewable fuel, but that the reverse was not true. We agree that a reduction in the total renewable fuel requirement that is considered under the general waiver authority at 211(o)(7)(A) need not necessarily be accompanied by an equivalent reduction in the advanced biofuel requirement. It is possible that there could be an inadequate supply of total renewable fuels that would justify a waiver of the total renewable fuel standard, for example, without there also being an inadequate supply of advanced biofuels. However, we are currently setting the annual RFS standard and are not responding to a petition that we assert the general waiver authority.

In 2013, the applicable volume of cellulosic biofuel specified in the statute represents more than a third of the advanced biofuel volume (1.0 bill gal out of 2.75 bill gal), a higher fraction than in any previous year. A substantial reduction in the applicable volume of cellulosic biofuel could potentially also have a substantial impact on the sufficiency of volumes to meet the advanced biofuel and total renewable fuel standards. As described in Section II.D above, we are establishing an available volume of cellulosic biofuel for 2013 of 6 mill ethanol-equivalent gallons, significantly below the statutory applicable volume of 1.0 bill gal. As a result, we have the discretion under CAA section 211(o)(7)(D)(i) to reduce the advanced biofuel and total renewable fuel applicable volumes by up to 994 mill gallons (ethanol-equivalent).

The statute does not provide any explicit criteria that must be met or factors that must be considered when making a determination as to whether and to what degree to reduce the advanced biofuel and total renewable fuel applicable volumes based on a reduction in cellulosic biofuel volumes under CAA section 211(o)(7)(D)(i). In comments on the NPRM, stakeholders differed in their views about which factors EPA should consider when making a determination about whether and to what degree to reduce volumes of advanced biofuel and total renewable fuel under the cellulosic waiver authority. Some indicated that the only factor that should be considered is whether the volumes in question are available. Others indicated that the criteria that apply under the general waiver authority at section 211(o)(7)(A) should also apply to the cellulosic waiver authority at section 211(o)(7)(D)(i). The Clean Air Task Force and the Union of Concerned Scientists both suggested that the criteria in section 211(o)(2)(B)(ii), which are required to be used to determine applicable volumes for years not specified in the statute, should also be considered in the context of the cellulosic waiver authority. The criteria in section 211(o)(2)(B)(ii) are described more fully in Section III.A.3 below.

We agree that nothing in the Act precludes EPA from considering the criteria described in sections 211(o)(2)(B)(ii) and 211(o)(7)(A) in determining appropriate reductions in advanced biofuel and total renewable fuel under the cellulosic waiver authority at section 211(o)(7)(D)(ii). Moreover, it may be appropriate to do so in certain circumstances, as described more fully below. However, we do not believe that there is any legal requirement to apply the criteria of those provisions as binding criteria for purposes of section 211(o)(7)(D)(ii). It is clear that these three statutory provisions are separate and independent provisions, with no cross-references. Congress did not include the criteria in those other waiver provisions in the separate waiver provision for cellulosic biofuel. In the case of the general waiver authority at section 211(o)(7)(A), we do not agree with the comment that it provides criteria that must be met in order to reduce cellulosic and advanced volumes under 211(o)(7)(D)(i). If it did, the waiver language in 211(o)(7)(D)(i) would be superfluous, since 211(o)(7)(A) would already provide the discretionary authority to reduce advanced biofuel and total renewable fuel in the circumstances where the criteria in 211(o)(7)(A) are satisfied. Moreover, if the criteria in 211(o)(7)(A) apply to the cellulosic waiver authority in 211(o)(7)(D)(i), then it would also logically apply to the biomass-based diesel waiver authority in 211(o)(7)(E)(ii), also rendering that section superfluous. We do not believe that the Act can or should be interpreted in this manner.

We believe that the applicable volumes for total and advanced biofuel identified in the statute should be retained for 2013 as there are reasonably available volumes of renewable fuel to achieve the statutory volumes. EPA has also considered the comments concerning factors other than availability, as discussed below. EPA has determined that under the circumstances discussed below for 2013, it is appropriate to retain the statutory volumes.

One stakeholder suggested that uncertainty in potential imports of sugarcane ethanol from Brazil should not be a factor when projecting the volumes expected to be available to meet the statutory volume requirements for advanced biofuel. The stakeholder pointed to a recent decision from the U.S. Court of Appeals indicating that EPA need not present specific numerical projections of available volumes of advanced biofuel if it did not intend to reduce the required volumes below the volumes specific in the statute. In that case the court stated that:

> Nothing in the text of § 7545(o)(7)(D)(i), or any other applicable provision of the Act, plainly requires EPA to support its decision not to reduce the applicable volume of advanced biofuels with specific numerical projections. This stands in contrast to the Act's explicit instructions that EPA make a numerical projection for cellulosic biofuel. Certainly EPA must provide a reasoned explanation for its actions, but rationality does not always imply a high degree of quantitative specificity.

API v. *EPA,* 706F.3d at 481 (D.C. Cir 2013)

In the 2012 RFS standards rule at issue in the referenced Court decision, EPA did not present individual numeric projections of available volumes of advanced biofuel, but instead described historical data, production capacity, competing publicly-available projections and qualitative information to conclude that sufficient volumes could be produced without lowering the applicable volume set forth in the statute. The Court upheld EPA's approach as reasonable. However, the Court decision does not preclude EPA from deriving and seeking comment on numeric projections where EPA believes it is appropriate to do so. In this case EPA believed it would facilitate its decision-making to derive and seek comment on a numeric projection of sugarcane ethanol imports for 2013. This approach is consistent with the statute and the API opinion.

2. General Waiver Authority

Under CAA 211(o)(7)(A), EPA can reduce the amount of any of the four volume requirements specified in the statute if one of the following determinations is made:

- Implementation of the requirement would severely harm the economy or the environment of a State, a region, or the United States;
- There is an inadequate domestic supply.

In order to make such a reduction in the required volumes, EPA would need to consult with the Secretary of Agriculture and the Secretary of Energy, and would need to provide public notice and opportunity for comment.

3. Modification of Applicable Volumes for 2016 and Beyond

Under certain specified conditions, CAA section 211(o)(7)(F) requires EPA to modify the applicable volume provided in the statute for calendar years 2016 and beyond if EPA has waived a volume requirement using the waiver authorities provided in CAA section 211(o)(7)(A), (D), or (E). This requirement to modify the applicable volumes is triggered when one of the following occurs:

- EPA waives at least 20 percent of the applicable volume requirement for two consecutive years
- EPA waives at least 50 percent of the applicable volume requirement for a single year

This requirement to modify the applicable volumes applies separately for each of the four volume requirements in CAA section 211(o)(2)(B),

Volume modifications made pursuant to CAA 211(o)(7)(F) would differ from waivers in several important ways. First, while waivers leave the statutory volume mandates at CAA 211(o)(2)(B)(i) intact and merely reduce them for the purposes of calculating the applicable annual percentage standards for that year, the volume modifications under 211(o)(7)(F) would instead modify the applicable volumes that are provided in the statute. Once modified, the new volumes would replace those in the statute for the applicable years. Second, waivers are generally determined and applied for one year at a time, while the volume modifications could be done at one time for multiple years after 2015. Third, CAA 211(o)(7)(F) provides explicit direction concerning those factors that EPA must consider in modifying the statutory volumes for 2016 and beyond, incorporating by reference the requirements in CAA section 211(o)(2)(B)(ii):

- The impact of the production and use of renewable fuels on the environment, including on air quality, climate change, conversion of wetlands, ecosystems, wildlife habitat, water quality, and water supply;
- The impact of renewable fuels on the energy security of the United States;
- The expected annual rate of future commercial production of renewable fuels, including advanced biofuels in each category (cellulosic biofuel and biomass-based diesel);
- The impact of renewable fuels on the infrastructure of the United States, including deliverability of materials, goods, and products other than renewable fuel, and the sufficiency of infrastructure to deliver and use renewable fuel;
- The impact of the use of renewable fuels on the cost to consumers of transportation fuel and on the cost to transport goods; and
- The impact of the use of renewable fuels on other factors, including job creation, the price and supply of agricultural commodities, rural economic development, and food prices.

To modify the required volumes under 211(o)(7)(F), EPA is also required to coordinate with the Secretary of Energy and the Secretary of Agriculture and review the implementation of the program to date. Any modification under this provision would be made through rulemaking.

In response to the NPRM, one stakeholder requested that EPA use the authority under CAA 211(o)(7)(F) as soon as possible, or by 2014, to modify the required future volumes for cellulosic biofuel as a way of providing more long-term certainty to the market. However, we do not believe that taking action sooner would provide such long-term certainty since the authority under CAA 211(o)(7)(D) would continue to apply and we would still be required to reduce the applicable volume of cellulosic biofuel if the volume projected to be available for any one calendar year was less than the volumes for that calendar year as modified under CAA 211(o)(7)(F).

B. Available Volumes of Advanced Biofuel in 2013

In the NPRM we discussed the cellulosic waiver authority provided in CAA 211(o)(7)(D)(i), which provides that EPA may reduce the applicable volume of advanced biofuel and total renewable fuel up to the amount of the reduction in required cellulosic biofuel volumes (986 mill gal in the NPRM). We clarified that, if we were to reduce the required volume of advanced biofuel under this statutory authority, we would also reduce the required volume of total renewable fuel by the same amount, with the net effect being that the volume of non-advanced biofuel needed to meet the statutory required volumes would be unchanged. In the NPRM we did not discuss reductions in any of the statutory volume requirements under the general waiver authority.

Our focus in the NPRM was on the availability of advanced biofuel in comparison to the volume needed to meet the statutory volume of 2.75 bill gal in light of the substantial reduction in cellulosic biofuel. Based on our assessment of availability of advanced biofuel, we proposed no reduction in the advanced biofuel and total renewable fuel volumes. We continue to believe that the availability of advanced biofuel is a critical component in determining whether the statutory volume requirement of 2.75 bill gal should be reduced. However, we recognize that we can also consider other factors in this determination. For instance, in response to our request for comment on whether the E10 blendwall might present difficulty in meeting the statutory volume requirements, a number of stakeholders indicated that we should use one of the statutory waiver authorities to reduce the required volumes of advanced biofuel and total renewable fuel to account for limitations in the volume of ethanol that can be consumed. Other stakeholders suggested that we reduce advanced and total volumes because of environmental or cost concerns.

We have the discretion under 211(o)(7)(D)(i) to reduce the advanced biofuel and total renewable fuel volumes by up to the amount we reduce the applicable volume of cellulosic biofuel, and such a reduction would contribute to reducing complications associated with the E10 blendwall. The net effect of such a change would be that the volume of non-advanced biofuel needed to meet the required volumes for total renewable fuel would be unaffected. We discuss the E10 blendwall and the treatment of total renewable fuel in Section III.C below, and we discuss a longer-term strategy for combining considerations of biofuel availability and the ethanol blendwall in Section III.E. In this section we focus on the availability of advanced biofuels in our determination of whether to reduce the advanced biofuel and total renewable fuel volumes using the cellulosic waiver authority.[31]

Renewable fuels that can be used to meet the standard for advanced biofuel include those with Renewable Identification Number (RIN) codes of 3, 4, 5, or 7. Table III.B–1 shows the number of each of these types of RIN that was generated in 2012.

TABLE III.B–1—2012 RINS THAT QUALIFIED TO MEET THE 2012 ADVANCED BIOFUEL STANDARD[32]

[Million ethanol-equivalent gallons]

D code	Category	Ethanol	Biodiesel	Renewable diesel	Biogas and heating oil
3	Cellulosic biofuel	0.02	0	0	0
4	Biomass-based diesel	0	1,579	147	0
5	Advanced biofuel	588	0	20	3
7	Cellulosic diesel	0	0	0	0
Total	2,337				

The total of 2,337 mill ethanol-equivalent gallons is higher than the 2,000 mill gal of advanced biofuel required in 2012. This result supports our projection in the rulemaking setting the 2012 standards[33] that there was no need to reduce the 2012 advanced biofuel requirement despite the significant reduction in the applicable volume of cellulosic biofuel.

The applicable volume in the statute for advanced biofuel in 2013 is 2,750 mill gal, an increase of 750 mill gal over the 2012 requirement of 2,000 mill gal, and 413 mill gal above the volume actually produced or imported in 2012. In order to determine the sufficiency of advanced biofuel volumes to meet a requirement for 2,750 mill gal in 2013, we first accounted for biomass-based diesel and cellulosic biofuels that would be required under the standards we are setting today. As shown in Table III.B–2, the result is that there would need to be 824 mill ethanol-equivalent gallons of other advanced biofuels in order to meet the total advanced biofuel requirement of 2,750 mill gal.

TABLE III.B–2—NECESSARY VOLUME OF ADVANCED BIOFUEL

[Mill gal ethanol-equivalent]

2013 Advanced biofuel applicable volume	2,750
Cellulosic biofuel requirement	6
Biomass-based diesel requirement	[a] 1,920
Necessary volume of additional advanced biofuel	824

[a] We have assumed that the 1.28 bill gal requirement is composed entirely of biodiesel with an equivalence value of 1.5 based on historical production. If significant quantities of renewable diesel, with an equivalence value of 1.6 or 1.7 are used to satisfy the biomass-based diesel requirement this number will be larger.

We have identified a variety of sources of advanced biofuel that could meet the need for 824 mill gal of additional

[31] Any exercise of the general waiver authority requires notice and the opportunity for comment. The NPRM did not propose a waiver under the general waiver authority, and only discussed volume adjustments made under the cellulosic waiver authority. We are not in a position to address in this final rule all of the issues that would be relevant under a notice and comment proceeding under the general waiver provisions. This final rule thus focuses on the exercise of our authority under the cellulosic biofuel waiver provision.

[32] 2012 data from the EPA-Moderated Transaction System (EMTS).

[33] 77 FR 1320, published on January 9, 2012.

advanced biofuel, including the following:

- Biodiesel in excess of that required to meet the volume requirement of 1.28 bill gal
- Domestically produced advanced biofuels such as renewable diesel that does not qualify as biomass-based diesel, biogas from landfills, sewage waste treatment plants, and manure digesters, heating oil, sorghum ethanol produced at dry mill facilities using specified forms of biogas for both process energy and most electricity production, and ethanol and other qualifying renewable fuels from separated food wastes
- Imports of advanced biofuels, including sugarcane ethanol and renewable diesel

Taken together, and as discussed in more detail below, there is the potential for well over 1.0 bill gal of these additional advanced biofuels in 2013. Moreover, there are also a significant number of carryover RINs from 2012 that could be used to fulfill part of the 2013 advanced biofuel requirement. These carryover RINs alone could meet more than 500 mill gal of the 824 mill gal volume shown in Table III.B–2.

TABLE III.B–3—ADVANCED BIOFUEL CARRYOVER RINS FROM 2012 INTO 2013 (MILLION)

	D Code	RINs
Biomass-Based Diesel	4	353
Advanced Biofuel	5	196

1. Biomass-Based Diesel

In a separate action, we have finalized a biomass-based diesel volume of 1.28 bill gal for 2013.[34] [35] However, biomass-based diesel volumes above 1.28 billion physical gallons are possible. As of February 2013, the aggregate production capacity of registered biodiesel plants in the U.S. was 2.8 bill gal per year across 171 facilities.[36] Of this production capacity, 2.4 bill gallons is represented by companies that actually produced some biodiesel in 2012. For all facilities that produced biodiesel at 20% or more of their capacity in 2012, the total production capacity is 1.6 bill gallons.

The biodiesel industry has demonstrated that it can increase production quickly under appropriate circumstances. Total domestic production of biomass-based diesel in 2011 exceeded 1.0 bill gal, compared to a 2010 production of about 380 mill gallons.[37] In response to the NPRM on the 2012 RFS standards that was published on July 1, 2011, some stakeholders expressed doubts that the industry could substantially increase production over historic levels in order to permit compliance with the proposed 2012 advanced biofuel standard of 1.0 bill gal.[38] Nevertheless, the industry responded to RFS mandates with substantial production increases. Based on the single-year increase of more than 600 mill gal in 2011 and the total capacity of existing plants described above, we believe it is possible that the industry could, if the statutory applicable volume of advanced biofuel is not reduced, achieve increases in production above the 280 mill gallon increment that is reflected in the biomass-based diesel requirement for 2013.

Recently, the tax credit for biodiesel was reinstated after having expired at the end of 2011.[39] This tax credit, applicable retroactively to 2012 and through the end of 2013, may provide additional incentive to produce and consume biodiesel volumes in excess of the 1.28 bill gal requirement. While one party commented that the biodiesel tax credit should not be a relevant factor, the existence of a tax credit affects the likelihood that biodiesel volumes in excess of 1.28 bill gal will be produced. Therefore, it is a relevant consideration in determining whether there are likely to be sufficient volumes of advanced biofuel available to meet the statutory volume requirement of 2.75 bill gal.

Because the 2013 volume requirement of 1.28 bill gal for biomass-based diesel was established in a final rulemaking published on September 27, 2012, we did not take comment on this volume in the NPRM. Nevertheless, in their comments on the NPRM, several refiners and their associations requested that the 2013 volume requirement for biomass-based diesel be reduced from 1.28 bill gal to the statutory minimum of 1.0 bill gal. They cited concerns about the industry's ability to produce this volume and pointed to a DOE study indicating that 2012 production was below the 1.0 bill gal requirement.[40] However, according to EMTS [41] the total volume of RIN-generating biodiesel produced in 2012 was 1.05 bill gal.

a. Feedstocks

i. Feedstock Availability

In response to the NPRM, some parties expressed concern that there would not be sufficient feedstocks available for production of biomass-based diesel in excess of 1.28 bill gal in 2013. Recognizing that there was some uncertainty regarding production in excess of 1.28 bill gal, we did not make a specific numerical projection in the NPRM. Nevertheless, we continue to believe that the availability of qualifying feedstocks is not likely to be a hindrance to excess biodiesel production in 2013.

According to EMTS, in 2012 nearly 90% of biomass-based diesel was produced from soybean oil and waste oils/fats/greases.[42]

TABLE III.B.1.A.I–1—FEEDSTOCKS USED TO MAKE BIODIESEL AND RENEWABLE DIESEL IN 2012

	Fraction of 2012 production (percent)
Soybean oil	47
Biogenic waste oils/fats/greases	41
Canola oil	8
Non-food grade corn oil	2
Oil from annual covercrops	1
Non-cellulosic portions of separated food wastes	1

Since the supply of waste oils/fats/greases is generally considered to be

[34] 77 FR 59458, September 27, 2012

[35] Assuming most of this volume will be comprised of biodiesel, the required volume of 1.28 bill gal equates to approximately 1.92 bill ethanol-equivalent gallons.

[36] The complete list of biodiesel production companies and their associated production capacities is provided in the docket. It is based on an aggregation of plant lists from the National Biodiesel Board, EIA, and EPA's registration database, and includes both operational facilities and those that are not. For comparison, EIA's data derived from their EIA–22 survey yielded 116 operating biodiesel facilities that are operational with a total capacity of 2.2 billion gallons.

[37] All values from EMTS. 2010 estimate consists of approximately 209 mill gallons as recorded through EMTS for volume produced under the RFS2 regulations in July through December of 2010, and approximately 171 mill gallons as recorded through RIN generation reports submitted by producers for volume produced under the RFS1 regulations in January through June of 2010.

[38] See comments in docket EPA–HQ–OAR–2010–0133 from the American Petroleum Institute, Marathon Petroleum Company, and the National Petrochemical Refiners Association.

[39] ''Congress Votes to Reinstate Biodiesel Tax Incentive,'' January 2, 2013. *http://biodiesel.org/news/biodiesel-news/news-display/2013/01/02/congress-votes-to-reinstate-biodiesel-tax-incentive.*

[40] EIA's ''Monthly Biodiesel Production Report'' published on March 28, 2013 indicates that total 2012 production of biodiesel was 969 mill gal. The same report indicates that 2011 production was 967 mill gal.

[41] EMTS, or EPA's Moderated Transaction System is the system established by EPA to track all RIN generation information and other RIN transactions.

[42] EIA indicates that about 80% of biomass-based diesel was produced from soybean oil and waste oils/fats/greases in 2012, with the majority being from soybean oil. The difference between the EIA and EMTS values is likely due to the categorization of some canola and/or corn oil as waste oils/fats/greases. See EIA Monthly Biodiesel Production Report released on June 27, 2013.

inelastic, it is reasonable to assume that any increases in biomass-based diesel production after 2012 will come from soybean oil. Overall production and use of soybean oil in 2012 is shown below.

TABLE III.B.1.A.I–2—PRODUCTION AND USE OF SOYBEAN OIL IN 2012

[Mill gal]

Domestic production of soy oil	2,471
Net exports of soy oil	254
Soy oil used to make biodiesel	524
Soy oil used for non-biodiesel purposes	1,693

Source: USDA/ERS, Oil Crops Yearbook, Table 5. Assumes 7.68 lb/gal. *http://www.ers.usda.gov/data-products/oil-crops-yearbook.aspx*.

According to USDA, domestic soybean production is expected to increase by 13% in the 2013 soybean marketing year compared to the 2012 marketing year, or about 3% for calendar year 2013.[43] If this occurs, then domestic production of soy oil would increase by about 80 mill gal. Combined with the soy oil that could be diverted from exports to biodiesel production and the fact that biodiesel production in 2012 was 1.05 bill gal, we project that the requirement for 1.28 bill gal of biodiesel in 2013 could be met and exceeded by about 100 mill gal while having essentially no impact on the volume of soy oil used for non-biodiesel purposes.

In addition to soy oil, it is also possible that other qualifying feedstocks could be available to produce biodiesel in excess of 1.28 bill gal in 2013. For instance, while production of non-food grade corn oil has been relatively constant over the last several years, exports have risen over this same time period. In 2012, more than one third of the 320 mill gal of corn oil produced was exported instead of being used domestically. These exports could be diverted to biodiesel production depending on relative prices and other factors. Taken together, the use of both soy oil and corn oil could potentially provide about 300 mill ethanol-equivalent gal of biodiesel in excess of the 1.28 bill gal requirement.

ii. Impacts From Feedstock Use

A number of stakeholders commented that the NPRM overly relies on biofuel production availability as a criterion for setting the standards and fails to consider other criteria and potential impacts. With respect to biodiesel, for example, commenters argued that maintaining the advanced standard at statutory levels could lead to increased production and use of biodiesel for compliance purposes, and that this increased biodiesel would likely be produced from soybean oil. Commenters argued that EPA failed to consider the follow-on, or indirect, effects, namely that world demand for other replacement food-grade oils, particularly for palm oil, would increase.[44] Commenters asserted that the net impact of these indirect impacts would be an increase in lifecycle GHG emissions associated with soy biodiesel production. They further claimed that because EPA failed to assess or properly model such impacts, soy biodiesel shouldn't qualify as an advanced biofuel.

In making this argument, commenters made a number of assertions with respect to the modeling and lifecycle analysis EPA conducted as part of the March 2010 final RFS rulemaking. For example, commenters argued that EPA did not adequately account for substitutions in the vegetable oil markets, and therefore did not fully account for the potential GHG emissions associated with clearing of forests and draining of peat lands in Malaysia or Indonesia. Commenters also asserted that market data suggests the increase in biodiesel production has had more of an impact on global palm oil production than increased U.S. soybean production, as modeled in EPA's March 2010 lifecycle analysis of soybean oil biodiesel.

Commenters further argued that EPA's modeling for the March 2010 final rule was based on volume projections that are inconsistent with the potential growth in advanced biofuels, including biodiesel, should EPA determine that the advanced and total required volumes should not be reduced. As a result, commenters stated, EPA's assessments of the lifecycle GHG emissions associated with various advanced biofuels are flawed, and relying on them is inappropriate. If we were to reassess soybean oil lifecycle impacts, as at least one commenter recommended, commenters argued that such an analysis would show soybean oil biodiesel not meeting the statutory 50 percent reduction threshold in lifecycle GHGs needed to qualify as an advanced biofuel under the RFS program.

With respect to commenters' arguments regarding the GHG impacts of biodiesel, we note that the lifecycle GHG threshold determinations conducted for various categories of biofuels (as required by statute) were completed as part of the March 2010 final RFS rule. We made the determination in that rulemaking that biomass-based diesel from soy oil meets the greenhouse gas reduction threshold for advanced biofuel. We are not revisiting that determination as part of this action. Instead this rulemaking addresses the applicable volume requirements for the various categories of renewable fuels, in the context of applying the provision for a waiver of the cellulosic biofuel volumes. Thus we are not reconsidering or reopening the GHG threshold determinations made in the 2010 RFS final rule. Instead, we are considering this comment solely in the context of exercising our discretion under CAA section 211(o)(7)(D)(i).

We disagree with commenters' assertion that the indirect effects of using biodiesel have not been accurately accounted for in the 2010 lifecycle determination for biomass-based diesel. In response, we first note that we here discuss the 2010 lifecycle GHG emissions analysis for the purpose of assessing the 2013 volume standards; this discussion is not intended for purposes of reexamining the lifecycle analysis that led to the GHG determinations. When conducting our GHG emissions lifecycle analysis in 2010, we used the FAPRI-Iowa State model to examine the impacts that an increase in biomass-based diesel in the U.S. would have on world demand for oils. That analysis specifically allowed for the ability for palm oil production to respond to increased soybean biodiesel demand. Our analysis showed that the increased demand for soybean based biodiesel led primarily to an increase in soybean production, though the results also showed some increase in palm oil production. Taking all the GHG impacts of these effects together, the analysis showed lifecycle GHG emissions associated with soy biodiesel production and use met the 50 percent threshold required for qualifying as an advanced biofuel under the RFS program. The data provided by commenters does not isolate the impact that changes in biodiesel demand have on vegetable oil markets, which are driven by multiple factors, including population growth, changes in eating habits, and economic growth. Commenters do not provide new

[43] Pete Riley, ''Grains and Oilseeds Outlook; 2013 Agricultural Outlook Forum,'' USDA/Farm Service Agency, February 22, 2013. The increased production of soy oil in 2013 is projected on a crop year with the 2013/14 marketing year being October 2013 through September 30, 2014. Consequently, the 13% increase in production would only begin to be available to the market beginning in October 2013.

[44] See comments from Union of Concerned Scientists, International Council on Clean Transportation, Clean Air Task Force, Grocery Manufacturers Association, Actionaid, NRDC and the National Wildlife Federation.

information that would change our lifecycle emissions analysis. The March 2010 analysis captured the long-term market reaction to a sustained higher demand over many years for biomass-based diesel in the U.S., which primarily resulted in an increase in soybean oil biomass-based diesel production. We continue to believe that over the long-term, expansion of soybean production is a realistic reaction to increased demand for biodiesel in the U.S., thus supporting our analysis that soybean biodiesel reduces GHG emissions over the long run.

Commenters also stated that the volumes of advanced biofuels that would be needed to fill the cellulosic void are larger than the volumes EPA modeled in the 2010 lifecycle analysis. EPA notes that we analyzed 1.7 billion gallons of biodiesel in our 2010 analysis, which is within the range of volumes being considered in this annual rule. Commenters also stated that the volumes of advanced biofuels that would be needed to fill the cellulosic void are larger than the volumes EPA modeled in the 2010 lifecycle analysis. EPA notes that we analyzed 1.7 billion gallons of biodiesel in our 2010 analysis, which is within the range of volumes being considered in this annual rule. In addition, commenters suggested that EPA quantify the impacts for the criteria described in section 211 (o)(2)(B)(ii) of the Clean Air Act. However, conducting such a comprehensive quantification was not practical for this rulemaking. We also note that the RFS program is a long-term program aimed at replacing substantial volumes of fossil-based transportation fuels with low-GHG renewable fuels over a multi-year period of time. In that context, the analysis of various impacts conducted for the March 2010 final RFS rule considered the effects of the program over the long term. Specifically, our analysis focused on quantifying the GHG impacts of an increase in biomass-based diesel demand in 2022, when the full volumes of the RFS program would be implemented.

In their comments on the NPRM, the American Cleaning Institute (ACI) expressed concern that demand for biodiesel and/or renewable diesel could adversely affect the oleochemical industry by diverting animal fats away from the production of soaps, detergents, and general cleaning supplies. ACI requested that the advanced biofuel volume requirement be reduced to ensure that such diversion of animals fats does not occur, or alternatively that animal fats be explicitly prohibited as a valid feedstock option for the production of biofuels. In our response to comments from ACI in the final rule setting the required volume biomass-based diesel for 2013,[45] we pointed out that under the statutory definition of renewable biomass, valid feedstocks include animal waste material and animal byproducts. We believe that animal fats fall into these categories, and as a result we do not have the authority to exclude or limit volumes of animal fats that are used for production of biofuel. Moreover, ACI did not provide any information indicating that a reduction in the required volume of biomass-based diesel would result in a reduction in the use of animal fats to produce biodiesel. Indeed, as discussed above, volumes of biodiesel above the 1.0 bill gal minimum established in the statute may be produced from soy oil and corn oil instead of animal fats.

Since the biomass-based diesel volume of 1.28 bill gal was established previously, the NPRM only requested comment on volumes of biomass-based diesel in excess of 1.28 bill gal. Although we believe it is likely that such excess volumes would be produced from soybean oil as described above, it is possible that they could be produced from animal fats. The only way to influence whether or not animal fats would be used to make excess biodiesel above the 1.28 bill gal biomass-based diesel applicable volume would be to reduce the advanced biofuel standard to 1.926 bill gal, which is the ethanol-equivalent sum of the biomass-based diesel and cellulosic biofuel applicable volumes. Even then, it would not prevent animal fats from being used to produce biodiesel.

For the reasons discussed above, we conclude that the volumes of excess biomass-based diesel available for use in 2013 as advanced biofuel are reasonably projected as 300 mill gal or more. In addition, the arguments for reducing the advanced biofuel standard to reduce the reliance on excess biomass-based diesel are not of a nature to warrant changing the conclusions we would draw.

b. Limitations in the Use of Biodiesel

While we are not projecting a specific volume of biodiesel in excess of 1.28 bill gal for 2013, we do acknowledge that there may be potential limitations on biodiesel consumption that could be imposed by manufacturer warranties and cold-weather operation.

Most diesel engines are warranted by their manufacturer to B5. That is, the use of biodiesel in concentrations above 5vol% may void these commercial warranties. While not a legal limitation on the use of biodiesel, it does present a practical limitation. Assuming a total diesel consumption volume of about 50 bill gal for 2013, B5 for the diesel pool as a whole would correspond to a biodiesel volume of 2.5 bill gal.

However, some diesel truck engines have been warranted by their manufacturers to consume B20, starting in 2011. Model-specific sales data for these vehicles was not available, so we could not directly estimate the volume of B20 consumed by these trucks. Nor were we able to assess the ability of the retail and distribution system to supply higher biodiesel blends for a subset of the fleet. But in the extreme, assuming all MY 2011 and newer trucks were designed for operation on B20 and that these trucks could always fuel on B20, it would only account for approximately 30% of the nationwide biodiesel volume in 2012.

At the same time, even B5 blends cannot be utilized year-round due to cold weather constraints. If biodiesel was not used at all in the 20 most northern states from December through March, the nation as a whole could still consume 1.9 bill gal annually.[46] However, this is likely to be a conservative estimate of the volume of biodiesel that can be consumed since infrastructure does exist in many northern states to permit the use of B5 in the winter. Moreover, another estimate of the impact of cold temperatures on biodiesel use can be derived from the cloud point. The cloud point for B5 soy methyl ester (SME) blended with No. 2 diesel is estimated to be approximately 5 °F. Thus, any region wherein temperatures regularly drop below 5 °F would present a difficulty for the use of B5. Assuming that biodiesel cannot be blended in such regions during any month where the temperature falls below 5 °F at least 10% of the time would result in a reduction of the volume of biodiesel that can be consumed annually by only about 3%. Thus, it appears that for 2013, the ability to consume biodiesel in the vehicle fleet does not provide a constraint.

2. Domestic Production of Advanced Biofuel Other Than Biomass-Based Diesel and Cellulosic Biofuel

Generic pathways that have been approved for the generation of RINs are specified in the regulations in Table 1

[45] 77 FR 59463, September 27, 2012.

[46] Jung, Zoltan, ''Estimating Potential Biodiesel Consumption Under Cold Weather Limitations,'' memorandum to docket EPA–HQ–OAR–2012–0546.

to § 80.1426.[47] There are currently six pathways through which advanced biofuel RINs can be generated. These pathways are shown in Table III.B.2–1.

TABLE III.B.2–1—PATHWAYS FOR ADVANCED BIOFUEL

Fuel type	Feedstock	Production process requirements	D-Code
H Biodiesel, renewable diesel, jet fuel and heating oil.	Soy bean oil; Oil from annual covercrops; Trans-Esterification Algal oil; Biogenic waste oils/fats/greases; Non-food grade corn oil Camelina sativa oil	One of the following: Trans-Esterification. Hydrotreating. Includes only processes that co-process renewable biomass and petroleum.	5
I Naphtha, LPG	Camelina sativa oil	Hydrotreating	5
J Ethanol	Sugarcane	Fermentation	5
P Ethanol, renewable diesel, jet fuel, heating oil, and naphtha.	The non-cellulosic portions of separated food waste.	Any	5
Q Biogas	Landfills, sewage waste treatment plants, manure digesters.	Any	5
S Ethanol	Grain Sorghum	Dry mill process, using only biogas from landfills, waste treatment plants, and/or waste digesters for process energy and for on-site production of all electricity used at the site other than up to 0.15 kWh of electricity from the grid per gallon of ethanol produced, calculated on a per batch basis.	5

In the NPRM, we projected that the total volume of other advanced biofuel could be 150 mill gal in 2013. Some stakeholders expressed their belief that this was a reasonable volume to project for domestic advanced biofuel producers for 2013, and Clean Energy Renewable Fuels provided information supporting their view that we had significantly underestimated the potential for biogas. Nevertheless, others expressed concern that 150 mill gal was too aggressive, pointing to the fact that the actual domestic production of other advanced biofuel in 2012 was only 50 mill gal. Consistent with our approach to cellulosic biofuel projections, we do not believe that future projections of advanced biofuel should be based strictly on actual historical production volumes. Nevertheless, we agree with stakeholders that expressed concern that we based our projections in part on information from registered producers that did not submit a Production Outlook Report as required under § 80.1449 for all registered producers. For this final rule, we have not considered production volumes from a specific producer if that producer did not provide a projection for 2013 in a Production Outlook Report.

In order to estimate the volumes of other advanced biofuels that could be produced in 2013, we reviewed the most recent set of Production Outlook Reports. These reports were submitted in the summer of 2012 and contain projections of renewable fuel production for each of the next five years.[48] Based on this review, we identified approximately 30 domestic companies that expect to produce advanced biofuel (with a D code of 5) in 2013. The total projected production volume for these companies in 2013 is 245 million ethanol-equivalent gallons, as shown in Table III.B.2–2.

TABLE III.B.2–2—PROJECTED DOMESTIC PRODUCTION OF ADVANCED BIOFUEL[a] IN 2013

[Million ethanol-equivalent gallons]

Biogas	44
Naphtha	8
Renewable diesel	57
Ethanol	136
Total	245

[a] Includes only volumes that would be assigned a D code of 5.

We recognize that these volumes are higher than the 150 mill gal that we projected in the NPRM. Nevertheless, we believe that they provide a reasonable estimate of the volumes that can be achieved in 2013. Because Production Outlook Reports are provided directly to the EPA and are not made public (except in the aggregate), producers have less incentive to overstate volume projections. These projected volumes also do not account for imports of renewable diesel from foreign producers which have the capacity to produce hundreds of millions of gallons per year. More importantly, the projected volumes in Table III.D.2–2 were made in June 2012. Since that time, we have established additional valid pathways for the generation of advanced biofuel RINs using camelina oil and grain sorghum.[49] Recent annual production of ethanol from grain sorghum was about 350 mill gal, though only a minority of these production facilities might be expected to install the requisite equipment allowing the use of biogas for process energy in 2013, thus allowing them to generate advanced biofuel RINs.

We also investigated a variety of other potential RIN-generating pathways for advanced biofuel that could result in additional volumes in 2013. In addition to potential new pathways for cellulosic biofuel that would also count towards the advanced biofuel volume requirement as discussed in Section II.D, new pathways are also under review that may provide additional advanced biofuel volumes in 2013. These include pathways for renewable diesel from jatropha oil, ethanol from barley and biomass sorghum, and a number of others. We have not yet determined, either through rulemaking or approval of an industry petition, whether these pathways are valid for the

[47] Pathways may also be approved for RIN generation in response to petitions submitted pursuant to 80.1416.

[48] While the individual reports have not been published since they include company-specific information that could impact the competitive nature of the industry, we are providing aggregate results in this NPRM.

[49] 78 FR 14190, March 5, 2013.

generation for advanced biofuel RINs. However, approval of such advanced biofuel pathways could potentially result in the production of more than 50 million ethanol-equivalent gallons in 2013. Insofar as any of these pathways are approved in time to be used in 2013, it would increase the volume of domestically-produced advanced biofuels available for 2013 compliance above the volumes shown in Table III.B.2–2.

3. Imported Sugarcane Ethanol

In the NPRM we projected that the volume of imported sugarcane ethanol in 2013 would need to reach about 670 mill gal in order for the statutory volume of 2.75 bill gal to be met. Given the availability of carryover RINs from 2012, potential for excess biomass-based diesel, and domestic production of other advanced biofuel, the amount of imported sugarcane ethanol needed to reach the statutory volume of 2.75 bill gallons could be significantly below 670 mill gal. Here we evaluate whether the actual 2012 import volume of 580 mill gal could also be imported in 2013.

a. Brazilian Ethanol Export Capacity

Total exports of ethanol from Brazil depend on ethanol production and demand within Brazil and have varied significantly over the last decade. The historical maximum occurred in 2008 when 1.35 bill gal was exported, and ongoing efforts to upgrade distribution infrastructure mean that Brazil has the infrastructure in place to export at least this volume annually.

In response to the NPRM, stakeholders provided widely diverging views on the volumes of imported sugarcane ethanol that could be expected in 2013. Some stakeholders suggested that the advanced biofuel standards should be set based on an assumption that there would be no more than a few hundred mill gal of imported sugarcane ethanol available in 2013, and others indicated that imported sugarcane ethanol should be excluded entirely from consideration. The Brazilian Ministry of Mines and Energy (MME) provided a detailed assessment supporting their view that Brazil can supply at least 670 mill gal to the U.S. in 2013, and the Brazilian sugarcane industry association UNICA likewise indicated that at least 670 mill gal could be expected [50] No stakeholders supported our suggestion that a 200 mill gal reduction in the advanced biofuel requirement might be warranted to account for potential uncertainty in the availability of imported sugarcane ethanol. To assess Brazil's potential export capacity for 2013, we considered multiple factors, including sugarcane and ethanol production capacity, Brazilian domestic ethanol demand, and historical data on sugarcane ethanol exports.

i. Brazilian Sugarcane and Ethanol Production Capacity

From the supply perspective, production of sugarcane in Brazil in the years just preceding 2013 has been lower than normally expected due to two factors. First, adverse weather conditions reduced production.[51] For example, adverse weather conditions are estimated to have reduced cane production by about 4% in the 2011/2012 marketing year.[52] Thus, a return to normal weather conditions in the time frame that this rulemaking considers by itself would restore approximately 4% of production.

Second, the general global economic downturn in recent years made obtaining credit more difficult in the Brazilian sugar cane industry, resulting in delayed replanting of existing fields. Normally sugarcane fields are replanted every five or six years to maximize yield. However, the lack of available credit caused some growers to delay the expense of this replanting, resulting in older fields losing production.[53] Perhaps in part due to easing credit conditions, as noted below, more direct investment in sugar cane production and milling in Brazil is occurring.

In the proposal, EPA cited data from September and December 2012 in estimating that the South Central region, the dominant region for ethanol production in Brazil, would produce a total of 5.56 bill gal for the 2012/13 year.[54] Other regions contributed roughly another 565 mill gal in 2011/12. Based on this production data, we concluded that 6.1 bill gal would be a reasonable conservative estimate for total 2013 production, assuming no growth at all in production outside the South Central region. Subsequent to issuance of the proposal, UNICA released its final report on the 2012/2013 harvest season, which confirmed an increase in the sugarcane harvest relative to 2011/12. That report showed that the 2012/2013 harvest for the South Central region was approximately 8% larger than the 2011/12 harvest.[55]

Some parties expected a more typical trend in sugarcane ethanol production for both the 2012/2013 and 2013/2014 harvest years, with replanted fields beginning to boost sugarcane production in existing plantations and, in response to increased worldwide demand, a growth in the acres planted with sugarcane. Increased production is supported by the Brazilian government which announced in February 2012 support for a plan to invest over $8 billion annually to boost cane and ethanol production.[56] Private investment in Brazil may also be increasing. For example, Usina de Acucar Santa Terezinha, a Brazilian ethanol producer, last year announced plans to invest almost $300 million in a new mill and sugarcane plantation.[57] As stated in the proposal, such information suggested that sugarcane and ethanol production in the 2013/14 harvest year could be higher than production over the last two years.

The 2012/2013 harvest year in Brazil's South Central region has ended, and EPA now has early estimates concerning the 2013/2014 harvest year, which began in April 2013. UNICA now projects an increased 2013/2014 harvest for the South Central region of 10.7% over the 2012/2013 harvest.[58]

With respect to ethanol production, analyses supplied in comment to the proposal by the Brazilian Ministry of Mines and Energy (MME) indicate it is projecting 2013/14 ethanol production to range from 7.2 to 7.5 bill gal, reflecting improvements in yield, additional acres planted and the expected market for sugar from sugarcane. MME's projections are in line with other data sources referenced in MME's comments that projected ethanol

[50] Some portion of Brazilian ethanol exports to the U.S. is non-fuel ethanol (i.e., for industrial use). U.S. Department of Commerce data indicates that of 2012 Brazilian ethanol exports to the U.S., 85% were fuel ethanol. *http://dataweb.usitc.gov./*

[51] Gain Report BR110016, October 3, 2011, USDA Agricultural Service. See *http://gain.fas.usda.gov/Recent%20GAIN%20Publications/Sugar%20Semi-annual_Sao%20Paulo%20ATO_Brazil_10-3-2011.pdf.*

[52] The sugar marketing year in Brazil's center-south sugar-producing region, where the large majority of production occurs, runs from May through April.

[53] On the margin, the high sugar prices may have also encouraged some growers to divert their crop from ethanol production to sugar production. But most cane growers do not have this flexibility with sugarcane mills designed for fixed amounts of refined sugar or ethanol so high sugar prices was likely a contributing factor but not a major cause of reduced sugarcane ethanol production in Brazil.

[54] UNICA, "Estimate for 2012/2013 Sugarcane Harvest of Brazilian South-Central Region", September 20, 2012, *http://www.unicadata.com.br/listagem.php?idMn=39.*

[55] UNICA, "Final Report of 2012/2013 Harvest Season, South-Central Region," *http://www.unicadata.com.br/listagem.php?idMn=83.*

[56] See *http://www.platts.com/RSSFeedDetailedNews/RSSFeed/Oil/8987702.*

[57] See *http://www.bloomberg.com/news/2012-03-08/santa-terezinha-invests-283-million-in-brazil-ethanol-projects.html.*

[58] UNICA, "South-Central brazil cane crush projected at 589.60 million tons for 2013/2014," *http://www.unicadata.com.br/listagem.php?idMn=80.*

production for 2013/14 ranging from 7.1 to 7.2 bill gal. These sources include projections by UNICA which in separate comment defended its analysis projecting 7.1 bill gal. This production rate would support the conclusion that enough ethanol should be available to meet Brazil's domestic demand (discussed following) as well as supply 580 mill gal or more to the U.S. during calendar year 2013.

ii. Brazilian Domestic Demand for Ethanol

Brazil's sugarcane ethanol production serves both its domestic market as well as the export market. The government of Brazil sets a minimum ethanol concentration for its gasoline. In 2011, the Brazilian government lowered this concentration to 20%, reflecting in part the decrease in domestic ethanol production. However, given the more optimistic production outlook, Brazil raised the minimum ethanol concentration to 25% effective May 1, 2013.[59] The ability of the Brazilian government to reset the minimum ethanol content introduces some uncertainty in projecting future Brazilian demand. However, historically, adjustments have been infrequent, relatively small in degree (a few percent), and largely been influenced by the price of ethanol (high prices leading to a reduction in the minimum). Since reinvestment in sugarcane stock is already underway, a considerable resurgence in Brazilian ethanol export potential in the 2013 calendar year seems likely. Assuming that the 25% blending rate remains in effect through the 2013/14 sugarcane season, the analyses referenced above by MME and UNICA suggest that more than enough ethanol should be available assuming normal weather patterns to allow for at least 580 mill gallons of exports to the U.S. in 2013.

iii. Additional Market Factors

Aside from production capability and domestic demand within Brazil, market conditions generally determine the amount of sugarcane ethanol imported into the U.S. from Brazil. Approved as an advanced biofuel pathway, ethanol produced from sugarcane benefits from the RIN value associated with advanced biofuel but also has to compete with other sources of ethanol used for blending with gasoline in the U.S., most notably ethanol made from corn starch (which does not qualify as an advanced biofuel). The expiration of the tariff applicable to imported ethanol has helped make imported sugarcane ethanol more cost competitive in the U.S., and any volumes of Brazilian sugarcane ethanol imported into California to meet the requirements of their Low Carbon Fuel Standard (LCFS) would also count towards meeting the requirements of the RFS program.

b. United States-Brazil Ethanol Trade

In both calendar years 2011 and 2012 there was some two-way trade in ethanol between the United States and Brazil. A number of stakeholders raised concerns about this two-way ethanol trade between the U.S. and Brazil. Some suggested that we should adjust the advanced biofuel standard to reduce or eliminate such outcomes.

According to currently available Energy Information Administration (EIA) data, 2013 U.S. fuel ethanol imports from Brazil through May were 75.9 million gallons compared to 36.1 million gallons during the same period in 2012, a 110% rise.[60] The U.S. Department of Commerce also collects data on U.S. imports of Brazilian fuel ethanol. They too report a significant increase in 2013 imports—105 million gallons through May 2013, up from 42.6 million gallons through the same period in 2012, a 147% increase.[61] This increase, combined with the fact that the majority of Brazilian ethanol exports to the United States have historically occurred in the second half of the calendar year, suggests that Brazilian ethanol exports to the U.S. are on a trajectory that would readily enable Brazil to supply 580 million gallons to the U.S. in 2013.[62]

2013 exports of fuel ethanol from the U.S. to Brazil have been relatively small. EIA data indicates that 26 million gallons of fuel ethanol have been exported from the U.S. to Brazil between January 1 and May 31, 2013.

TABLE III.B.3.b–1—U.S. FUEL ETHANOL TRADE WITH BRAZIL

[Mill gal]

	2008	2009	2010	2011	2012
U.S. Fuel Ethanol Imports from Brazil[63]	203	5	0	101	403
U.S. Fuel Ethanol Exports[64]					
Total	N/A	N/A	398	1195	742
To Brazil	N/A	N/A	23	396	86

Both the EIA and U.S. Department of Commerce data consider fuel ethanol that is transported directly from Brazil to the United States. However, significant volumes of fuel ethanol originating from Brazil and imported by the United States pass through Caribbean Basin Initiative (CBI) countries for dehydration before continuing on to the U.S. Such volumes are not included in the Table III.B.3–1. EIA data indicates that the U.S. imported 40 million gallons of fuel ethanol from CBI countries in 2012; most of this originated in Brazil, though determining the specific quantity is difficult.

Comments on this two-way trade focused on associated GHG impacts, both direct impacts from transportation-related emissions, and the indirect GHG impacts resulting from the market dynamics that could potentially result as a consequence of EPA's volume determinations.

i. Direct Transportation Emissions

With respect to direct emissions, commenters noted that GHG emissions occur as a result of shipping sugarcane ethanol to the U.S. and shipment of corn-based ethanol to Brazil. We recognize that there are GHG emissions

[59] Platts, ''Brazil to raise ethanol mix in gasoline to 25% from 20% May 1,'' *http://www.platts.com/RSSFeedDetailedNews/RSSFeed/Oil/8194390.*

[60] EIA, *U.S. Imports from Brazil of Fuel Ethanol. http://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=pet&s=mfeim_nus-nbr_1&f=m.*

[61] The data from EIA and the U.S. Department of Commerce are generally consistent, but slight differences may arise due to differences in the survey population, the reporting methodology, the reporting schedules, and the timing of updates.

[62] In 2012, 90% of the 403 million imported gallons occurred in June through December.

[63] EIA, *U.S. Imports from Brazil of Fuel Ethanol.http://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=pet&s=mfeim_nus-nbr_1&f=m.*

[64] EIA, *Exports by Destination. http://www.eia.gov/dnav/pet/pet_move_expc_a_EPOOXE_EEX_mbbl_a.htm.*

associated with shipping sugarcane ethanol from Brazil to the U.S. as well as the subsequent emissions associated with distributing this fuel from the port of entry to likely blending locations. These transportation emissions were taken into account as part of the lifecycle assessment of sugarcane ethanol adopted as part of the 2010 final rule, and represent approximately (3%) of total lifecycle emissions for sugarcane ethanol. Regarding the emissions associated with potential shipments of corn ethanol from the U.S. to Brazil, these would be small in magnitude compared to the overall emission reductions from the use of sugarcane ethanol, as the transportation emissions are a small part of the lifecycle emissions, whether the emissions are for fuel imported from Brazil or exported to Brazil. Also, as noted below, the commenter provides no basis for EPA to determine the magnitude of the emissions they are concerned about, given the multiple factors that lead to wide variability in import and export levels of ethanol between the U.S. and Brazil.

ii. Indirect Emissions

Stakeholder's comments regarding sugarcane ethanol and U.S.-Brazil trade concern the annual standard-setting process for 2013 and the indirect GHG impacts associated with the use of imported sugarcane ethanol as an advanced biofuel. Commenters raised two major issues associated with the potential GHG impacts associated with sugarcane ethanol demand in the U.S. (1) In the long-run (e.g., 2022), if EPA were to maintain the full statutory advanced standard while reducing the cellulosic standard to levels seen in recent years based on availability, more than 10 bill gal of imported ethanol would be required to meet the advanced standard. At those volumes, based on studies by the OECD and FAPRI-Missouri, commenters state that it is likely that a majority of the imported ethanol gallons would be diverted from Brazilian consumption of ethanol, and that much of the sugarcane ethanol would be backfilled by corn ethanol imports from the U.S. As a result, commenters argue that imported sugarcane would not meet the 50 percent GHG emissions reductions required for an advanced biofuel. (2) In the short-run, commenters claim that there are limited options for increasing the supply of sugarcane ethanol, many of which would undermine the GHG emission reductions included in EPA's lifecycle analysis. Commenters claim that in the 2013 time period, increased sugarcane ethanol imports to the U.S. could only be supplied if Brazil decreases gasoline consumption, Brazil replaces sugarcane ethanol with fossil gasoline, Brazil replaces sugarcane ethanol with another ethanol (presumably corn), sugar production in Brazil increases, or stocks of sugar are reduced to meet increased demand. Commenters claim that if replacement of sugarcane ethanol is with gasoline or corn ethanol, sugarcane ethanol would not meet the GHG emission reductions required for an advanced biofuel.

Regarding the first issue, it is premature and would be speculation to consider at this time what emissions might result were EPA to maintain the statutory advanced standard over the next several years. That issue is also not relevant for this rulemaking action. For each calendar year, EPA may reduce the required volumes of advanced biofuel and total renewable fuel if it reduces the volume required for cellulosic biofuel. This rulemaking addresses only calendar year 2013, and does not establish or set a precedent for what actions EPA may or may not take for future calendar years. Therefore, we believe the analysis presented by commenters on future scenarios that rely on imported volumes of sugarcane ethanol that exceed current Brazilian production are not relevant to this 2013 rulemaking.[65]

The second issue raised in this context pertains to the question of how the national applicable volume for advanced biofuel influences ethanol production and trade patterns (along with concomitant indirect GHG emissions effects) in a given year. A comprehensive analysis of those effects is challenging, as there are a variety of economic and other factors at play. A thorough analysis of this issue would require complex economic and emissions modeling for multiple market sectors, which is impractical, particularly for a rule that establishes a yearly volume requirement. Furthermore, we do not believe that the data commenters submitted provides an adequate basis for drawing the conclusion, as commenters do, that retaining the statutory 2013 advanced biofuel requirement would result in an overall increase in GHG emissions due to ethanol trade. For example, in the comments submitted by ICCT, no data is provided indicating whether it is more likely that increased sugarcane exports will result in increased petroleum gasoline consumption or increased corn ethanol imports in Brazil, or if the market response will be an increase in sugar production or drawing down sugar stocks.

Each of these different market implications would have significantly different GHG emissions impacts. Multiple reasons exist for the volume of trade between the US and Brazil beyond the RFS program's requirements, including other US demand for sugarcane ethanol (e.g., California's LCFS); seasonal production of sugarcane which results in off-season demand for ethanol; and regional infrastructure constraints in Brazil, which makes it easier for parts of Brazil to import corn ethanol in some regions. As shown by Table III.B.3–1 above, there is no clear correlation at all between corn ethanol exports to Brazil and sugarcane ethanol imports from Brazil. There is no basis to assume that each gallon of sugarcane ethanol imported into the U.S. would be offset by a gallon of corn ethanol exported to Brazil. Furthermore, fluctuations in the sugar markets could lead to increased sugarcane ethanol supply without increasing sugarcane production. As discussed in the UNICA comments, world sugar prices are currently down 36% since 2011, which creates an additional incentive for producers, to the extent possible, to shift from sugar production to ethanol production. In fact, UNICA expects ethanol production to increase by 18–20% in 2013/2014, even though sugarcane production will only increase by 10%. To the extent that the increase in sugarcane ethanol to the U.S. results in increased sugarcane production, decreased sugar production, or a drawdown of sugar stocks, it is not likely that the increase in U.S. imports of sugarcane ethanol would lead to increased exports of corn ethanol to Brazil or a significant change in GHG emissions.

We also note that Congress established the RFS as a long-term program aimed at replacing substantial volumes of fossil-based transportation fuels with low-GHG renewable fuels over time. The annual standard-setting process however involves a decision for a single year, which may not reflect the long-term effects of the program. For example, our emissions analysis conducted for the March 2010 final RFS rule focused not on yearly decisions on standards, but rather the effects of the program over the long term. That analysis did not attempt to answer the question of what the GHG emissions impacts would be of increasing or lowering the volume mandates in any one year. Instead, our analysis focused on quantifying the GHG impacts of an

[65] In addition, as discussed below, in this action EPA is not revisiting or reopening the determination made in the 2010 RFS final rule that imported sugar cane ethanol meets the greenhouse gas reductions threshold for advanced biofuel.

increase in sugarcane ethanol demand in 2022, when the full volumes of the RFS program were implemented. The March 2010 analysis captured the long-term market reaction to a sustained higher demand over many years for sugarcane ethanol in the U.S., which primarily resulted in an increase in Brazilian sugarcane production. We continue to believe that over the long-term, expansion of Brazilian sugarcane production is a realistic reaction to increased demand for sugarcane ethanol in the U.S., thus supporting our analysis that sugarcane ethanol reduces GHG emissions over the long run.

In sum, we believe that the import of sugar cane ethanol as an advanced biofuel in 2013 should produce reductions in GHGs compared to the fossil-based gasoline it will replace, which would not occur if the advanced biofuel standard were reduced. While the points raised by commenters indicate there is some uncertainty about the magnitude of these reductions on a year-by-year basis, the evidence and arguments they present do not warrant a conclusion that there would be any significant change in GHG benefits. In addition, as noted above, the ongoing demand for advanced biofuels is part of a long-term approach to achieving major GHG reductions from the RFS program.

Finally, with respect to commenters' arguments regarding the GHG impacts of imported sugarcane ethanol, we note that the lifecycle threshold determinations conducted for various biofuels pathways (as required by statute) were completed as part of the March 2010 final RFS rule. We made the determination in that rulemaking that imported sugar cane ethanol meets the greenhouse gas reductions threshold for advanced biofuel. We are not revisiting those determinations as part of this action. Instead this rulemaking addresses the applicable volume requirements for the various categories of renewable fuels, in applying the provision for a waiver of the cellulosic biofuel volumes. Thus we are not reconsidering or reopening the GHG threshold determinations made in the 2010 RFS final rule. Instead, we are considering this comment solely in the context of exercising its discretion under CAA section 211(o)(7)(D)(i).

For the reasons discussed above, we conclude that the volumes of sugarcane ethanol that are available for use in 2013 as advanced biofuel are reasonably projected as at least as much as 580 mill gallons. We continue to place primary weight on this factor in determining whether to maintain the statutory levels for advanced biofuel. In addition, the arguments and reasons for reducing the advanced biofuel standard to reduce the reliance on imported sugar cane ethanol are not of a nature to warrant changing the conclusions we would draw based on the available supply of sugarcane ethanol as an advanced biofuel.

C. Compliance With the Total Renewable Fuel Standard in 2013

As described in Section III.B above, the NPRM addressed potential reductions in advanced biofuel and total renewable fuel under the cellulosic waiver authority. In this context, any reduction in advanced biofuel would be matched gallon-for-gallon (on an ethanol-equivalent basis) by reductions in total renewable fuel, effectively having no impact on volumes of non-advanced biofuel such as corn ethanol.

In response to the NPRM, many stakeholders expressed concern about the E10 blendwall and the possibility that the applicable standards for 2013, absent a reduction in the advanced biofuel and total renewable fuel volume requirements, could require the consumption of more volumes of higher ethanol blends (E15–E85) than can reasonably be absorbed by the market.[66] In order to evaluate these concerns, we estimated the volumes of ethanol that could be needed to meet the statutory volume requirements in 2013 and whether or not that volume could reasonably be used.

In the NPRM we proposed a significant reduction in the required volume of cellulosic biofuel. For today's final rule we are adjusting this volume requirement downward to 6 mill gal as described in Section II.D above. We also set a volume requirement for biomass-based diesel of 1.28 bill gal in a separate rulemaking.[67] Table III.C–1 shows what the four volume requirements would be without any reductions in the statutory volumes of advanced biofuel or total renewable fuel.

TABLE III.C–1—VOLUMES OF RENEWABLE FUEL FOR 2013 ABSENT REDUCTIONS IN ADVANCED BIOFUEL AND TOTAL RENEWABLE FUEL

[Million ethanol-equivalent gallons]

	D codes that can be used to meet this standard	Required volume
Cellulosic biofuel	3, 7	6
Biomass-based diesel	4, 7	1,920
Advanced biofuel	3, 4, 5, 7	2,750
Total renewable fuel	3, 4, 5, 6, 7	16,550

Based on these volume requirements, we estimated the volumes of both ethanol and non-ethanol that could be used to satisfy these standards if there were no biomass-based diesel produced in excess of the 1.28 bill gal requirement. As such, these estimates may overstate the volume of ethanol that would have to be consumed because, as discussed above, there is significant capacity for biodiesel production beyond the 1.28 bill gal requirement for 2013. This scenario also does not consider the availability of substantial numbers of carryover RINs from 2012, which is discussed in greater detail below.

TABLE III.C–2—POTENTIAL VOLUMES OF RENEWABLE FUEL FOR 2013

[Million ethanol-equivalent gallons]

	D code	Ethanol	Non-ethanol
Cellulosic biofuel	3	1	5
Biomass-based diesel	4	0	[a] 1,920

[66] In the proposal, we requested comment on the degree to which the E10 blendwall might present a difficulty in meeting the applicable volume requirements in 2013.

[67] 77 FR 59458, September 27, 2012.

TABLE III.C–2—POTENTIAL VOLUMES OF RENEWABLE FUEL FOR 2013—Continued

[Million ethanol-equivalent gallons]

	D code	Ethanol	Non-ethanol
Other advanced biofuel			
—Domestically produced	5	[b] 136	[b] 109
—Imported		[c] 580	0
Conventional Biofuel	6	13,800	0
Total		14,517	2,034

[a] Based on the applicable volume requirement of 1.28 bill gal, and assuming no excess.
[b] From Production Outlook Reports as listed in Table III.B.2–2.
[c] Balance of advanced biofuel standard of 2.75 bill gal that is estimated to come from imported sugarcane ethanol.

In order to determine the volume of ethanol that would need to be consumed in blends higher than E10 in order to meet this standard, we assumed a total 2013 energy consumption for all gasoline-powered vehicles and engines of 14.58 Quadrillion Btu.[68] Based on a denatured ethanol energy content of 77,000 Btu/gal and a gasoline energy content of 115,000 Btu/gal, we determined that the 14.5 bill gal of ethanol shown in Table III.C–2 would require 129.5 bill gal of E10 and 2.1 bill gal of E85.[69] This volume of E85 would contain about 1.6 bill gal of ethanol. By contrast, if no E85 were consumed, the total volume of E10 would be 131.1 bill gal and the maximum volume of ethanol that could be consumed would thus be 13.1 bill gal. As shown in Table III.C–2, the conventional biofuel volume alone exceeds this level. In the absence of carryover RINs from 2012, it would be extremely challenging to meet this standard.

In their comments on the NPRM, a number of refiners contended that E85 is not a viable strategy for consuming volumes of ethanol in excess of the E10 blendwall. Some called for reducing the required volumes of renewable fuel so that ethanol would comprise no more than 10% of the gasoline fuel pool. We agree that, historically, E85 consumption has been very low. In 2012 EIA estimated that E85 consumption was about 40 mill gal, and in prior years it was less.[70] In its Annual Energy Outlook 2013, EIA projects that E85 consumption may increase to 176 mill gal in 2013 under the demand pressure created by the RFS program and without consideration of carryover RINs from 2012, but even so this is still significantly less than the 2.1 bill gal that we estimate would need to be consumed under the limitations of the scenario described above. We expect that consumption of E85, and perhaps blends with other concentrations of ethanol, will grow over time.

While recent consumption of E85 (approximately 40 mill gal in 2012) has been considerably lower than the 2.1 bill gal that would be needed in the scenario outlined above, we note that the price of E85 has historically only been about 15% lower than the price of E10. Since the average volumetric energy content of E85[71] is about 22% below that of E10, the historical price of E85 has actually been higher than the price of E10 on an energy equivalent basis. Moreover, the price gap between E10 and E85 may be perceived as larger to consumers who might assume that a gallon of E85 will contain 85% ethanol, having an energy content 25% lower than E10. Those flex-fuel vehicle (FFV) owners that have been purchasing E85 have thus been doing so for reasons other than the economic benefit (e.g. personal values or government fleet mandates) or because they are unaware of the extent that E85 contains less energy than E10. If the price of E85 were to fall relative to the price of E10, we would expect consumption of E85 to increase. Significant reductions in the price of E85 could result in higher volumes of E85 consumption, provided there is adequate availability of infrastructure for distribution of E85, availability of FFVs, consumer awareness of the availability of E85, its cost in comparison to E10, and the energy difference between E85 and E10. Such a reduction in the price of E85 could occur with a significant reduction in the price of corn relative to the price of oil. Historically during periods of lower corn prices the desire to maximize profit has resulted in an increase in ethanol blending. With the E10 market saturated, lower corn prices could result in lower E85 prices. At higher corn prices, as described more fully in Section III.D below, a long-term increase in E85 consumption would still need to come through a reduction in the price of E85 relative to E10, which would entail an increase in the price of RINs. Based on this, some increase in volumes of higher ethanol blends could be accomplished, with the extent of the required subsidy to E85 consumers through higher RINs prices depending on E85 infrastructure, consumer acceptance, and the price of corn relative to the price of oil.

There are also mechanisms other than increased volumes of E85 through which obligated parties could comply with the applicable volume requirements in the absence of reductions in the advanced biofuel and total renewable fuel volume requirements. One of those options is carryover RINs from 2012. EMTS was examined after the February 28, 2013 deadline for compliance with the 2012 standards to determine the total number of 2012 RINs that had not been used for compliance in 2012 or retired for any other reason. The totals are shown below.

TABLE III.C–3—CARRYOVER RINS FROM 2012 INTO 2013

[Million]

	D Code	RINs
Biomass-Based Diesel	4	353
Advanced Biofuel	5	196
Conventional Biofuel	6	2,117
Total		2,666

Although the rollover provisions in § 80.1427(a)(5) limit the carryover of RINs to 20% of the next year's volume obligations for individual obligated parties, the values in Table III.C–3 are less than 20% of the values shown in Table III.C–1 for the nation as a whole.

As discussed above, compliance with the statutory volume requirements for advanced biofuel and total renewable fuel in 2013 could in theory be met by the consumption of 2.1 bill gal of E85 containing about 1.6 bill gal of ethanol. However, given that there are over 2.6 bill carryover RINs available, there are more than enough in the market to permit compliance with the 2013 advanced biofuel and total renewable fuel volume requirements even if E85 consumption does not increase in 2013. These carryover RINs are also available to address any potential shortfalls in production of corn-based ethanol that may result from the 2012 drought.[72]

[68] Calculated from EIA Annual Energy Outlook 2013, Transportation Table 37 (converted to lower heating value (LHV)).

[69] To simplify this analysis we have not assumed any other ethanol blend levels and no E0.

[70] EIA, ''U.S. Refinery and Blender Net Production,'' 3/15/13.

[71] E85 in this rulemaking is assumed to contain 74% ethanol on an annual average basis, consistent with EIA. However, this value can vary in-use from 51% to 83%, and greater ethanol content will correspond to lower energy content of E85 in comparison to E10.

[72] Through April 2013 approximately 4.1 billion D6 RINs have been produced. This production rate projected through 2013 would indicate the production of approximately 12.3 billion D6 RINs. In addition, the production rate at ethanol facilities has been increasing. EIA's weekly fuel ethanol production data shows that ethanol production had

Continued

We recognize that in some cases carryover RINs from 2012 may not be available to an individual obligated party that needs them. There are indications from some stakeholders that those who own carryover RINs may opt to not sell them, instead carrying them over to help assure compliance with their own obligations in a future year. There is no way to determine what fraction of carryover RINs may fall into this category. However, we note that the 14.5 bill gal of ethanol that might need to be consumed in 2013 (Table III.C–2) is only 1.4 bill gal above the E10 blendwall. This is significantly less than the number of available carryover RINs available. Thus only about half of the carryover RINs in existence would need to be made available in order for the full statutory volume requirements for advanced biofuel and total renewable fuel to be met in 2013.

In response to the NPRM, one stakeholder indicated that carryover RINs should not be considered in the process of setting standards. Instead, this stakeholder argued, carryover RINs were intended only to provide flexibility to enable companies to remain in compliance in years when circumstances such as drought or other biofuel supply shortage limit the availability of RINs. However, the final rulemaking for the RFS1 program did not describe the purpose of carryover RINs in such narrow terms. Droughts were indeed provided as an example of a market circumstance that could limit the production of renewable fuels, but the RFS1 final rule also described the use of carryover RINs more broadly as a means for protecting against any potential supply shortfalls that could limit the availability of RINs. The rule also put this flexibility in terms of availability of RINs and the potential for waivers:

The availability of excess previous-year RINs would thus provide compliance certainty in the event that the supply of current-year RINs falls below the RFS program requirements and the Agency does not waive any portion of the program requirements. (72 FR 23935, May 1, 2007)

In addition, carryover RINs are a valid compliance mechanism, and they will either be used for compliance purposes or eventually retired. The issue here is estimating the adequacy of the availability and use of ethanol in 2013 for compliance purposes, and the availability of carryover RINs is certainly relevant in analyzing that issue. Therefore, we believe that it is appropriate to consider carryover RINs in the context of evaluating the comments received on the need for further compliance relief to address the E10 blendwall.

Carryover RINs and increased E85 are not the only available mechanisms that obligated parties have for meeting the 2013 standards. There are also additional sources for non-ethanol biofuels that could potentially be used for compliance in 2013 instead of relying on increased volumes of E85. As discussed in Section III.B.1 above, there is unused biodiesel production capacity and sufficient feedstocks available to permit biodiesel production in excess of 1.28 bill gal if demand for it exists. In addition, various feedstocks not currently identified in Table 1 to 80.1426 can be used in facilities that have been grandfathered under § 80.1403 to produce biodiesel that is categorized as renewable fuel, but not advanced biofuel, providing these feedstocks meet the definition of renewable biomass.

Several commenters indicated that the recent rise in D6 RIN prices, from approximately 5 ¢/RIN in early January 2013 to approximately 70 ¢/RIN by March 2013 [73], is evidence that the E10 blendwall had been reached and that obligated parties would have significant difficulty complying with the proposed renewable fuel volumes. We recognize that the approaching E10 blendwall and the related anticipation of future scarcity of RINs in the context of currently high feedstock prices is the primary driver for these price increases, though other factors and market mechanisms may also contribute to the increase in the price of D6 RINs. As discussed previously in this section, however, we project that there will be sufficient RINs available to obligated parties to satisfy their advanced biofuel and total renewable fuel obligations in 2013 despite the challenge represented by the blendwall.

One commenter also suggested that this increase in RIN prices would increase the cost of transportation fuel to U.S. consumers by about $17 billion. We do not believe this is a credible program cost increase resulting from high RIN prices even if it does represent the market value of RINs required for compliance with the RFS program. It is incorrect to assume a direct correlation between the increase in RIN prices and a rise in average transportation fuel costs. The cost of the RFS program is driven by the cost of renewable fuels relative to the petroleum fuels they displace. The effect of increasing RIN prices is not to increase overall transportation fuel costs, but rather to reduce the price of more renewable-fuel intensive fuels (e.g. E85) relative to the price of fuels with a lower renewable content (e.g. E10). Since the cost of renewable fuels did not increase over this time period, we do not believe that recent higher RIN prices have caused a significant increase in the total cost of transportation fuels in 2013.[74]

We recognize, however, that high RIN prices may impact individual fuel market participants differently. For example, high D6 RIN prices are likely to have differing effects on how various levels of gasoline/ethanol blends and diesel fuel are priced. The refining industry has raised concerns that in response to high RIN prices, individual refiners may choose to export fuel, and individual importers may reduce imports in order to reduce their RIN obligations. These actions could increase the cost of transportation fuels if increased exports and/or decreased imports significantly reduce the available supply of transportation fuel in the United States. We believe this is highly unlikely as increased exports or decreased imports by one company would provide the opportunity for another obligated party to increase sales volumes and market share within the U.S. and offset any change in transportation fuel supply. EPA will continue to monitor RIN prices and potential impacts closely.

For all of the reasons discussed above, we conclude that for 2013 adequate volumes of renewable fuel and carryover RINs are available to meet the requirements for total and advanced biofuel, and that the E10 blendwall is not a barrier to compliance with these volumes given the various alternative methods to comply besides the blending of ethanol as E10. This conclusion is specific to the circumstances present for 2013.

D. Final Applicable Volume Requirements for 2013

As shown in Table III.B–2, in order for an advanced biofuel requirement of 2.75 bill gal to be met, there would need to be 824 mill gal of advanced biofuels in addition to the volumes that would

dropped to 770, 000 barrels per day in late January but had recovered to 875,000 barrels per day by the third week of May. This later number projects to an annual production rate of approximately 13.4 bill gal of ethanol per year. When considered together with the estimated 2.1 billion carry over RINs we project there will be sufficient D6 RINs to satisfy the unadjusted total renewable fuel standard.

[73] RIN prices continued to rise after the comment period for the NPRM closed.

[74] See also: Irwin, Scott and Good, Darrel. ''High Gasoline and Ethanol RINs Prices: Is There a Connection?'' *Farmdoc Daily.* Department of Agricultural and Consumer Economics, University of Illinois-Champaign. 27 March 2013. Web. 15 June 2013.

need to be produced or imported to meet the biomass-based diesel and cellulosic biofuel requirements. After reviewing the projected availability of advanced biofuel volumes from various sources, we have determined that it is likely that there will be sufficient volumes available to produce or import this 824 mill gal. First, we have determined that there are more than 500 million advanced biofuel carryover RINs from 2012 that can be used for compliance in 2013. With regard to excess biodiesel, we have determined that there could potentially be up to 100 mill gal of excess soy oil and up to 100 mill gal of excess corn oil available, which together could provide 300 million or more advanced biofuel RINs. With regard to other advanced biofuels, we project that up to 245 mill gal could be produced, and another 50 mill gal if pathways under consideration are approved in enough time for them to be used by producers in 2013. Finally, we project that the volume of imported sugarcane ethanol from Brazil can reach the actual import volumes in 2012, which was 580 mill gal, and potentially considerably more. It is clear that, in the aggregate, these sources of advanced biofuel RINs are substantially more than what is needed to meet the advanced biofuel requirement of 2.75 bill gal. Therefore, we do not believe that there is a compelling reason to reduce the required volume of 2.75 bill gal advanced biofuel for 2013. Moreover, we do not believe that the blendwall will represent an impediment to compliance in 2013 due to the availability of carryover RINs from 2012, opportunities for some increase in consumption of E85, and opportunities for non-ethanol biofuels.

E. Volume Requirements for 2014

As described in the NPRM, we recognize that ethanol will likely continue to predominate the renewable fuel pool in the near future, and that for 2014 the ability of the market to consume ethanol in higher blends such as E85 is constrained as a result of infrastructure- and market-related factors. Most stakeholders that submitted comments in response to the NPRM made reference to the impending E10 blendwall, though they differed on how EPA should address it. A number of obligated parties and other stakeholders have communicated to EPA that while the E10 blendwall may be manageable in 2013, in 2014 compliance is expected to become significantly more difficult. We agree with that assessment. In 2014 the applicable volume of total renewable fuel set forth in the statute rises to 18.15 billion ethanol-equivalent gallons, of which 14.4 bill gal would be non-advanced biofuel comprised primarily of corn-ethanol, and 3.75 bill gal would be advanced biofuel. A significant portion of the fuel available to meet the advanced biofuel requirement would also likely be ethanol, including domestically produced cellulosic and advanced ethanol, along with advanced ethanol imported from Brazil. However, the maximum volume of ethanol that could be consumed as E10 in 2014 is projected to be just 13.2 bill gal.[75] Given the history of the market and relevant constraints, EPA does not currently foresee a scenario in which the market could consume enough ethanol sold in blends greater than E10, and/or produce sufficient volumes of non-ethanol biofuels (biodiesel, renewable diesel, biogas, etc.), to meet the volumes of total renewable fuel and advanced biofuel stated in the statute.

Given these challenges, EPA anticipates that in the 2014 proposed rule, we will propose adjustments to the 2014 volume requirements, including to both the advanced biofuel and total renewable fuel categories. We expect that in preparing the 2014 proposed rule, we will estimate the available supply of cellulosic and advanced biofuel, assess the E10 blendwall and current infrastructure and market-based limitations to the consumption of ethanol in gasoline-ethanol blends above E10, and then propose to establish volume requirements that are reasonably attainable in light of these considerations and others as appropriate. EPA believes that the statute provides EPA with the authorities and tools needed to make appropriate adjustments in the national volume requirements to address these challenges. We are currently evaluating a variety of options and approaches consistent with our statutory authorities for use in establishing RFS requirements for 2014. We will discuss these options in detail in the forthcoming NPRM for the 2014 standards and expect to utilize the notice and comment process to fully engage the public in consideration of a reasonable path forward that appropriately addresses the blendwall and other constraints.

We received a number of comments suggesting that because EPA was late in issuing these final RFS standards for 2013, and in light of concerns over the blendwall and RIN prices, that the Agency should take action to relieve or reduce burdens associated with RFS compliance in 2013. While we do not believe that it would be appropriate to remove or further reduce the statutory volume obligations for 2013 as some suggested, we do agree with the commenter who suggested that EPA provide additional time for obligated parties to demonstrate compliance with the 2013 standards. Knowledge of the volume requirements for 2014 is crucial to the strategies that obligated parties may implement when purchasing RINs and wet gallons of fuel for compliance with their individual 2013 RVOs. Given this, EPA's view is that delaying the compliance demonstration for the 2013 compliance period would alleviate some of the uncertainty and concerns that obligated parties have regarding the tardiness of the final rule and its effect on their decisions regarding RIN acquisition.

Therefore, we are extending the RFS compliance deadline for the calendar year 2013 RFS standards to June 30, 2014. This change affects § 80.1451(a)(1) and adds a new paragraph (a)(1)(xiv). In addition to providing obligated parties with more time to demonstrate compliance, we believe that this extension will allow obligated parties to implement various purchasing and allocation strategies that help them comply on an individual basis given the tardiness of this final rule. The compliance demonstration deadline extension is for the 2013 compliance year only, and does not extend the compliance demonstration deadline in any subsequent year. Additionally, given the extension of the compliance demonstration deadline for the 2013 compliance period, we are extending the deadline for submitting reports for the attest engagement requirement for the corresponding compliance year until September 30, 2014. This change affects § 80.1464(d) and adds a new paragraph (g). The attest engagement deadline extension is likewise for the 2013 compliance year only, and does not extend the deadline in any subsequent year.

IV. Applicable Percentage Standards for 2013

A. Background

The renewable fuel standards are expressed as volume percentages and are used by each refiner, blender, or importer to determine their renewable volume obligations (RVO). Since there are four separate standards under the RFS2 program, there are likewise four separate RVOs applicable to each obligated party. Each standard applies to the sum of all gasoline and diesel

[75] This volume is calculated using EIA's 2013 Annual Energy Outlook assuming ethanol represents 10% of total motor gasoline consumption by volume.

produced or imported. The applicable percentage standards are set so that if every obligated party meets the percentages, then the amount of renewable fuel, cellulosic biofuel, biomass-based diesel, and advanced biofuel used will meet the volumes required on a nationwide basis.

As discussed in Section II.D, we are projecting a volume of cellulosic biofuel for 2013 of 4 million gallons (6 million ethanol-equivalent gallons). This is the volume we have used as the basis for setting the percentage standard for cellulosic biofuel for 2013. We are maintaining the advanced biofuel and total renewable fuel volumes at the applicable volumes specified in the statute. The biomass-based diesel volume for 2013 has been established at 1.28 billion gallons through a separate rulemaking. The volumes used to determine the four final percentage standards are shown in Table IV.A–1.

TABLE IV.A–1—FINAL VOLUMES FOR USE IN SETTING THE APPLICABLE PERCENTAGE STANDARDS FOR 2013 [a]

Cellulosic biofuel	6 mill gal.
Biomass-based diesel	1.28 bill gal.
Advanced biofuel	2.75 bill gal.
Renewable fuel	16.55 bill gal.

[a] Due to the manner in which the percentage standards are calculated, all volumes are given in terms of ethanol-equivalent except for biomass-based diesel which is given in terms of physical volume

As with previous years' renewable fuels standards determinations, the formulas used in deriving the annual standards are based in part on estimates of the volumes of gasoline and diesel fuel, for both highway and nonroad uses, that are projected to be used in the year in which the standards will apply. Producers of other transportation fuels, such as natural gas, propane, and electricity from fossil fuels, are not subject to the standards, and volumes of such fuels are not used in calculating the annual standards. Since the standards apply to producers and importers of gasoline and diesel, these are the transportation fuels used to set the standards, and then again to determine the annual volume obligations of an individual gasoline or diesel producer or importer.

B. Calculation of Standards

1. How are the standards calculated?

The following formulas are used to calculate the four percentage standards applicable to producers and importers of gasoline and diesel (see § 80.1405):

$$\mathrm{Std}_{\mathrm{CB,\,i}} = 100\% \times \frac{\mathrm{RFV}_{\mathrm{CB,\,i}}}{(G_i - RG_i) + (GS_i - RGS_i) - GE_i + (D_i - RD_i) + (DS_i - RDS_i) - DE_i}$$

$$\mathrm{Std}_{\mathrm{BBD,\,i}} = 100\% \times \frac{\mathrm{RFV}_{\mathrm{BBD,\,i}} \times 1.5}{(G_i - RG_i) + (GS_i - RGS_i) - GE_i + (D_i - RD_i) + (DS_i - RDS_i) - DE_i}$$

$$\mathrm{Std}_{\mathrm{AB,\,i}} = 100\% \times \frac{\mathrm{RFV}_{\mathrm{AB,\,i}}}{(G_i - RG_i) + (GS_i - RGS_i) - GE_i + (D_i - RD_i) + (DS_i - RDS_i) - DE_i}$$

$$\mathrm{Std}_{\mathrm{RF,\,i}} = 100\% \times \frac{\mathrm{RFV}_{\mathrm{RF,\,i}}}{(G_i - RG_i) + (GS_i - RGS_i) - GE_i + (D_i - RD_i) + (DS_i - RDS_i) - DE_i}$$

Where:

$\mathrm{Std}_{\mathrm{CB,i}}$ = The cellulosic biofuel standard for year i, in percent.

$\mathrm{Std}_{\mathrm{BBD,i}}$ = The biomass-based diesel standard (ethanol-equivalent basis) for year i, in percent.

$\mathrm{Std}_{\mathrm{AB,i}}$ = The advanced biofuel standard for year i, in percent.

$\mathrm{Std}_{\mathrm{RF,i}}$ = The renewable fuel standard for year i, in percent.

$\mathrm{RFV}_{\mathrm{CB,i}}$ = Annual volume of cellulosic biofuel required by section 211(o) of the Clean Air Act for year i, in gallons.

$\mathrm{RFV}_{\mathrm{BBD,i}}$ = Annual volume of biomass-based diesel required by section 211(o) of the Clean Air Act for year i, in gallons.

$\mathrm{RFV}_{\mathrm{AB,i}}$ = Annual volume of advanced biofuel required by section 211(o) of the Clean Air Act for year i, in gallons.

$\mathrm{RFV}_{\mathrm{RF,i}}$ = Annual volume of renewable fuel required by section 211(o) of the Clean Air Act for year i, in gallons.

G_i = Amount of gasoline projected to be used in the 48 contiguous states and Hawaii, in year i, in gallons.

D_i = Amount of diesel projected to be used in the 48 contiguous states and Hawaii, in year i, in gallons. This value excludes diesel used in ocean-going vessels.

RG_i = Amount of renewable fuel blended into gasoline that is projected to be consumed in the 48 contiguous states and Hawaii, in year i, in gallons.

RD_i = Amount of renewable fuel blended into diesel that is projected to be consumed in the 48 contiguous states and Hawaii, in year i, in gallons.

GS_i = Amount of gasoline projected to be used in Alaska or a U.S. territory in year i if the state or territory opts-in, in gallons.

RGS_i = Amount of renewable fuel blended into gasoline that is projected to be consumed in Alaska or a U.S. territory in year i if the state or territory opts-in, in gallons.

DS_i = Amount of diesel projected to be used in Alaska or a U.S. territory in year i if the state or territory opts-in, in gallons.

RDS_i = Amount of renewable fuel blended into diesel that is projected to be consumed in Alaska or a U.S. territory in year i if the state or territory opts-in, in gallons.

GE_i = Amount of gasoline projected to be produced by exempt small refineries and small refiners in year i, in gallons, in any year they are exempt per §§ 80.1441 and 80.1442, respectively. For 2013, this value is non-zero. See further discussion in Section IV.B.2 below.

DE_i = Amount of diesel projected to be produced by exempt small refineries and small refiners in year i, in gallons, in any year they are exempt per §§ 80.1441 and 80.1442, respectively. For 2013, this value is non-zero. See further discussion in Section IV.B.2 below.

The Act requires EPA to base the standards on an EIA estimate of the amount of gasoline and diesel that will be sold or introduced into commerce for that year. The four separate renewable fuel standards for 2013 are based on the gasoline, ethanol, diesel, and biodiesel consumption volumes projected by EIA.[76] We adjusted these nationwide values to represent the 49 states that participate in the RFS program (neither Alaska nor any U.S. territory participates).

2. Small Refineries and Small Refiners

In CAA section 211(o)(9), enacted as part of the Energy Policy Act of 2005, Congress provided a temporary exemption to small refineries (those refineries with a crude throughput of no more than 75,000 barrels of crude per day) through December 31, 2010. In our initial rulemaking to implement the new RFS program,[77] we exercised our discretion under section 211(o)(3)(B) and extended this temporary exemption to the few remaining small refiners that met the Small Business Administration's (SBA) definition of a small business (1,500 employees or less company-wide) but did not meet the statutory small refinery definition as noted above. 40 CFR 80.1141, 80.1142. Because EISA did not alter the small refinery exemption in any way, the RFS2 program regulations maintained the exemptions for gasoline and diesel produced by small refineries and small refiners through 2010 (unless the exemption was waived). See 40 CFR 80.1441, 80.1442.

Congress provided two ways that small refineries can receive a temporary extension of the exemption beyond 2010. One is based on the results of a study conducted by the Department of Energy (DOE) to determine whether small refineries would face a disproportionate economic hardship under the RFS program. The other is based on EPA determination of disproportionate economic hardship on a case-by-case basis in response to refiner petitions.

In January 2009, DOE issued a study which did not find that small refineries would face a disproportionate economic hardship under the RFS program.[78] The conclusions were based in part on the expected robust availability of RINs and EPA's ability to grant relief on a case-by-case basis. As a result, beginning in 2011 small refiners and small refineries were required to participate in the RFS program as obligated parties, and there was no small refiner/refinery volume adjustment to the 2011 standards as there was for the 2010 standards.

Following the release of DOE's 2009 small refinery study, Congress directed DOE to complete a reassessment and issue a revised report. In March of 2011, DOE re-evaluated the impacts of the RFS program on small entities and concluded that some small refineries would suffer a disproportionate hardship.[79] As a result, EPA exempted these refineries from being obligated parties for two additional years, 2011 and 2012.[80] The 2012 standards established in the January 9, 2012, final rulemaking reflected the exemption of these refineries.

EPA may also extend the exemption for individual small refineries or small refiners on a case-by-case basis if they demonstrate disproportionate economic hardship. 40 CFR §§ 80.1441(e)(2), 80.1442(h). EPA has granted some exemptions pursuant to this process that apply in 2011 and 2012. EPA has granted one exemption for 2013. However, any requests for exemption that are approved after the release of today's final rulemaking will not affect the 2013 standards. As stated in the final rule establishing the 2011 standards, ''EPA believes the Act is best interpreted to require issuance of a single annual standard in November that is applicable in the following calendar year, thereby providing advance notice and certainty to obligated parties regarding their regulatory requirements. Periodic revisions to the standards to reflect waivers issued to small refineries or refiners would be inconsistent with the statutory text, and would introduce an undesirable level of uncertainty for obligated parties.'' Thus, any additional exemptions for small refineries or small refiners that are issued after today will not affect the 2013 standards.

EPA requested comment on two areas related to small refiner/refinery exemptions. The first was whether it would be appropriate to extend the two year exemption for small refineries. Two commenters stated that EPA should not provide such an extension to small refineries. Both referenced the number of years the program has been in place, leading to the conclusion that small entities have had time to prepare to meet the standards. One of the commenters also stated that small refiners likely have been blending renewable fuel for years given market incentives. One of these commenters stated that the relief provided was meant to be temporary and not ''on-going.'' A third commenter suggested that EPA not only continue to provide hardship waivers, but extend the opportunity for waivers to mid-size refiners, on the basis that these refiners, like small refiners, do not own ethanol facilities and have little control of the RIN and ethanol markets. In addition, the location of several small and mid-size refineries prohibits the export of gasoline, thus reducing their compliance options in the face of limited RIN availability. However, it is the limited financial resources of such entities that provide overarching hardship to such entities, according to the commenter. This commenter also stated that EPA's granting of hardship relief is based on whether the refinery cannot remain economically viable without said relief. The commenter believes the decision point should be based on whether the refiner suffers disproportionately to others in the industry.

The Act specifically provides for a temporary RFS exemption for small refineries, and for the possibility of extensions of those temporary exemptions. EPA used its discretion in the RFS1 program regulations, and again in the RFS2 regulations, to extend the temporary exemption (and possibility of extensions) to a few small refiners meeting criteria established in prior EPA fuels rules based on general authority to provide appropriate lead time in establishing implementing regulations and based on the language in section 211(o) directing EPA to apply RFS requirements to refineries, blenders, distributors, and importers ''as appropriate.'' Regarding EPA's use of ''economic viability'' (in the commenter's words) as a decision point, the Agency has interpreted this to be a

[76] Letter, A. Michael Schaal, Director, Office of Petroleum, Natural Gas, and Biofuels Analysis, U.S. Energy Information Administration, to Christopher Grundler, Director, Office of Transportation and Air Quality, U.S. EPA, May 8, 2013.

[77] 72 FR 23900, May 1, 2007.

[78] DOE report ''EPACT 2005 Section 1501 Small Refineries Exemption Study'', (January, 2009).

[79] ''Small Refinery Exemption Study: An Investigation into Disproportionate Economic Hardship,'' U.S. Department of Energy, March 2011.

[80] Since the standards are applied on an annual basis, the exemptions are likewise on an annual basis even though the determination of which refineries would receive an extension to their exemption did not occur until after January 1, 2011.

severe impact—large enough to create a hardship and threaten the viability of the company. Thus, absent such hardship, the agency does not believe it is appropriate to extend the exemption for small refineries.

EPA also requested comment on whether it is appropriate for the agency to change the standards if small refiner exemptions are granted after the final rule is issued. As discussed above, EPA has heretofore considered and rejected this option for the primary reason of wanting to provide certainty to obligated parties regarding the levels of the standards. One commenter stated that, though they were opposed to further extending exemptions to small entities, that—lawfully, the standards must be adjusted whenever a waiver is granted. In the rule establishing the 2011 standards, we stated that ''EPA believes the Act is best interpreted to require issuance of a single annual standard . . . thereby providing advance notice and certainty to obligated parties . . .'' The Agency continues to believe that this is the single best approach; the commenter did not provide new information to cause us to re-evaluate this position.

3. Final Standards

As specified in the March 26, 2010 RFS2 final rule,[81] the percentage standards are based on energy-equivalent gallons of renewable fuel, with the cellulosic biofuel, advanced biofuel, and total renewable fuel standards based on ethanol equivalence and the biomass-based diesel standard based on biodiesel equivalence. However, all RIN generation is based on ethanol-equivalence. More specifically, the RFS2 regulations provide that production or import of a gallon of qualifying biodiesel will lead to the generation of 1.5 RINs. In order to ensure that demand for 1.28 billion physical gallons of biomass-based diesel will be created in 2013, the calculation of the biomass-based diesel standard provides that the required volume be multiplied by 1.5. The net result is a biomass-based diesel gallon being worth 1.0 gallon toward the biomass-based diesel standard, but worth 1.5 gallons toward the other standards.

The levels of the percentage standards would be reduced if Alaska or a U.S. territory chooses to participate in the RFS2 program, as gasoline and diesel produced in or imported into that state or territory would then be subject to the standard. Neither Alaska nor any U.S. territory has chosen to participate in the RFS2 program at this time, and thus the value of the related terms in the calculation of the standards is zero.

Note that because the gasoline and diesel volumes estimated by EIA include renewable fuel use, we must subtract the total renewable fuel volumes from the total gasoline and diesel volumes to get total non-renewable gasoline and diesel volumes. The values of the variables described above are shown in Table IV.B.3–1.[82] Terms not included in this table have a value of zero.

TABLE IV.B.3–1—VALUES FOR TERMS IN CALCULATION OF THE STANDARDS

[Bill gal]

Term	Value
$RFV_{CB,2013}$	0.006.
$RFV_{BBD,2013}$	1.28.
$RFV_{AB,2013}$	2.75.
$RFV_{RF,2013}$	16.55.
G_{2013}	132.80.
D_{2013}	51.76.
RG_{2013}	13.31.
RD_{2013}	1.23.
GE_i	Confidential.[a]
DE_i	Confidential.[a]

[a] This information is not published because it reflects an exemption for a single entity and publishing such information would reveal confidential business information.

Using the volumes shown in Table IV.B.3–1, we have calculated the final percentage standards for 2013 as shown in Table IV.B.3–2.

TABLE IV.B.3–2—FINAL PERCENTAGE STANDARDS FOR 2013

	Percent
Cellulosic biofuel	0.004
Biomass-based diesel	1.13
Advanced biofuel	1.62
Renewable fuel	9.74

V. Annual Administrative Announcements

In the RFS2 final rule, we stated our intent to make two announcements each year:

- Set the price for cellulosic biofuel waiver credits that will be made available to obligated parties in the event that we reduce the volume of cellulosic biofuel below the applicable volume specified in the Clean Air Act (CAA), and
- Announce the results of our annual assessment of the aggregate compliance approach for U.S. planted crops and crop residue.

The biofuel waiver credit price being announced today was calculated in accordance with the specifications in § 80.1456(d). The manner in which EPA calculates the waiver credit price is precisely set forth in EPA regulations, and EPA's assessment of the aggregate compliance approach is based on data sources, methodology, and criteria that were identified and explained in the preamble to the RFS2 final rule. For these reasons we would not typically include these administrative announcements in a Notice of Proposed Rulemaking. However, given that the NPRM for the 2013 standards was not published prior to 2013, we determined that regulated parties would benefit from knowing the waiver credit price and our conclusions regarding the aggregate compliance approach as soon as possible. Therefore, the February 7, 2013 NPRM included both of these administrative announcements. In today's rulemaking we are finalizing both announcements, and responding to a number of comments we received on the aggregate compliance approach.

A. 2013 Price for Cellulosic Biofuel Waiver Credits

Section 211(o)(7)(D) of the CAA requires that whenever EPA sets the applicable volume of cellulosic biofuel at a level lower than that specified in the Act, EPA is to provide a number of cellulosic credits for sale that is no more than the EPA-determined applicable volume. Congress also specified the formula for calculating the price for such waiver credits: adjusted for inflation, the credits must be offered at the price of the higher of 25 cents per gallon or the amount by which $3.00 per gallon exceeds the average wholesale price of a gallon of gasoline in the United States. The inflation adjustment is for years after 2008. EPA regulations provide that the inflation adjustment is calculated by comparing the most recent Consumer Price Index for All Urban Consumers (CPI–U) for the ''All Items'' expenditure category as provided by the Bureau of Labor Statistics that is available at the time EPA sets the cellulosic biofuel standard to the comparable value that was reported soonest after December 31, 2008.

In contrast to its directions to EPA for setting the price of a cellulosic biofuel waiver credit, Congress afforded the Agency considerable flexibility in designing regulations specifying the

[81] 75 FR 14716, March 26, 2010.

[82] To determine the 49-state values for gasoline and diesel, the amounts of these fuels used in Alaska is subtracted from the totals provided by DOE. The Alaska fractions are determined from the most recent (2011) EIA State Energy Data, Transportation Sector Energy Consumption Estimates. The gasoline and transportation distillate fuel oil fractions are approximately 0.2% and 0.7%, respectively. Ethanol use in Alaska is estimated at 11.2% of its gasoline consumption (based on the same State data), and biodiesel use is assumed to be zero.

permissible uses of the credits. The CAA states that EPA regulations ''shall include such provisions, including limiting the credits' uses and useful life, as the Administrator deems appropriate to assist market liquidity and transparency, to provide appropriate certainty for regulated entities and renewable fuel producers, and to limit any potential misuse of cellulosic biofuel credits to reduce the use of other renewable fuels, and for such other purposes as the Administrator determines will help achieve the goals of this subsection.'' The final RFS2 regulations provide a detailed discussion of how we designed the provisions for cellulosic biofuel waiver credits in keeping with the statutory language. In short, 2013 cellulosic biofuel waiver credits (or''waiver credits'') are only available for the 2013 compliance year. Waiver credits will only be made available to obligated parties, and they are nontransferable and nonrefundable. Further, obligated parties may only purchase waiver credits up to the level of their cellulosic biofuel RVO less the number of cellulosic biofuel RINs that they own. A company owning cellulosic biofuel RINs and cellulosic waiver credits may use both types of credits if desired to meet their RVOs, but unlike RINs, waiver credits may not be carried over for use in the next calendar year. Obligated parties may not use waiver credits to meet a prior year deficit obligation. Finally, unlike cellulosic biofuel RINs which may also be used to meet an obligated party's advanced and total renewable fuel obligations, waiver credits may only be used to meet a cellulosic biofuel RVO. An obligated party will still need to additionally and separately acquire RINs to meet their advanced biofuel and total renewable fuel obligations.

For the 2013 compliance period, since the applicable volume of cellulosic biofuel used to set the annual cellulosic biofuel standard is lower than the volume for 2013 specified in the CAA, we are making cellulosic waiver credits available to obligated parties for end-of-year compliance should they need them at a price of $0.42 per credit. To calculate this price, EPA first determined the average wholesale (refinery gate) price of gasoline using the most recent 12 months of data available from the EIA Web site on September 30, 2012. Based on this data, we calculated an average price of gasoline for the period July 2011 to June 2012 of $2.85. In accordance with the Act, we then calculated the difference of the inflation-adjusted value of $3.00, or $3.27, and $2.85, which yielded $0.42. Next, we compared the value of $0.42 to the inflation-adjusted value of $0.25, or $0.27. The Act requires EPA to use the greater of these two values as the price for cellulosic biofuel waiver credits.

The derivation of this value is more fully explained in a memorandum submitted to the docket for this rulemaking, and a more complete description of the statutory requirements and their application can be found in the RFS2 final rule.

B. Assessment of the Domestic Aggregate Compliance Approach

The RFS2 regulations contain a provision for renewable fuel producers who use planted crops and crop residue from U.S. agricultural land that relieves them of the individual recordkeeping and reporting requirements concerning the specific land from which their feedstocks were harvested. To enable this approach, EPA established a baseline number of acres for U.S. agricultural land in 2007 (the year of EISA enactment) and determined that as long as this baseline number of acres was not exceeded, it was unlikely that new land outside of the 2007 baseline would be devoted to crop production based on historical trends and economic considerations. We therefore provided that renewable fuel producers using planted crops or crop residue from the U.S. as feedstock in renewable fuel production need not comply with the individual recordkeeping and reporting requirements related to documenting that their feedstocks are renewable biomass, unless EPA determines through one of its annual evaluations that the 2007 baseline acreage of agricultural land has been exceeded.

In the final RFS2 regulations, EPA committed to make an annual finding concerning whether the 2007 baseline amount of U.S. agricultural land has been exceeded in a given year. If the baseline is found to have been exceeded, then producers using U.S. planted crops and crop residue as feedstocks for renewable fuel production would be required to comply with individual recordkeeping and reporting requirements to verify that their feedstocks are renewable biomass.

In response to the NPRM, we received two comments criticizing the aggregate compliance approach, including a comment questioning transparency surrounding the data and methodology. EPA continues to believe that USDA cropland and reserve program acreage data are the most appropriate and applicable sources of data on which to base our annual evaluation for whether the 2007 baseline has been exceeded for aggregate compliance. The USDA data along with a description of our evaluation has been provided in the rulemaking dockets for each annual RFS standard.

Based on data provided by the USDA Farm Service Agency (FSA) and Natural Resources Conservation Service (NRCS), we have estimated that U.S. agricultural land reached approximately 384 million acres in 2012, and thus did not exceed the 2007 baseline acreage. This acreage estimate is based on the same methodology used to set the 2007 baseline acreage for U.S. agricultural land in the RFS2 final rulemaking. Specifically, we started with FSA crop history data for 2012, from which we derived a total estimated acreage of 384 million acres. We then subtracted the amount of land estimated to be participating in the Grasslands Reserve Program (GRP) and Wetlands Reserve Program (WRP) by the end of Fiscal Year 2012, 230,550 acres, to yield an estimate of approximately 384 million acres of U.S. agricultural land in 2012. The USDA data used to make this calculation can be found in the docket to this rule.

C. Assessment of the Canadian Aggregate Compliance Approach

On March 15, 2011, EPA issued a notice of receipt of and solicited public comment on a petition for EPA to authorize the use of an aggregate approach for compliance with the Renewable Fuel Standard renewable biomass requirements, submitted by the Government of Canada. The petition requested that EPA determine that an aggregate compliance approach will provide reasonable assurance that planted crops and crop residue from Canada meet the definition of renewable biomass. After thorough consideration of the petition, all supporting documentation provided and the public comments received, EPA determined that the criteria for approval of the petition were satisfied and approved the use of an aggregate compliance approach to renewable biomass verification for planted crops and crop residue grown in Canada.

The Government of Canada utilized several types of land use data to demonstrate that the land included in their 124 million acre baseline is cropland, pastureland or land equivalent to U.S. Conservation Reserve Program land that was cleared or cultivated prior to December 19, 2007, and was actively managed or fallow and nonforested on that date (and is therefore RFS2 qualifying land). The total agricultural land in Canada in 2012 is estimated at 120.9 million acres. This total agricultural land area includes 97.3 million acres of cropland and summer fallow, 13.8 million acres of pastureland and 9.8 million acres of agricultural land under conservation practices. This acreage estimate is based on the same methodology used to set the 2007 baseline acreage for Canadian agricultural land in the RFS2 response to petition. The data used to make this calculation can be found in the docket to this rule.

D. Vacatur of 2012 Cellulosic Biofuel Standard

On January 25, 2013 a DC circuit court ruled that the EPA's projection of cellulosic biofuel production was in excess of the agency's statutory authority and vacated the cellulosic biofuel standards.[83] Very few cellulosic biofuel RINs were generated in 2012 and of those that were the majority of these RINs were required to be retired when the cellulosic biofuel they represented was exported. EPA is therefore eliminating the cellulosic biofuel requirement for 2012 in accordance with the order from the DC circuit court. Cellulosic biofuel RINs generated in 2012 may still be used to satisfy up to 20% of an obligated party's cellulosic biofuel obligation in 2013.

VI. Comments Outside the Scope of This Rulemaking

In their comments responding to the NPRM, a number of parties used the opportunity to raise concerns that were not directly related to the issues and provisions we were addressing in the NPRM, namely the determination of the applicable volume requirements and associated percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuel. Instead, they addressed issues associated with the following:

- EPA's petition process in § 80.1416 for approving new fuel pathways and requests that the review of certain pathways be expedited
- Requests for clarification regarding whether certain feedstocks qualify as renewable biomass
- Requests for new EPA initiatives to promote FFVs and blender pumps
- Possible legislative changes to the RFS program
- E15 waivers and EPA policy on E15
- Requests for new or revised lifecycle GHG assessments
- Impacts of ethanol on small engines
- Impacts of ethanol on air quality and use of corn for food
- Comments on specific regulatory provisions in 40 CFR Part 80, Subpart M
- Comments on the 1.28 bill gal volume requirement for biomass-based diesel

We also received some comments addressing the impacts of ethanol on air quality and the use of corn for food. These issues were addressed in the RFS2 final rule released in 2010 and were not revisited in the February 7, 2013 NPRM.

While we are taking these comments under consideration as we continue to implement the RFS2 program, these comments are outside the scope of today's action, and we are not providing substantive responses to them at this time. With regard to comments on the 1.28 bill gal requirement for biomass-based diesel, we will take them into consideration in the context of our response to the petition for reconsideration submitted by the American Fuels and Petrochemical Manufacturers.

VII. Public Participation

Many interested parties participated in the rulemaking process that culminates with this final rule. This process provided opportunity for submitting written public comments following the proposal that we published on February 7, 2013 (78 FR 9282), and we also held a public hearing on March 8, 2013 at which a number of parties provided both verbal and written testimony. All comments received, both verbal and written, are available in EPA docket EPA–HQ–OAR–2012–0546 and we considered these comments in developing the final rule. Public comments and EPA responses are discussed throughout this preamble.

VIII. Statutory and Executive Order Reviews

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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

The economic impacts of the RFS2 program on regulated parties, including the impacts of the required volumes of renewable fuel, were already addressed in the RFS2 final rule promulgated on March 26, 2010 (75 FR 14670). With the exception of cellulosic biofuel, this action proposes the percentage standards applicable in 2013 based on the volumes that were analyzed in the RFS2 final rule.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Burden is defined at 5 CFR 1320.3(b). This final rule does not impose any additional reporting requirements on regulated parties beyond those already required under the RFS program; therefore, there will not be any additional reporting burdens on entities impacted by this regulation. This action merely establishes the RFS annual standards for 2013 as required by section 211(o) of the Clean Air Act.

C. Regulatory Flexibility Act

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

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

Today's rule is an annual rulemaking implementing a long-term program that was finalized in 2010. Under that program small refiners and small refineries were already granted two years of relief that could be extended upon demonstration of ongoing hardship. EPA, with the assistance of DOE, has continued to implement these provisions and provide relief when warranted.

[83] See *API* v. *EPA,* No. 12–1139, slip op. at 5–9 (D.C. Cir. January 25, 2013)

After considering the economic impacts of today's final rule on small entities, we certify that this action will not have a significant economic impact on a substantial number of small entities. This rule sets the annual standard for cellulosic biofuel for 2013 at 6 mill gal. Since small refiners and small refineries collectively comprise about 11.9% of gasoline and 15.2% of diesel production [84], for an average of 12.9% for the entire gasoline + diesel pool, small refiners and small refineries would only be required to collectively meet a cellulosic biofuel requirement of about 0.8 mill gal ($6 \times 12.9\%$). At the cellulosic biofuel waiver credit price of $0.42, established in this rule for 2013, the cost of complying with this requirement would total about $0.33 million for the approximately 60 obligated parties that would be affected, or about $5,500 per facility on average.

The impacts of the RFS2 program on small entities were already addressed in the RFS2 final rule promulgated on March 26, 2010 (75 FR 14670), and this final rule will not impose any additional requirements on small entities.

D. Unfunded Mandates Reform Act

This final action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. This action implements mandate(s) specifically and explicitly set forth by the Congress in Clean Air Act section 211(o) without the exercise of any policy discretion by EPA. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This final rule only applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers and merely sets the 2013 annual standards for the RFS program.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action sets the 2013 annual standards for the RFS program and only applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers. Thus, Executive Order 13132 does not apply to this rule.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This final rule will be implemented at the federal level and affects transportation fuel refiners, blenders, marketers, distributors, importers, exporters, and renewable fuel producers and importers. Tribal governments would be affected only to the extent they purchase and use regulated fuels. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks and because it implements specific standards established by Congress in statutes (section 211(o) of the Clean Air Act).

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

This action is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action simply sets the annual standards for renewable fuel under the RFS program for 2013.

I. National Technology Transfer and Advancement Act

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

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

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

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

EPA has determined that this 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. This action does not relax the control measures on sources regulated by the RFS regulations and therefore will not cause emissions increases from these source.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the 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 action is not a ''major rule'' as defined by 5 U.S.C. 804(2). Therefore, this rule will be effective on the date of publication.

[84] Estimates from RFS2 final rule, 75 FR 14867.

IX. Statutory Authority

Statutory authority for this action comes from section 211 of the Clean Air Act, 42 U.S.C. 7545. Additional support for the procedural and compliance related aspects of today's Final rule, come from Sections 114, 208, and 301(a) of the Clean Air Act, 42 U.S.C. Sections 7414, 7542, and 7601(a).

List of Subjects in 40 CFR Part 80

Administrative practice and procedure, Air pollution control, Diesel fuel, Environmental protection, Fuel additives, Gasoline, Imports, Oil imports, Petroleum.

Dated: August 6, 2013.

Gina McCarthy,

Administrator.

For the reasons set forth in the preamble, 40 CFR part 80 is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

■ 1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7542, 7545, and 7601(a).

■ 2. Section 80.1405 is amended by removing and reserving paragraph (a)(3)(i) and by adding paragraphs (a)(4) and (d)(4) to read as follows:

§ 80.1405 What are the Renewable Fuel Standards?

(a) * * *

(4) *Renewable Fuel Standards for 2013.*

(i) The value of the cellulosic biofuel standard for 2013 shall be 0.004 percent.

(ii) The value of the biomass-based diesel standard for 2013 shall be 1.13 percent.

(iii) The value of the advanced biofuel standard for 2013 shall be 1.62 percent.

(iv) The value of the renewable fuel standard for 2013 shall be 9.74 percent.

* * * * *

(d) * * *

(4) The 2013 price for cellulosic biofuel waiver credits is $0.42 per waiver credit.

■ 3. Section 80.1451 is amended by revising paragraph (a)(1) introductory text and by adding paragraph (a)(1)(xiv) to read as follows:

§ 80.1451 What are the reporting requirements under the RFS program?

(a) * * *

(1) Annual compliance reports for the previous compliance period shall be submitted by February 28 of each year except as provided in paragraph (xiv) below, and shall include all of the following information:

* * * * *

(xiv) For the 2013 compliance year, annual compliance reports shall be submitted by June 30, 2014.

* * * * *

■ 4. Section 80.1464 is amended by revising paragraph (d) and by adding paragraph (g) to read as follows:

§ 80.1464 What are the attest engagement requirements under the RFS program?

(d) For each compliance year, each party subject to the attest engagement requirements under this section shall cause the reports required under this section to be submitted to EPA by May 31 of the year following the compliance year, except as provided in paragraph (g) below.

* * * * *

(g) For the 2013 compliance year, reports required under this section shall be submitted to EPA by September 30, 2014.

[FR Doc. 2013–19557 Filed 8–14–13; 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; Proposed Designation of Critical Habitat for Florida Leafwing and Bartram's Scrub-Hairstreak Butterflies; Endangered Status for the Florida Leafwing and Bartram's Scrub-Hairstreak Butterflies; Proposed Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2013–0031; 4500030114]

RIN 1018–AZ59

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for Florida Leafwing and Bartram's Scrub-Hairstreak Butterflies

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the Florida leafwing *(Anaea troglodyta floridalis)* and Bartram's scrub-hairstreak *(Strymon acis bartrami)* butterflies under the Endangered Species Act. In total, approximately 3,351 hectares (8,283 acres) in Miami-Dade and Monroe Counties, Florida, fall within the boundaries of the proposed critical habitat designation for the Florida leafwing butterfly, and approximately 3,748 hectares (9,261 acres) in Miami-Dade and Monroe Counties, Florida, fall within the boundaries of the proposed critical habitat designation for the Bartram's scrub-hairstreak butterfly.

DATES: We will accept comments received or postmarked on or before October 15, 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 **FOR FURTHER INFORMATION CONTACT** by September 30, 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–2013–0031, 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–2013–0031; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

The coordinates or plot points or both from which the maps are generated are included in the administrative record for this critical habitat designation and are available at *http://www.fws.gov/verobeach/, http://www.regulations.gov* at Docket No. No. FWS–R4–ES–2013–0031, and at the South Florida Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we may develop for this critical habitat designation will also be available at the Fish and Wildlife Service Web site and Field Office set out above, and may also be included in the at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Larry Williams, Field Supervisor, U.S. Fish and Wildlife Service, South Florida Ecological Services Office, 1339 20th Street, Vero Beach, FL 32960, by telephone 772–562–3909, or by facsimile 772–562–4288. 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, once we determine that a species is endangered or threatened, then we must also designate critical habitat for the species. Designations and revisions of critical habitat can only be completed by issuing a rule. Elsewhere in today's **Federal Register**, we propose to list the Florida leafwing and Bartram's scrub-hairstreak butterflies as endangered species under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (Act).

This rule consists of: A proposed rule for designation of critical habitat for the Florida leafwing and Bartram's scrub-hairstreak butterflies. The Florida leafwing and Bartram's scrub-hairstreak butterflies have been proposed for listing under the Act. This rule proposes designation of critical habitat necessary for the conservation of the species.

The basis for our action. Under the Act, when a species is proposed for listing, to the maximum extent prudent and determinable, we must designate critical habitat for the species. Both species have been proposed for listing as endangered, and therefore, we also propose to designate:

- Approximately 3,351 hectares (ha) (8,283 acres (ac)) are proposed as critical habitat for the Florida leafwing butterfly and approximately 3,748 ha (9,261 ac) are proposed for the Bartram's scrub-hairstreak butterfly. The critical habitat proposed for the Florida leafwing occurs entirely within that proposed for the Bartram's scrub-hairstreak. The proposed critical habitat for both butterflies is located in Miami-Dade and Monroe Counties, Florida.
- The proposed designation for both butterflies includes both occupied and unoccupied critical habitat. The Service determined that the proposed unoccupied units are essential for the conservation of the butterflies, in order to provide for the necessary expansion of current Florida leafwing and Bartram's scrub-hairstreaks population(s) and for reestablishment of populations into areas where these subspecies previously occurred.

Section 4(b)(2) of the Endangered Species 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.

We are preparing an economic analysis of the proposed designations of critical habitat. 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 additional public review and comment.

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, from 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 (16 U.S.C. 1531 *et seq.*), including whether there are threats to the butterflies 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 be prudent.

(2) Specific information on:

(a) The amount and distribution of the Florida leafwing and Bartram's scrub-hairstreak habitat including the hostplant, pineland croton *(Croton linearis);*

(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;

(f) What areas not occupied at the time of listing are essential for the conservation of the species and why; and

(g) Whether we have determined the most appropriate size and configuration of our proposed critical habitat units.

(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 these species and proposed critical habitat.

(4) Information on the projected and reasonably likely impacts of climate change on both butterflies and proposed critical habitat.

(5) Any probable 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 any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(7) 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.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* You may request at the top of your document that we withhold personal information such as your street address, phone number, or email address from public review; however, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, South Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

All previous Federal actions are described in the proposal to list the Florida leafwing and Bartram's scrub-hairstreak butterflies as endangered species under the Act published elsewhere in today's **Federal Register**.

Critical Habitat

Background

It is our intent to discuss below only those topics directly relevant to the designation of critical habitat for the Florida leafwing and Bartram's scrub-hairstreak in this section of the proposed rule. For more information on Florida leafwing and Bartram's scrub-hairstreak taxonomy, life history, habitat, and population descriptions, please refer to the proposed listing rule published elsewhere in today's **Federal Register**.

The Florida leafwing and Bartram's scrub-hairstreak butterflies are endemic to south Florida and the lower Florida Keys. Both butterflies occur within pine rockland habitat that retain their shared larval hostplant, pineland croton *(Croton linearis).* Historically, these subspecies were locally common within pine rocklands of Miami-Dade and Monroe Counties, while occurring only sporadically in Collier, Martin, Palm Beach, and Broward Counties. The estimated range-wide population densities for these butterflies vary considerably from year to year, but generally occur in the low hundreds.

At present, the Florida leafwing is extant only within the Long Pine Key (LPK) region of Everglades National Park (ENP). Until 2006 when it was extirpated, an additional population occurred on Big Pine Key (BPK), part of National Key Deer Refuge (NKDR). The Bartram's scrub-hairstreak also occurs within the LPK region on ENP, as well as locally within conservation lands adjacent to the ENP and in the Florida Keys on BPK.

Although Florida leafwing and Bartram's scrub-hairstreak populations occur almost entirely within public conservation lands, threats remain from a wide array of natural and human-related sources. Habitat loss, fragmentation and degradation, specifically from natural fire suppression (combined with limited prescribed burns or mechanical clearing), are the most imminent threats to these butterflies and their hostplant. The Florida leafwing has been extirpated (no longer in existence) from nearly 96 percent of its historical range; the only known extant population occurs within ENP in Miami-Dade County. The Bartram's scrub-hairstreak has been extirpated from nearly 93 percent of its historical range; only five isolated metapopulations remain on Big Pine Key in Monroe County, Long Pine Key in ENP, and relict pine rocklands adjacent to the ENP in Miami-Dade County.

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features:

(a) Essential to the conservation of the species and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are

essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) 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 data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical and biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements are the specific elements of physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, would 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) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. 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 would continue to contribute to recovery of these butterflies if we list the Florida leafwing and the Bartram's scrub hairstreak butterflies. 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 for the Florida Leafwing and the Bartram's Scrub-Hairstreak Butterflies

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist:

(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or

(2) such designation of critical habitat would not be beneficial to the species.

A threat of take attributed to collection under Factor B currently exists for both these butterflies. There is evidence that the designation of critical habitat could result in an increased threat from taking, specifically collection, for both butterflies, through publication of maps and a narrative description of specific critical habitat units in the **Federal Register**. However, such information on locations of extant Florida leafwing and Bartram's scrub-hairstreak populations is already widely available to the public through many outlets. Therefore, identification and mapping of critical habitat is not expected to initiate any such threat or significantly increase existing collection pressure.

In the absence of finding that the designation of critical habitat would increase threats to a species, if any benefits would result from a critical habitat designation, then a prudent finding is warranted. Here, the potential benefits of designation include: (1) Triggering consultation under section 7 of the Act, in new areas for actions in which there may be a Federal nexus where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential features and areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species.

Therefore, because we have determined that the designation of critical habitat will not likely increase the degree of threat to the species and may provide some measure of benefit, we find that designation of critical habitat is prudent for the Florida leafwing and Bartram's scrub-hairstreak butterflies.

Critical Habitat Determinability

Having determined that designation of critical habitat is prudent, under section 4(a)(3) of the Act we must find whether critical habitat for the Florida leafwing and Bartram's scrub-hairstreak butterflies 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 butterflies and habitat characteristics where the butterflies are located. This and other information represent the best scientific data available and led us to conclude that the designation of critical habitat is determinable for the Florida leafwing and Bartram's scrub-hairstreak butterflies.

Physical or Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features (PBFs) that are essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derived the specific PBFs for the Florida leafwing and Bartram's scrub-hairstreak butterflies from studies of both of the butterflies' habitat, ecology, and life histories as described below—(see *Habitat and Life History* section of our proposed listing rule published elsewhere in today's **Federal Register**).

Florida Leafwing Butterfly

Space for Individual and Population Growth and for Normal Behavior

The Florida leafwing occurs within pine rockland habitat, and occasionally associated rockland hammock interspersed in these pinelands, throughout their entire lifecycle. Description of these communities and associated native plant species are provided in the Status Assessment for the Florida Leafwing and Bartram's Scrub-hairstreak Butterflies section in the proposed listing rule elsewhere in today's **Federal Register**. The lifecycle of the Florida leafwing occurs entirely within the pine rockland habitat, and in some instances associated rockland hammocks (Salvato and Salvato 2008, p. 246; 2010a, p. 96; Minno, pers. comm. 2009). At present, the Florida leafwing is extant within ENP and, until 2006, had occurred on Big Pine Key in the Florida Keys and historically in pineland fragments on mainland Miami-Dade County (Smith *et al.* 1994, p. 67; Salvato and Salvato 2010a, p. 91; 2010c, p. 139), the smallest viable population being Navy Wells Pineland Preserve (120 hectares (ha) (296 acres (ac)). The Florida leafwing was only sporadic in occurrence north of Miami-Dade County (Smith *et al.* 1994, p. 67; Salvato and Hennessey 2003, p. 243). Studies indicate butterflies are capable of dispersing throughout the landscape, sometimes as far as 5 kilometers (km) (3 miles (mi)), utilizing high-quality habitat patches (Davis *et al.* 2007, p. 1351; Bergman *et al.* 2004, p. 625). The Florida leafwing, with its strong flight abilities, can disperse to make use of appropriate habitat in ENP (Salvato and Salvato 2010a, p. 95). At present, ongoing surveys suggest the leafwing actively disperses throughout the Long Pine Key region of ENP (Salvato and Salvato 2010, p. 91; 2010c, p. 139). However, once locally common at Navy Wells Pineland Preserve and the Richmond Pine Rocklands (which occur approximately 8 and 27 km (5 and 17 mi)) to the northeast of ENP, respectively), leafwings are not known to have bred at either location in over 25 years (Salvato and Hennessey 2003, p. 243; Salvato pers. comm. 2012). Therefore, based on the information above, we identify pine rockland habitats and associated rockland hammock that are at least 120 ha (296 ac) in size to be a PBF for this butterfly.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

The Florida leafwing is dependent on pine rocklands that retain the butterfly's sole hostplant, pineland croton (Hennessey and Habeck 1991, pp. 13–17; Smith *et al.* 1994, p. 67; Worth *et al.* 1996, pp. 64–65). The immature stages of this butterfly feed on the croton for development (Worth *et al.* 1996, pp. 64–65; Minno *et al.* 2005, p. 115). Adult Florida leafwings will feed on tree sap, take minerals from mud, and occasionally visit flowers within the pine rockland (Lenczewski 1980, p. 17; Salvato and Salvato 2008, p. 326; Salvato and Salvato 2010a, p. 96). Therefore, based on the information above, we identify pine rockland and associated rockland hammocks, specifically those containing pineland croton and other herbaceous vegetation typical of these plant communities, which fulfill the larval development and adult dietary requirements of the

Florida leafwing, to be a PBF for the Florida leafwing.

Cover or Shelter

Immature stages of the Florida leafwing occur entirely on the hostplant, pineland croton. Adult Florida leafwing disperse and roost within the pine rockland canopy, and also in rockland hammock vegetation interspersed within these pinelands. Because of their use of the croton and their choice of roosting sites, the former Florida leafwing population on Big Pine Key may have been deleteriously impacted by exposure to seasonal pesticide applications designed to control mosquitoes. The potential for mosquito control chemicals to drift into nontarget areas on the island and to persist for varying periods of time has been well documented (Hennessey and Habeck 1989, pp. 1–22; 1991, pp. 1–68; Hennessey *et al.* 1992, pp. 715–721; Pierce 2009, pp. 1–17). If exposed, studies have indicated that both immature and adult butterflies could be affected (Zhong *et al.* 2010, pp. 1961–1972; Bargar 2012, pp. 1–7). Truck-applied pesticides were found to drift considerable distances from target areas with residues that persisted for weeks on the hostplant (Pierce 2009, pp. 1–17), possibly threatening larvae. Salvato (2001, p. 13) suggested that adult Florida leafwing were particularly vulnerable to aerial applications based on their tendency to roost within the pineland canopy, an area with maximal exposure to such treatments. Therefore, based on the information above, we identify pine rocklands, and associated rockland hammock communities with pineland croton for larval development and ample roosting sites for adults and limited or restricted pesticide application, to be a PBF for this subspecies.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

The Florida leafwing, with its strong flight abilities, can disperse to make use of appropriate habitat in ENP (Salvato and Salvato 2010a, p. 95). Reproduction and larval development occur entirely within the pine rocklands. The Florida leafwing is multivoltine (*i.e.,* produces multiple generations per year), with an entire life cycle of about 2 to 3 months (Hennessey and Habeck 1991, p. 17) and maintains continuous broods throughout the year (Baggett 1982, pp. 78–79; Salvato 1999, p. 121). Natural history studies by Salvato and Salvato (2012, p. 1) indicate that the extant Florida leafwing population within Long Pine Key experiences up to 80 percent mortality amongst immature larval stages from parasites. All parasitic mortality noted for the Florida leafwing by Salvato and Salvato (2012, pp. 1–3) has been from native species; however, mortality from both native and nonnative predators has been observed. Therefore, based on the information above, we identify pine rockland and associated rockland hammocks, specifically those containing pineland croton and other herbaceous vegetation typical of these plant communities, with limited nonnative predation, which fulfill the larval development and adult reproductive requirements of the Florida leafwing, to be a PBF for this subspecies.

Pine rockland native vegetation includes, but is not limited to, canopy vegetation dominated by slash pine *(Pinus elliottii var. densa);* subcanopy vegetation that may include but is not limited to saw palmetto *(Serenoa repens),* cabbage palm *(Sabal palmetto),* silver palm *(Coccothrinax argentata),* brittle thatch palm *(Thrinax morrisii),* wax myrtle *(Myrica cerifera),* myrsine *(Rapanea punctata),* poisonwood *(Metopium toxiferum),* locustberry *(Byrsonima lucida),* varnishleaf *(Dodonaea viscosa),* tetrazygia *(Tetrazygia bicolor),* rough velvetseed *(Guettarda scabra),* marlberry *(Ardisia escallonioides),* mangrove berry *(Psidium longipes),* willow bustic *(Sideroxylon salicifolium),* and winged sumac *(Rhus copallinum).* Short-statured shrubs that may include but are not limited to a subcanopy with running oak *(Quercus elliottii),* white indigoberry *(Randia aculeata),* Christmas berry *(Crossopetalum ilicifolium),* redgal *(Morinda royoc),* and snowberry *(Chiococca alba);* and understory vegetation that may include but is not limited to bluestem *(Andropogon* spp.*, Schizachyrium gracile, S. rhizomatum,* and *S. sanguineum),* arrowleaf threeawn *(Aristida purpurascens),* lopsided indiangrass *(Sorghastrum secundum),* hairawn muhly *(Muhlenbergia capillaris),* Florida white-top sedge *(Rhynchospora floridensis),* pineland noseburn *(Tragia saxicola),* devil's potato *(Echites umbellata),* pineland croton, several species of sandmats *(Chamaesyce spp.),* partridge pea *(Chamaecrista fasciculata),* coontie *(Zamia pumila),* and maidenhair pineland fern *(Anemia adiantifolia).* Rockland hammock native vegetation includes, but is not limited to, a canopy vegetated by gumbo limbo *(Bursera simaruba),* false tamarind (Lysiloma latisiliquum)*,* paradisetree *(*Simarouba glauca*),* black ironwood *(Krugiodendron ferreum),* lancewood *(Ocotea coriacea),* Jamaican dogwood *(Piscidia piscipula),* West Indies mahogany *(Swietenia mahagoni),* willow bustic *(Sideroxylon salicifolium),* inkwood *(Exothea paniculata),* strangler fig *(Ficus aurea),* pigeon plum *(Coccoloba diversifolia),* poisonwood *(Metopium toxiferum),* buttonwood *(Conocarpus erectus),* blolly *(Guapira discolor),* and devil's claw *(Pisonia* spp.*);* subcanopy vegetation that may include but is not limited to Spanish stopper *(Eugenia foetida), Thrinax (Amyris elemifera),* marlberry *(Ardisia escallonioides),* wild coffee *(Psychotria nervosa), Sabal,* gumbo limbo *(Guaiacum sanctum),* hog plum *(Ximenia americana),* and *Colubrina;* and understory vegetated that may include but is not limited to *Zamia pumila,* barbed-wire cactus *(Acanthocereus tetragonus),* and basket grass *(Oplismenus hirtellus).*

Habitats Protected From Disturbance or Representative of the Historical, Geographic, and Ecological Distributions of the Subspecies

The Florida leafwing continues to occur in habitats that are protected from human-generated disturbances and are only partially representative of the butterflies' historical, geographical, and ecological distribution because its range within these habitats has been reduced. The subspecies is still found in its representative plant communities of pine rocklands and associated rockland hammocks. Representative plant communities are located on Federal, State, local, and private conservation lands that implement conservation measures benefitting the butterflies.

Pine rockland is dependent on some degree of disturbance, most importantly from natural or prescribed fires (Loope and Dunevitz 1981, p. 5; Snyder *et al.* 2005, p. 1; Bradley and Saha 2009, p. 4; Saha *et al.* 2011, pp. 169–184; Florida Natural Areas Inventory (FNAI) 2010, p. 1). These fires are a vital component in maintaining native vegetation, such as croton, within this ecosystem. Without fire, successional climax from tropical pineland to rockland hammock is too rapid, and displacement of native species by invasive nonnative plants often occurs.

The Florida leafwing, as with other subtropical butterflies, have adapted over time to the influence of tropical storms and other forms of adverse weather conditions (Minno and Emmel 1994, p. 671; Salvato and Salvato 2007, p. 154). Hurricanes and other significant weather events create openings in the pine rockland habitat (FNAI 2010, p. 3) However, given the substantial reduction in the historical range of the butterfly in the past 50 years, the threat and impact of tropical storms and hurricanes on their remaining populations is much greater than when their distribution was more widespread (Salvato and Salvato 2010a, p. 96; 2010c, p. 139). Therefore, based on the information above, we identify disturbance regimes natural or prescribed to mimic natural disturbances, such as fire, to be a PBF for this subspecies.

Primary Constituent Elements for the Florida Leafwing Butterfly

According to 50 CFR 424.12(b), we are required to identify the PBFs essential to the conservation of the Florida leafwing in areas occupied at the time of listing, focusing on the features' primary constituent elements (PCEs). We consider PCEs to be specific elements of the PBFs that provide for a species' life-history processes and are essential to the conservation of the species.

The Florida leafwing is dependent upon functioning pine rockland habitat to provide its fundamental life requirements, such as pineland croton for larval development, food sources and roosting areas required by adult butterflies. Based on our current knowledge of the PBFs and habitat characteristics required to sustain the butterfly's life-history processes, we determine that the PCEs for the Florida leafwing are:

(1) Areas of pine rockland habitat, and in some locations, associated rockland hammocks.

(a) Pine rockland habitat contains:

(i) Open canopy, semi-open subcanopy, and understory;

(ii) Substrate of oolitic limestone rock; and

(iii) A plant community of predominately native vegetation.

(b) Rockland hammock habitat associated with the pine rocklands contains:

(i) Canopy gaps and edges with an open to semi-open canopy, subcanopy, and understory; and

(ii) Substrate with a thin layer of highly organic soil covering limestone or organic matter that accumulates on top of the underlying limestone rock; and

(iii) A plant community of predominately native vegetation.

(2) Competitive nonnative plant species in quantities low enough to have minimal effect on survival of the Florida leafwing.

(3) The presence of the butterfly's hostplant, pineland croton, in sufficient abundance for larval recruitment, development, and, food resources, and for adult butterfly roosting habitat, and reproduction.

(4) A dynamic natural disturbance regime or one that artificially duplicates natural ecological processes (e.g. fire, hurricanes or other weather events, at 3- to 5-year intervals) that maintains the pine rockland habitat and associated plant community.

(5) Pine rockland habitat and associated plant community that are sufficient in size to sustain viable Florida leafwing populations.

(6) Pine rockland habitat with levels of pesticide low enough to have minimal effect on the survival of the butterfly or its ability to occupy the habitat.

Special Management Considerations or Protection for the Florida Leafwing Butterfly

When designating critical habitat, we assess whether the specific areas within the geographic areas 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 protections. The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats:

Habitat Destruction and Modification by Development—The Florida leafwing has experienced substantial destruction, modification, and curtailment of its habitat and range. The pine rockland community of south Florida, on which both the butterfly and its hostplant depend, is critically imperiled globally (FNAI 2012, p. 27). Destruction of the pinelands for economic development has reduced this habitat community by 90 percent on mainland south Florida (O'Brien 1998, p. 208). All known mainland populations of the Florida leafwing occur on publicly owned land that is managed for conservation, ameliorating some of the threat. However, any unknown extant populations of the butterfly or suitable habitat that may occur on private land or non-conservation public land are vulnerable to habitat loss. In Miami-Dade County, occupied Florida leafwing habitat occurs in the Long Pine Key region of ENP and is actively managed by the National Park Service (NPS) for the Florida leafwing and the pine rockland ecosystem, in general.

Sea Level Rise—Various model scenarios developed at the Massachusetts Institute of Technology (MIT) have projected possible trajectories of future transformation of the south Florida landscape by 2060 based upon four main drivers: Climate change, shifts in planning approaches and regulations, human population change, and variations in financial resources for conservation (Vargas-Moreno and Flaxman 2010, pp. 1–6). The Service used various MIT scenarios in combination with extant and historical Florida leafwing occurrences, and remaining hostplant-bearing pine rocklands to predict climate change impacts to the butterfly and its habitat.

In the best case scenario, which assumes low sea level rise, high financial resources, proactive planning, and only trending human population growth, analyses suggest that the extant Florida leafwing population within ENP is susceptible to future losses, with losses attributed to increases in sea level and human population. In the worst case scenario, which assumes high sea level rise, low financial resources, a ''business as usual'' approach to planning, and a doubling of human population, the habitat at Long Pine Key may be lost resulting in the complete extirpation of the Florida leafwing. Actual impacts may be greater or less than anticipated based upon high variability of factors involved (e.g., sea level rise, human population growth) and assumptions made. Being proactive to address sea level rise may be beyond the feasibility of land owners or managers. However, while land owners or land managers may not be able to be proactive in preventing these events, they may be able to respond with management or protection. Management actions or activities that could ameliorate sea level rise include providing protection of suitable habitats unaffected or less affected by sea level rise.

Lack of Natural or Prescribed Fires—The threat of habitat destruction or modification is further exacerbated by lack of prescribed fire and suppression of natural fires (Salvato and Salvato 2010a, p. 91; 2010c, p. 139). Historically, lightning-induced fires were a vital component in maintaining native vegetation within the pine rockland ecosystem, including pineland croton (Loope and Dunevitz 1981, p. 5; Slocum *et al.* 2003, p. 93; Snyder *et al.* 2005, p. 1; Salvato and Salvato 2010b, p. 154). Resprouting after burns is the primary mechanism allowing for the persistence of perennial shrubs, including pineland croton, in pine habitat (Olson and Platt 1995, p. 101). Without fire, perennial native vegetation can be displaced by invasive nonnative plants.

In recent years, ENP has used partial and systematic prescribed burns to treat the Long Pine Key pine rocklands in their entirety over a 3-year window (National Park Service 2005, p. 27). These methods attempt to burn adjacent pine rockland habitats alternately. In addition, refugia (*i.e.,* unburned areas of croton hostplant) have been included as part of burns conducted within occupied butterfly habitat, wherever possible (R. Anderson, pers. comm. 2011). Providing refugia directly within (as well as adjacent to) the treatment area during prescribed burn activities may substantially increase the potential for the Florida leafwing to recolonize recently burned areas and to remain within or near the fire-treated pineland. Outside of ENP, Miami-Dade County has implemented various conservation measures, such as burning in a mosaic pattern and on a small scale, during prescribed burns to protect the butterfly (Maguire, pers. comm. 2010).

Fire management of pine rocklands in NKDR is hampered by the pattern of land ownership and development; residential and commercial properties are embedded within or in close proximity to pineland habitat (Snyder *et al.* 2005, p. 2; C. Anderson, pers. comm. 2012a). Ongoing management activities designed to ameliorate this threat include the use of small-scale prescribed burns or mechanical clearing to maintain the native vegetative structure in the pine rockland required by the subspecies.

Hurricanes and Storm Surge—The Florida leafwing, as with other subtropical butterflies, have adapted over time to the influence of tropical storms and other forms of adverse weather conditions (Minno and Emmel 1994, p. 671; Salvato and Salvato 2007, p. 154). Hurricanes and other significant weather events create openings in the pine rockland habitat (FNAI 2010, p. 3). However, given the substantial reduction in the historical range of the butterfly in the past 50 years, the threat and impact of tropical storms and hurricanes on their remaining populations is much greater than when their distribution was more widespread (Salvato and Salvato 2010a, p. 96; 2010c, p. 139). While land owners or land managers may not be able to be proactive in preventing these events, they may be able to respond with management or protection resulting from these threats. Management actions or activities that could enhance pine rockland recovery following tropical storms include hand removal of damaged vegetation, as well as by other mechanical means or prescribed fire.

Mosquito Control Pesticide Applications—Efforts to control salt marsh mosquitoes, *Aedes taeniorhynchus,* among others, have increased as human activity and population have increased in south Florida. To control mosquito populations, second-generation organophosphate (naled) and pyrethroid (permethrin) adulticides are applied by mosquito control districts throughout south Florida. The use of such pesticides (applied using both aerial and ground-based methods) for mosquito control presents a potential risk to nontarget species, such as the Florida leafwing. Mosquito control pesticides use within Miami-Dade County pine rockland areas is limited (approximately 2 to 4 times per year, and only within a portion of proposed critical habitat) (Vasquez, pers. comm. 2013) and no spraying is conducted in Long Pine Key within ENP.

Pesticide spraying practices by the Mosquito Control District at NKDR have changed to reduce pesticide use over the years. Since 2003 expanded larvicide treatments to surrounding islands have significantly reduced adulticide use on BPK, No Name Key, and the Torch Keys. In addition, the number of aerially applied naled treatments allowed on NKDR has been limited since 2008 (Florida Key Mosquito Control District 2012, pp. 10–11). No spray zones that include the core habitat used by pine rockland butterflies and several linear miles of pine rockland habitat within the Refuge-neighborhood interface were excluded from truck spray applications (C. Anderson, pers. comm. 2012a; Service 2012, p. 32). These exclusions and buffer zones encompass over 95 percent of extant croton distribution on Big Pine Key, and include the majority of known extant and historical Florida leafwing population centers on the island (Salvato, pers. comm. 2012). However, some areas of pine rocklands within NKDR are still sprayed with naled (aerially applied adulticide), and buffer zones remain at risk from drift; additionally, private residential areas and roadsides across Big Pine Key are treated with permethrin (ground-based applied adulticide) (Salvato 2001, p. 10). Therefore, the hairstreak and, if extant, the leafwing and their habitat on Big Pine Key may be directly or indirectly (via drift) exposed to adulticides used for mosquito control at some unknown level.

Criteria Used To Identify Critical Habitat for the Florida Leafwing Butterfly

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b) we review available information pertaining to the habitat requirements of the species and identify occupied areas at the time of listing that contain the features essential to the conservation of the species. If, after identifying currently occupied areas, a determination is made that those areas are inadequate to ensure conservation of the species, in accordance with the Act and our implementing regulations at 50 CFR 424.12(e), we then consider whether designating additional areas—outside those currently occupied—are essential for the conservation of the species. As discussed above we are proposing to designate critical habitat in areas within the geographical area presently occupied by the species, i.e., occupied at the time of listing. We also are proposing to designate specific areas outside the geographical area occupied by the species at the time of listing but that were historically occupied, because such areas are essential for the conservation of the species.

Small butterfly populations with limited, fragmented distributions, such as the Florida leafwing, are highly vulnerable to localized extirpations (Schulz and Hammond 2003, pp. 1377, 1379; Frankham 2005, pp. 135–136). Historical populations of endangered south Florida butterflies such as the Miami blue (Saarinen 2009, p. 79) and Schaus swallowtail (Daniels and Minno 2012, p. 2), once linked, now are subject to the loss of genetic diversity from genetic drift, the random loss of genes, and inbreeding. In general, isolation, whether caused by geographic distance, ecological factors, or reproductive strategy, will likely prevent the influx of new genetic material and can result in a highly inbred population with low viability and, or fecundity (Chesser 1983, p. 68). Fleishman *et al.* (2002, pp. 706–716) indicated that factors such as habitat quality may influence metapopulation dynamics of butterflies, driving extinction and colonization processes, especially in systems that experience substantial natural and anthropogenic environmental variability. In addition, natural fluctuations in rainfall, hostplant vigor, or butterfly predators may weaken a population to such an extent that recovery to a viable level would be impossible. Isolation of habitat can prevent recolonization from other sites and result in extinction. Because of the dangers associated with small populations or limited distributions, the recovery of many rare butterfly species includes the creation of new sites or reintroductions within the historical range to ameliorate these effects.

When designating critical habitat, we consider future recovery efforts and conservation of the species. We have determined that all currently known occupied habitat should be proposed for critical habitat designation. However, realizing that the current occupied habitat is not adequate for the conservation of the Florida leafwing, we used habitat and historical occurrence data to identify unoccupied habitat essential for the conservation of the subspecies.

Only one extant Florida leafwing population remains (Salvato and Salvato 2010c, p. 139). Population estimates for the Florida leafwing are estimated to be only several hundred or fewer at any given time. Although this population occurs on conservation lands, management and law enforcement are limited. We believe it is necessary for conservation that additional populations of the Florida leafwing be established within its historical range. Therefore, we have proposed three unoccupied areas for designation as critical habitat, one on Big Pine Key within the Florida Keys, and two others on the mainland within Miami-Dade County, where the Florida leafwing was historically recorded, but has since been extirpated.

The Miami-Dade County proposed critical habitat areas are large pine rockland fragments (Navy Wells Pineland Preserve) or contiguous fragments (Richmond Pine Rocklands), which we believe provide the minimal habitat size (at least 120 ha (296 ac)) required for the subspecies to persist. The Florida leafwing was known to occur at Navy Wells Pineland Preserve within the past 25 years (Smith *et al.* 1994, p. 67). Although causes for the Florida leafwing's subsequent disappearance from Navy Wells are unknown, we believe that, with proper management and restoration efforts (consistent prescribed fire and habitat enhancement), the butterfly, given its strong flight abilities will be able to recolonize both this and the Richmond Pine Rockland area. The one critical habitat unit on Big Pine Key in the Florida Keys we are proposing is a former stronghold for the subspecies (Smith *et al.* 1994, p. 67; Salvato and Salvato 2010c, p. 39), where appropriate hostplant-bearing habitat was historically recorded, but has since become degraded and unsuitable for butterfly use. Here also, we believe that, following habitat restoration activities (vegetation and fire management), the Florida leafwing may be able to be reestablished on this site, thereby returning a vital metapopulation of the subspecies to the Florida Keys.

The current distribution of the Florida leafwing is much reduced (90 percent) from its historical distribution. We anticipate that recovery will require continued protection of the remaining extant population and habitat, as well as establishing populations in additional areas that more closely approximate its historical distribution in order to ensure there are adequate numbers of butterflies in stable populations and that these populations occur over a wide geographic area. This will help to ensure that catastrophic events, such as storms, cannot simultaneously affect all known populations.

To determine the location and boundaries of critical habitat, the Service used the following sources of information and considerations:

(1) Historical and current records of Florida leafwing occurrence and distribution found in publications, reports, and associated voucher specimens housed at museums and private collections;

(2) Institute for Regional Conservation (IRC) and Fairchild Tropical Gardens (FTG) geographic information system (GIS) data showing the location and extent of documented occurrences of the pine rockland habitat with pineland croton;

(3) Reports prepared by ecologists, biologists, and botanists with the IRC, ENP, FTG, and Service assessing the current and historic distribution of pine rockland habitat and pineland croton. Some of these were funded by the Service; others were requested or volunteered by biologists with the Service, NPS, or IRC; and

(4) Historical records of pineland croton found in publications, reports and associated voucher specimens housed at herbaria, all of which are also referenced in the above mentioned reports from the IRC and cited publications.

Area Occupied at the Time of Listing

The one occupied critical habitat unit was delineated around the only remaining extant Florida leafwing population. This unit includes the mapped extent of the population that contains one or more of the elements of the PBFs.

The delineation included space to allow for the successional nature of the occupied pine rockland habitat, the habitat being one of the elements of the PBFs. While suitable, at any one time, only a portion of this habitat is optimal for the Florida leafwing and the size and location of optimal areas is successional over time, being largely driven by the frequency and scale of natural or prescribed fires or other disturbances such as storms. Correspondingly the abundance and distribution of pineland croton within the pine rockland habitat varies greatly from time to time depending on habitat changes because of these events. Although prescribed burns are administered on the conservation land that retains the Florida leafwing population, fire return intervals and scope are inconsistent. As a result, areas within the pine rockland habitat supporting the subspecies may not always provide optimal habitat for the butterfly in the future as natural or prescribed burns, fire suppression or other disturbances removes or fragments hostplant distribution. Conversely, changes in hostplant distribution over time following fires or other disturbances, may allow the butterfly to return, expand, and colonize areas with shifting hostplant populations.

The delineation also included space to plan for the persistence of the current Florida leafwing population in the face of imminent effects on habitats as a result of sea level rise. Although currently occupied and containing the elements of PBFs, this area may be altered as a result of vegetation shifts or salt water intrusion, to an extent to which cannot be predicted at this time.

Areas Outside of the Geographic Range at the Time of Listing

The Florida leafwing has been extirpated from several locations where it was previously recorded. We are proposing three critical habitat units for those that are well-documented as historically occupied and are essential to the conservation of the subspecies. As it is not always possible to identify the exact location where a specimen was collected, we used the best available descriptions to determine likely locales, but ultimately were guided by the location of remaining pine rockland habitats.

In identifying these areas we considered additional refining criteria:

(1) Areas of sufficient size to support ecosystem processes for populations of the Florida leafwing. The historical distribution of the Florida leafwing appeared limited to large pine rocklands parcels 120 ha (296 ac) or greater. For many years the leafwing persisted at Navy Wells, which has an area of 120 ha (296 ac), long after being extirpated from everywhere else in Miami-Dade County that was smaller in area. The only other leafwing populations that occurred outside of the Everglades in the past 25 years were those in the Richmond Pine Rocklands and Big Pine Key, which have approximately 900 and 1,400 acres of pine rocklands, respectively. So we believe appropriately-sized units should be at a minimum the size of the Navy Wells

(i.e., 120 ha (296 ac). Large contiguous parcels of habitat are more likely to be resilient to ecological processes of disturbance and succession, and support viable populations of the Florida leafwing. The unoccupied areas selected were at least 120 ha (296 ac) or greater in size.

(2) Areas to maintain connectivity of habitat to allow for population expansion. Isolation of habitat can prevent recolonization of the Florida leafwing and result in extinction. Because of the dangers associated with small populations or limited distributions, the recovery of many rare butterfly species includes the creation of new sites or reintroductions to ameliorate these effects.

(3) Areas once restored will allow the Florida leafwing to disperse and recolonize and in some instances, may be able to support expansion and a larger number of the subspecies either through reintroduction or expansion from areas already occupied by the butterfly. These areas generally are habitats within or adjacent to pine rocklands that have been affected by natural or anthropogenic impacts but retain areas that are still suitable for the butterfly or that could be restored. These areas would help to offset the anticipated loss and degradation of habitat occurring or expected from the effects of climate change (such as sea level rise) or due to development.

In summary, for areas within the geographic area occupied by the subspecies at the time of listing, we delineated the critical habitat unit boundaries by evaluating habitat suitability of pine rockland habitat within the geographic area occupied at the time of listing (current), and retained those areas that contain some or all of the PCEs to support life-history functions essential for conservation of the subspecies.

In summary, for areas outside the geographic area occupied by the species at the time of listing, but that are within the historical range of the species, we determined that they are essential to the survival and recovery of the species. These areas are essential for the conservation of the species because they:

(1) Provide sufficient size to support ecosystem processes for populations of the Florida leafwing;

(2) Maintain connectivity of habitat to allow for population expansion; and

(3) Once restored will allow the Florida leafwing to expand throughout its historical range.

We conclude that the areas proposed for critical habitat provide for the conservation of the Florida leafwing because they include habitat for all of the one remaining extant population. Further, the current amount of habitat that is occupied is not sufficient for the recovery of the subspecies; therefore, we included unoccupied habitat in this proposed critical habitat designation which is essential for the long-term conservation of the species.

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. 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 PBFs in the adjacent critical habitat.

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document in the rule portion. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* at Docket No. FWS–R4–ES–2013–0031, on our Internet sites *www.fws.gov/verobeach/,* and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT** above).

Proposed Critical Habitat Designation for the Florida Leafwing Butterfly

One of the four critical habitat units (FLB1) proposed for the Florida leafwing is currently designated as critical habitat under the Act for the Cape Sable seaside sparrow (*Ammodramus maritimus mirabilis*) (50 CFR 17.95(b)). No other critical habitat units proposed for this subspecies have been designated as critical habitat for other species under the Act.

The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the Florida leafwing. The four areas we propose as critical habitat are: (1) FLB1 Everglades National Park, Miami-Dade County, Florida, (2) (FLB2) Navy Wells Pineland Preserve, Miami-Dade County, Florida, (3) (FLB3) Richmond Pine Rocklands, Miami-Dade County, Florida, and (4) (FLB4) Big Pine Key, Monroe County, Florida. Land ownership within the proposed critical habitat consists of Federal (81 percent), State (4 percent), and private and other (15 percent). Table 1 shows these units by land ownership, area, and occupancy.

TABLE 1—FLORIDA LEAFWING BUTTERFLY PROPOSED CRITICAL HABITAT UNITS

Unit No.	Unit name	Ownership	Percent	Hectares	Acres	Occupied
FLB1	Everglades National Park	Federal	100	2,313	5,716	yes.
		Total	*100*	*2,313*	*5,716*	
FLB2	Navy Wells Pineland Preserve	State	29	35	85	no.
		Private-Other	71	85	211	
		Total	*100*	*120*	*296*	
FLB3	Richmond Pine Rocklands	Federal	14	50	122	no.
		Private-Other	86	309	767	
		Total	*100*	*359*	*889*	
FLB4	Big Pine Key	Federal	65	365	901	no.
		State	16	90	223	
		Private-Other	19	104	258	

TABLE 1—FLORIDA LEAFWING BUTTERFLY PROPOSED CRITICAL HABITAT UNITS—Continued

Unit No.	Unit name	Ownership	Percent	Hectares	Acres	Occupied
		Total	*100*	*559*	*1,382*	
Total All Units		Federal	81	2,728	6,739	
		State	4	125	308	
		Private-Other	15	498	1,236	
		All	100	3,351	8,283	

Note: Area sizes may not sum due to rounding.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the Florida leafwing, below.

Unit FLB1: Everglades National Park, Miami-Dade County, Florida

Unit FLB1 consists of 2,313 ha (5,716 ac) in Miami-Dade County. This unit is composed entirely of lands in Federal ownership, 100 percent of which are located within the Long Pine Key region of ENP. This unit is currently occupied and contains all the PBFs, including suitable habitat (pine rockland habitat of sufficient size), hostplant presence, natural or artificial disturbance regimes, low levels of nonnative vegetation and larval parasitism, and restriction of pesticides required by the subspecies, and contains the PCE of pine rockland. The PBFs in this unit may require special management considerations or protection to address threats of fire suppression, habitat fragmentation, poaching, and sea level rise. However, in most cases these threats are being addressed or coordinated with the ENP to implement needed actions.

For instance, ENP is currently in the process of updating its fire management plan (FMP) and environmental assessment which will assess the impacts of fire on various environmental factors, including listed, proposed, and candidate species (Land, pers. comm. 2011; Sadle, pers. comm. 2013a). ENP is actively coordinating with the Service, as well as other members of the Imperiled Butterfly Working Group (IBWG) to review and adjust the prescribed burn practices outlined in the FMP to help maintain or increase Florida leafwing population sizes, protect pine rocklands, expand or restore remnant patches of hostplants, and ensure that short-term negative effects from fire (i.e., loss of hostplants, loss of eggs and larvae) can be avoided or minimized.

Unit FLB2: Navy Wells Pineland Preserve, Miami-Dade County, Florida

Unit FLB2 consists of 120 ha (296 ac) in Miami-Dade County. This unit is comprised entirely of conservation lands located within the Navy Wells Pineland Preserve which is jointly owned by Miami-Dade County (85 ha (211 ac)) and the State (35 ha (85 ac)). State lands are interspersed within Miami-Dade County Parks and Recreation Department lands which are managed for conservation. This unit is bounded on the north by SW 348 Street and on the south by SW 360 Street; on the east by State Road 9336 and on the west by the vicinity of SW 2002 Avenue.

This unit was occupied historically by the Florida leafwing. This unit is not currently occupied but is essential to the conservation of the subspecies because it serves to protect habitat needed to recover the subspecies, reestablish wild populations within the historical range of the subspecies, and maintain populations throughout the historic distribution of the subspecies in Miami-Dade County, and provides habitat for recovery in the case of stochastic events if the butterfly is extirpated from the one location where it is presently found.

Unit FLB3: Richmond Pine Rocklands Miami-Dade County, Florida

Unit FLB3 consists of 359 ha (889 ac) in Miami-Dade County. This unit is comprises of lands in Federal (U.S. Coast Guard (Homeland Security) (29 ha (72 ac)), U.S. Army Corps of Engineers (Department of Defense (DoD) (8 ha (20 ac)), National Oceanic Atmospheric Administration (NOAA) (4 ha (9 ac)), Federal Bureau of Prisons (Department of Justice (DoJ) (9 ha (21 ac)), and private or other (309 ha (767 ac)) ownership. This unit is bordered on the north by Coral Reef Road and on the south by SW 168 Street; on the east by SW 117 Avenue and on the west by US1; then resumes bordered on the north by Coral Reef Road and on the south by SW 184 Street; on the east by US1 and on the west by SW 137 Avenue.

The unit was occupied historically by the Florida leafwing and includes some of the largest remaining contiguous fragments of pine rockland habitats outside of ENP. This unit is not currently occupied but is essential to the conservation of the butterfly because it serves to protect habitat needed to recover the subspecies, reestablish wild populations within the historical range of the subspecies, and maintain populations throughout the historic distribution of the subspecies in Miami-Dade County, and it provides habitat for recovery in the case of stochastic events if the butterfly is extirpated from the one location where it is presently found.

Unit FLB4: Big Pine Key, Monroe County, Florida

Unit FLB4 consists of 559 ha (1,382 ac) in Monroe County. This unit includes Federal lands within National Key Deer Refuge (365 ha (901 ac)), State lands (90 ha (223 ac)), and property in private or other ownership (104 ha (258 ac)). State lands are interspersed within NKDR lands and managed as part of the Refuge. The unit begins on northern Big Pine Key on the southern side of Gulf Boulevard, continues south on both sides of Key Deer Boulevard (County Road 940 (CR 940)) to the vicinity of Osprey Lane on the western side of CR 940 and Tea Lane to the east of CR 940, then resumes on both sides of CR 940 from Osprey Lane south of the vicinity of Driftwood Lane, then resumes south of Osceola Street, between Fern Avenue to the west and Baba Lane to the east, then resumes north of Watson Boulevard in the vicinity of Avenue C, then continues south on both sides of Avenue C to South Street, then resumes on both sides of CR 940 south to US 1 between Ships Way to the west and Sands Street to the east, then resumes south of US 1 from Newfound Boulevard to the west and Deer Run Trail to the east, then resumes south of US 1 from Palomino Horse Trail to the west and Industrial Road to the east.

This unit was historically occupied by the Florida leafwing. This unit is not currently occupied but is essential to the conservation of the Florida leafwing because it serves to protect habitat needed to recover the subspecies, reestablish wild populations within the historical range of the subspecies, and maintain populations throughout the historic distribution of the subspecies in the Lower Florida Keys, and it provides area for recovery in the case of stochastic events if the butterfly is extirpated from the one location where it is presently found. In the Lower Florida Keys National Wildlife Refuges Comprehensive Conservation Plan (CCP), management objective number 11 provides specifically for maintaining and restoring butterfly populations of special conservation concern, including the Florida leafwing butterfly.

Bartram's Scrub-Hairstreak

Physical or Biological Features

Space for Individual and Population Growth and for Normal Behavior

Bartram's scrub-hairstreak's entire lifecycle occurs within pine rockland habitat and occasionally associated rockland hammock interspersed in these pinelands. A description of these communities and associated native plant species are provided in the Status Assessment for the Florida Leafwing and Bartram's Scrub-hairstreak section in the proposed listing rule elsewhere in today's **Federal Register**.

At present, the Bartram's scrub-hairstreak is extant on Big Pine Key, within ENP, and several pineland fragments on mainland Miami-Dade County (Smith *et al.* 1994, p. 118; Salvato and Salvato 2010b, p. 154), the smallest being Navy Wells Pineland Preserve outparcel number 39 (7 ha (18 ac)), which represents the minimum known extant sustained population size. The Bartram's scrub-hairstreak was historically less common and sporadic in occurrence north of Miami-Dade County (Smith *et al.* 1994, pp. 118; Salvato and Hennessey 2004, p. 223). Studies indicate butterflies are capable of dispersing throughout the landscape, sometimes as far as 5 km (3 mi); utilizing high-quality habitat patches (Davis *et al.* 2007, p. 1351; Bergman *et al.* 2004, p. 625). Stepping stones may be particularly useful to the Bartram's scrub-hairstreak, which exhibits low vagility (movement), rarely venturing from the pine rockland habitat or away from large areas of contiguous patches of hostplant. Therefore, based on the information above, we identify pine rockland habitats and associated rockland hammock that are at least 7 ha (18 ac) in size and are located no more than 5 km (3 miles) apart to allow for habitat connectivity to be a PBF for this butterfly.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

The Bartram's scrub-hairstreak is dependent on pine rocklands that retain the butterfly's sole hostplant, pineland croton. The immature stages of this butterfly feed on the croton for development (Minno and Emmel 1993, p. 129; Worth *et al.* 1996, p. 62). Adult Bartram's scrub-hairstreaks actively visit flowers for nectar (Minno and Emmel 1993, p. 129; Worth *et al.* 1996, p. 65; Calhoun *et al.* 2002, p. 14; Salvato and Hennessey 2004, p. 226; Salvato and Salvato 2008, p. 324) within open pine areas and edges and openings within associated rockland hammocks. Therefore, based on the information above, we identify pine rockland and associated rockland hammocks, specifically those containing pineland croton and other herbaceous vegetation typical of these plant communities, which fulfill the larval development and adult dietary requirements, to be PBFs for the Bartram's scrub-hairstreak.

Cover or Shelter

Immature stages of the Bartram's scrub-hairstreak occur entirely on the hostplant, pineland croton. Adult Bartram's scrub-hairstreaks prefer more open pine areas, at the edges and openings of associated rockland hammocks. The Bartram's scrub-hairstreak population on Big Pine Key may be deleteriously impacted by exposure to seasonal pesticide applications designed to control mosquitoes because of where the butterflies congregate in the vegetation. Salvato (2001, p. 13) suggested that the Bartram's scrub-hairstreak was particularly vulnerable to truck-based applications based on the fact that the subspecies commonly aggregates on low-lying shrubs occurring along frequently treated roadsides. Therefore, based on the information above, we identify the absence of pesticide in the pine rocklands, and associated rockland hammock communities or in low enough quantities that is not detrimental to the butterfly to be a PBF for this subspecies.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

Bartram's scrub-hairstreak reproduction and larval development occur entirely within the pine rocklands. The butterfly has been observed during every month throughout its range; however the exact number of broods appears to be sporadic from year to year, with varying peaks in seasonal abundance (Baggett 1982, p. 81; Hennessey and Habeck 1991, pp. 17–19; Emmel *et al.* 1995, pp. 14–15; Minno and Minno 2009, pp. 70–76; Salvato and Salvato 2010b, p. 156; C. Anderson, pers. comm. 2012a; J. Sadle, pers. comm. 2013b). The Bartram's scrub-hairstreak retains breeding populations within pine rocklands on Big Pine Key, Long Pine Key in ENP, and within a number of pine rockland fragments adjacent to ENP (Salvato and Salvato 2010b, p. 154). Therefore, based on the information above, we identify pine rockland and associated rockland hammocks, specifically those containing pineland croton and other herbaceous vegetation typical of these plant communities, which fulfill the larval development and adult reproductive requirements of the Bartram's scrub-hairstreak, to be a PBF for this subspecies.

Pine rockland native vegetation includes, but is not limited to, canopy vegetation dominated by slash pine *(Pinus elliottii* var. *densa)* and subcanopy vegetation that may include, but is not limited to, saw palmetto *(Serenoa repens),* cabbage palm *(Sabal palmetto),* silver palm *(Coccothrinax argentata),* brittle thatch palm *(Thrinax morrisii),* wax myrtle *(Myrica cerifera),* myrsine *(Rapanea punctata),* poisonwood *(Metopium toxiferum),* locustberry *(Byrsonima lucida),* varnishleaf *(Dodonaea viscosa),* tetrazygia *(Tetrazygia bicolor),* rough velvetseed *(Guettarda scabra),* marlberry *(Ardisia escallonioides),* mangrove berry *(Psidium longipes),* willow bustic *(Sideroxylon salicifolium),* and winged sumac *(Rhus copallinum).* Short-statured shrubs may include, but are not limited to, a subcanopy with running oak *(Quercus elliottii),* white indigoberry *(Randia aculeata),* Christmas berry *(Crossopetalum ilicifolium),* redgal *(Morinda royoc),* and snowberry *(Chiococca alba);* and understory vegetation that may include, but is not limited to, bluestem *(Andropogon spp., Schizachyrium gracile, S. rhizomatum, and S. sanguineum),* arrowleaf threeawn *(Aristida purpurascens),* lopsided indiangrass *(Sorghastrum secundum),* hairawn muhly *(Muhlenbergia capillaris),* Florida white-top sedge *(Rhynchospora floridensis),* pineland noseburn *(Tragia saxicola),* devil's potato *(Echites umbellata),* pineland croton, several species of sandmats *(Chamaesyce spp.),* partridge pea *(Chamaecrista fasciculata),* coontie *(Zamia pumila),* and maidenhair pineland fern *(Anemia adiantifolia).* Rockland hammock native vegetation includes, but is not limited to, a canopy vegetated by gumbo limbo *(Bursera simaruba),* false tamarind (Lysiloma latisiliquum), paradisetree *(Simarouba glauca),* black ironwood *(Krugiodendron ferreum),* lancewood *(Ocotea coriacea),* Jamaican dogwood *(Piscidia piscipula),* West Indies mahogany *(Swietenia mahagoni),* willow bustic *(Sideroxylon salicifolium),* inkwood *(Exothea paniculata),* strangler fig *(Ficus aurea),* pigeon plum*(Coccoloba diversifolia*), poisonwood *(Metopium toxiferum),* buttonwood *(Conocarpus erectus),* blolly *(Guapira discolor),* and devil's claw *(Pisonia* spp.*);* subcanopy vegetation that may include, but is not limited to, Spanish stopper *(Eugenia foetida), Thrinax, torchwood (Amyris elemifera),* marlberry *(Ardisia escallonioides),* wild coffee *(Psychotria nervosa), Sabal,* gumbo limbo *(Guaiacum sanctum),* hog plum *(Ximenia americana),* and *Colubrina;* and understory vegetation that may include, but is not limited to, *Zamia pumila,* barbed-wire cactus *(Acanthocereus tetragonus),* and basket grass *(Oplismenus hirtellus).*

Habitats Protected From Disturbance or Representative of the Historical, Geographic, and Ecological Distributions of the Subspecies

The Bartram's scrub-hairstreak continues to occur in habitats that are protected from human-generated disturbances and are representative of the butterflies' historical, geographical, and ecological distribution, although its range has been reduced. The subspecies is still found in its representative plant communities of pine rocklands. Representative communities are located on Federal, State, local, and private conservation lands that implement conservation measures benefitting the butterfly.

Pine rockland is dependent on some degree of disturbance, most importantly from natural or prescribed fires (Loope and Dunevitz 1981, p. 5; Carlson *et al.* 1993, p. 914; Slocum *et al.* 2003, p. 93; Snyder *et al.* 2005, p. 1; Bradley and Saha 2009, p. 4; Saha *et al.* 2011, pp. 169–184; FNAI 2010, p. 1). These fires are a vital component in maintaining native vegetation, such as croton, within this ecosystem. Without fire, successional climax from tropical pineland to rockland hammock is too rapid, and displacement of native species by invasive nonnative plants often occurs. Therefore, based on the information above, we identify disturbance regimes, natural or prescribed to mimic natural disturbances such as fire, to be a PBF for this subspecies.

The Bartram's scrub-hairstreak, as with other subtropical butterflies, have adapted over time to the influence of tropical storms and other forms of adverse weather conditions (Minno and Emmel 1994, p. 671; Salvato and Salvato 2007, p. 154). Hurricanes and other significant weather events create openings in the pine rockland habitat (FNAI 2010, p. 3). However, given the substantial reduction in the historical range of the butterfly in the past 50 years, the threat and impact of tropical storms and hurricanes on their remaining populations is much greater than when their distribution was more widespread (Salvato and Salvato 2010a, p. 96; 2010c, p. 139). Therefore, based on the information above, we identify disturbance regimes natural or prescribed to mimic natural disturbances such as fire, to be a PBF for this subspecies.

Primary Constituent Elements for the Bartram's Scrub-Hairstreak Butterfly

The Bartram's scrub-hairstreak is dependent upon functioning pine rockland habitat to provide its fundamental life requirements, such as pineland croton for larval development, and food sources required by adult butterflies. Based on our current knowledge of the PBFs and habitat characteristics required to sustain the butterfly's life-history processes, we determine that the PCEs for the Bartram's scrub-hairstreak are:

(1) Pine rockland habitat, and in some instances, associated rockland hammocks.

(a) Pine rockland habitat contains:

(i) Open canopy, semi-open subcanopy, and understory;

(ii) Substrate of oolitic limestone rock; and

(iii) A plant community of predominately native vegetation.

(b) Rockland hammock habitat associated with the pine rocklands contains:

(i) Canopy gaps and edges with an open to semi-open canopy, subcanopy, and understory;

(ii) Substrate with a thin layer of highly organic soil covering limestone or organic matter that accumulates on top of the underlying limestone rock; and;

(iii) A plant community of predominately native vegetation.

(2) Competitive nonnative plant species in quantities low enough to have minimal effect on survival of Bartram's scrub-hairstreak butterfly.

(3) The presence of the butterfly's hostplant, pineland croton, in sufficient abundance for larval recruitment, development, and food resources, and for adult butterfly nectar source and reproduction;

(4) A dynamic natural disturbance regime or one that artificially duplicates natural ecological processes (e.g., fire, hurricanes, or other weather events) that maintains the pine rockland habitat and associated plant community.

(5) Pine rockland habitat and associated plant community that allow for connectivity and are sufficient in size to sustain viable populations of Bartram's scrub hairstreak butterfly.

(6) Pine rockland habitat with levels of pesticide low enough to have minimal effect on the survival of the butterfly or its ability to occupy the habitat.

Special Management Considerations or Protection for Bartram's Scrub-Hairstreak Butterfly

The special management considerations or protections for the Bartram's scrub-hairstreak, and the primary threats to the PBFs on which the Bartram's scrub-hairstreak depends, are the same as those described for the Florida leafwing above, except where noted below.

Habitat Destruction and Modification by Development—The majority of known mainland populations of the Bartram's scrub-hairstreak occur on publicly owned lands that are managed for conservation. In Miami-Dade County, occupied Bartram's scrub-hairstreak habitat occurs in the Long Pine Key region of ENP and is actively managed by the NPS for the Bartram's scrub-hairstreak and the pine rockland ecosystem, in general. Outside of the ENP, extant occupied habitat for the Bartram's scrub-hairstreak occurs on lands owned by Miami-Dade County, University of Miami, and the U.S. Coast Guard, which are managed for the conservation of the pine rockland ecosystem ameliorating some of the threat.

Sea Level Rise—Based on modeling using best case scenario, which assumes low sea level rise, high financial resources, proactive planning, and only trending population growth, analyses suggest that the Big Pine Key population of the Bartram's scrub-hairstreak may be lost or greatly reduced. Based upon the above assumptions, extant Bartram's scrub-hairstreak populations on Big Pine Key and Long Pine Key appear to be most susceptible to future losses attributed to increases in sea level and human population. In the worst case scenario, which assumes high sea level rise, low financial resources, the habitat at Big Pine Key and Long Pine Key may be lost. Under the worst case scenario, pine rockland habitat would remain within Navy Wells Pineland Preserve and the Richmond Pine Rocklands, both of which currently retain Bartram's scrub-hairstreak populations. Proactively addressing sea level rise may be beyond the feasibility of land owners or managers. However, while land owners or land managers may not be able to be proactive in preventing these events, they may be able to respond with management or protection. Management actions or activities that could ameliorate sea level rise include providing protection of suitable habitats unaffected or less affected by sea level rise.

Lack of Natural or Prescribed Fires—The threat of habitat destruction or modification is further exacerbated by lack of prescribed fire and suppression of natural fires (Salvato and Salvato 2010a, p. 91; 2010c, p. 139). Historically, lightning-induced fires were a vital component in maintaining native vegetation within the pine rockland ecosystem, including pineland croton (Loope and Dunevitz 1981, p. 5; Slocum *et al.* 2003, p. 93; Snyder *et al.* 2005, p. 1; Salvato and Salvato 2010b, p. 154). Resprouting after burns is the primary mechanism allowing for the persistence of perennial shrubs, including pineland croton, in pine habitat (Olson and Platt 1995, p. 101). Without fire, perennial native vegetation can be displaced by invasive nonnative plants.

In recent years, ENP has used partial and systematic prescribed burns to treat the Long Pine Key pine rocklands in their entirety over a 3-year window (NPS 2005, p. 27). These methods attempt to burn adjacent pine rockland habitats alternately. In addition, refugia (*i.e.,* unburned areas of croton hostplant) have been included as part of burns conducted within occupied butterfly habitat, wherever possible (R. Anderson, pers. comm. 2011). Providing butterfly refugia habitat directly within (as well as adjacent to) the treatment area during prescribed burn activities may substantially increase the potential for Bartram's scrub-hairstreak to recolonize recently burned areas and to remain within or near the fire-treated pineland. Outside of ENP, Miami-Dade County has implemented various conservation measures, such as burning in a mosaic pattern and on a small scale, during prescribed burns to protect the butterfly (Maguire, pers. comm. 2010).

Fire management of pine rocklands in NKDR is hampered by the pattern of land ownership and development; residential and commercial properties are embedded within or in close proximity to pineland habitat (Snyder *et al.* 2005, p. 2; C. Anderson, pers. comm. 2012). Ongoing management activities designed to ameliorate this threat include the use of small-scale prescribed burns or mechanical clearing to maintain the native vegetative structure in the pine rockland required by the subspecies.

Mosquito Control Pesticide Applications—Efforts to control salt marsh mosquitoes, *Aedes taeniorhynchus,* among others, have increased as human activity and population have increased in south Florida. To control mosquito populations, second-generation organophosphate (naled) and pyrethroid (permethrin) adulticides are applied by mosquito control districts throughout south Florida. The use of such pesticides (applied using both aerial and ground-based methods) for mosquito control presents a potential risk to nontarget species, such as the Bartram's scrub-hairstreak. Mosquito control pesticides use within Miami-Dade County pine rockland areas is limited (approximately 2 to 4 times per year, and only within a portion of proposed critical habitat) (Vasquez, pers. comm. 2013) and no spraying is conducted in Long Pine Key within ENP.

Pesticide spraying practices by the Mosquito Control District at NKDR have changed to reduce pesticide use over the years. Since 2003 expanded larvicide treatments to surrounding islands have significantly reduced adulticide use on BPK, No Name Key, and the Torch Keys. In addition, the number of aerially applied naled treatments allowed on NKDR has been limited since 2008 (FKMCD 2012, pp. 10–11). No spray zones that include the core habitat used by pine rockland butterflies and several linear miles of pine rockland habitat within the Refuge-neighborhood interface were excluded from truck spray applications (C. Anderson, pers. comm. 2012a; Service 2012, p. 32). These exclusions and buffer zones encompass over 95 percent of extant croton distribution on Big Pine Key, and include the majority of known extant and historical Bartram's scrub-hairstreak population centers on the island (Salvato, pers. comm. 2012). However, some areas of pine rocklands within NKDR are still sprayed with naled (aerially applied adulticide), and buffer zones remain at risk from drift; additionally, private residential areas and roadsides across Big Pine Key are treated with permethrin (ground-based applied adulticide) (Salvato 2001, p. 10). Therefore, the Bartram's scrub-hairstreak habitat on Big Pine Key is directly or indirectly (via drift) exposed to adulticides used for mosquito control at some level. Expansion of no-spray zones may aid in butterfly dispersal within the pine rocklands of Big Pine Key.

Criteria Used To Identify Critical Habitat for the Bartram's Scrub-Hairstreak Butterfly

The criteria used to identify critical habitat for the Bartram's scrub-hairstreak are the same as those discussed above for the Florida leafwing, except where noted below.

We are proposing to designate critical habitat in areas within the geographical area currently occupied i.e., occupied by the species at the time of listing. We also are proposing to designate specific areas outside the geographical area occupied by the species at the time of listing that were historically occupied, but are presently unoccupied, because such areas are essential for the conservation of the species.

Isolation of habitat can prevent recolonization of Bartram's scrub-hairstreak from other sites and result in extinction. Because of the dangers associated with small populations or limited distributions, the recovery of many rare butterfly species includes the creation of new sites or reintroductions to ameliorate these effects. In addition, establishing corridors or employing small patches (stepping stones) of similar habitats have been shown to facilitate dispersal, reduce extinction rates and increase gene flow of imperiled butterflies (Schultz 1998, p. 291; Haddad 2000, pp. 739; 744; Haddad *et al.* 2003, p. 614; Wells *et al.* 2009, p. 709). Leidner and Haddad (2010, pp. 2318–2319) suggest that small natural areas within the urban landscape may serve an important role in promoting butterfly dispersal and gene flow in fragmented landscapes. Davis *et al.* (2007, p. 1351) and Bergman *et al.* (2004, p. 625) indicate butterflies are capable of dispersing throughout the landscape, sometimes as far as 5 km (3 miles), utilizing high-quality habitat patches. Stepping stones may be particularly useful to the Bartram's scrub-hairstreak, which like most lycaenids, exhibits low vagility, rarely venturing from the pine rockland habitat or away from large areas of contiguous patches of hostplant.

Accordingly, realizing that the current occupied habitat is not adequate for the conservation of Bartram's scrub-hairstreak, we used habitat and historical occurrence data to identify unoccupied habitat essential for the conservation of the subspecies.

Only five extant Bartram's scrub-hairstreak populations remain within the subspecies' historical range. Total population estimates for the Bartram's scrub-hairstreak are estimated to be only several hundred or fewer at any given time. Although these populations occur on conservation lands; management and law enforcement are limited. We believe it is necessary for conservation and recovery that additional populations of the Bartram's scrub-hairstreak be established within its historical range. Therefore, we are proposing two critical habitat units in the Florida Keys where appropriate hostplant-bearing habitat was historically recorded, which has since been degraded and became unsuitable for butterfly use. We believe that, given proper management and restoration efforts, the Bartram's scrub-hairstreak may be able to be established on these units, thereby providing an essential fortification of the subspecies' metapopulation in the Florida Keys.

To determine the location and boundaries of critical habitat for the Bartram's scrub-hairstreak, the Service used the following information sources and considerations.

(1) Historical and current records of Bartram's scrub-hairstreak occurrence and distribution found in publications, reports and associated voucher specimens housed at museums and private collections;

(2) IRC and FTG GIS data showing the location and extent of documented occurrences of the pine rockland habitat with pineland croton;

(3) Reports prepared by ecologists, biologists, and botanists with the IRC, ENP, FTG, and Service assessing the current and historic distribution of pine rockland habitat and pineland croton; and

(4) Historical records of pineland croton found in publications, reports and associated voucher specimens housed at herbaria, all of which are also referenced in the above-mentioned reports from the IRC and cited publications.

Areas Occupied at the Time of Listing

We have identified areas to include in this proposed designation by applying the following considerations to the existing Bartram's scrub-hairstreak habitats that contain PBFs.

The occupied critical habitat units were delineated around extant populations. These units include the mapped extent of the population and supporting habitat that contained the elements of the PBFs that allow for population growth and expansion. In ENP, the distribution of the Bartram's scrub-hairstreak is across a larger area than at any other single location. Outside of ENP, units are limited to three units composed of pine rockland fragments within the current distribution of the subspecies that contain the elements of the PBFs. These units retain extant, localized Bartram's scrub-hairstreak populations. The units include only pine rocklands fragments that are at least 7 ha (18 ac) in size (which represents the minimum known extant population size) and are currently occupied. On Big Pine Key, the distribution of the Bartram's scrub-hairstreak is across all extant pine rocklands on the island that contain the elements of the PBFs.

The delineation included space to plan for the persistence of the current Bartram's scrub-hairstreak populations in the face of imminent effects on habitats as a result of sea level rise. Under the worst case scenario for sea level rise (as discussed above in *Special Management Considerations or Protection*), pine rockland habitat would remain at both Navy Wells, Camp Owaissa Bauer, and the Richmond Pine Rocklands, each of which retain Bartram's scrub-hairstreak populations. However, even in these areas, pine rocklands may be altered as a result of vegetation shifts or salt water intrusion, at an extent to which cannot be predicted at this time.

In summary, for areas within the geographic area occupied by the subspecies at the time of listing, we delineated critical habitat unit boundaries by evaluating habitat suitability of pine rockland habitat within the geographic area occupied at the time of listing (current), and retain those areas that contain some or all of the PCEs to support life-history functions essential for conservation of the subspecies.

Areas Outside of the Geographic Range at the Time of Listing

The Bartram's scrub-hairstreak has become extirpated from several locations where it was previously recorded. We are proposing critical habitat for those areas that are well-documented historic butterfly locations (i.e., Big Pine Key, Long Pine Key, areas in Miami-Dade County) (Smith *et al.* 1994, p. 118; Salvato and Hennessey 2004, p. 223) and that maintain one or more of the PCEs or can be restored. Two units are within the historical range of the butterfly, where the butterfly is currently considered extirpated because there is a lack of specific butterfly location documentation. These units contain pine rockland habitat and are essential for the conservation of the subspecies, because:

(1) Large contiguous parcels of habitat are more likely to be resilient to ecological processes of disturbance and succession, and support viable populations of the Bartram's scrub-hairstreak. However, in Miami-Dade County, the Bartram's scrub-hairstreak is extant on parcels as small as 7 ha (18 ac), which lay adjacent to larger pine rocklands. Bartram's scrub-hairstreak populations may be able to utilize these smaller fragments while dispersing between units. Therefore, all pine rocklands fragments, at least 7 ha (18 ac) in size, that are currently unoccupied and within 5 km (3 miles) of an extant Bartram's scrub-hairstreak population within Miami-Dade County, were identified as critical habitat for the Bartram's scrub-hairstreak.

(2) Areas are needed to maintain connectivity of habitat and aid butterfly dispersal within and between occupied units (i.e. stepping stones for dispersal). These areas maintain connectivity within and between populations and allow for population expansion within the butterfly's historical range.

(3) Areas are needed to allow the dynamic ecological nature of the pine rockland habitat to continue. The abundance and distribution of pineland croton within the pine rockland habitat varies greatly throughout the range of the Bartram's scrub-hairstreak. At any one time, only a portion of this habitat is optimally suitable for the Bartram's scrub-hairstreak and the size and location of suitable areas is dynamic over time, being largely driven by the frequency and scale of natural or prescribed fires. Historically lighting-induced fires maintained native vegetation within the pine rockland ecosystem, including pineland croton. Although prescribed burns are administered on the majority of conservation lands which retain Bartram's scrub-hairstreak populations, fire return intervals and scope are inconsistent. In addition, little or no fire management occurs on private lands. Thus, areas of pine rockland that now support the subspecies, may not provide as optimal habitat in the future as fire suppression and resultant succession removes or fragments hostplant distribution. Conversely, hostplants may return or increase in areas following prescribed fires, allowing the butterflies to expand or colonize within them in the future.

In summary, we determined that the areas proposed outside the geographic area occupied by the species at the time of listing, but that are within the historical range of the species, are essential to the survival and recovery of the species. Essential areas are those that maintain pine rockland habitat and are within the historical range of the butterfly, where the butterfly has been extirpated but where there are well-known specific or general historical locations of the butterfly.

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. 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 PBFs in the adjacent critical habitat.

In summary, we are proposing areas for designation of critical habitat that we have determined are occupied at the time of listing and contain sufficient elements of physical or biological features to support life-history processes essential for the conservation of the species, and lands outside of the geographical area occupied at the time of listing that we have determined are essential for the conservation of the Bartram's scrub-hairstreak butterfly.

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document in the rule portion. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* at Docket No. FWS–R4–ES–2013–0031, on our Internet sites *www.fws.gov/verobeach/*, and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT** above).

Proposed Critical Habitat Designation for the Bartram's Scrub-Hairstreak Butterfly

Two of the seven units proposed for Bartram's scrub-hairstreak are currently designated as critical habitat under the Act for other species. Unit BSHB1—Everglades National Park, is currently designated as critical habitat for the Cape Sable seaside sparrow (*Ammodramus maritimus mirabilis;* 50 CFR 17.95(b)), and Unit BSHB2—Little Pine Key is designated critical habitat for the silver rice rat (*Oryzomys palustris natator;* 50 CFR 17.95(a)). No other critical habitat units proposed for this butterfly have been designated as critical habitat for other species under the Act.

The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the Bartram's scrub-hairstreak. The seven areas we propose as critical habitat are: (1) BSHB1 Everglades National Park, Miami-Dade County, Florida, (2) BSHB2 Navy Wells Pineland Preserve, Miami-Dade County, Florida, (3) BSHB3 Camp Owaissa Bauer, Miami-Dade County, Florida, (4) BSHB4 Richmond Pine Rocklands, Miami-Dade County, Florida, (5) BSHB5 Big Pine Key, Monroe County, Florida, (6) BSHB6 No Name Key, Monroe County, Florida, and (7) BSHB7 Little Pine Key, Monroe County, Florida. Land ownership within the proposed critical habitat consists of Federal (75 percent), State (5 percent), and private and other (20 percent). Table 2 summarizes these units. Proposed critical habitat for the Florida leafwing occurs entirely within Bartram's scrub-hairstreak units BSHB1, BSHB2, BSHB4, and BSHB5.

TABLE 2—BARTRAM'S SCRUB-HAIRSTREAK PROPOSED CRITICAL HABITAT UNITS

Unit No.	Unit name	Ownership	Percent	Hectares	Acres	Occupied
BSHB1	Everglades National Park	Federal	100	2,313	5,716	yes.
		Total	*100*	2,313	5,716	
BSHB2	Navy Wells Pineland Preserve	State	30	62	153	yes.
		Private-Other	70	141	349	
		Total	*100*	*203*	*502*	
BSHB3	Camp Owaissa Bauer	State	20	29	71	yes.
		Private-Other	80	117	288	
		Total	*100*	*146*	*359*	
BSHB4	Richmond Pine Rocklands	Federal	11	50	122	yes.
		State	7	32	79	
		Private-Other	82	356	881	
		Total	*100*	*438*	*1082*	
BSHB5	Big Pine Key	Federal	65	365	901	yes.
		State	16	90	223	
		Private-Other	19	104	258	
		Total	*100*	*559*	*1,382*	
BSHB6	No Name Key	Federal	75	30	75	no.
		State	18	9	22	
		Private-Other	7	11	26	
		Total	*100*	*50*	*123*	
BSHB7	Little Pine Key	Federal	100	39	97	no.
		Total	*100*	*39*	*97*	
Total		Federal	75	2,797	6,911	
All Units		State	5	222	548	
		Private-Other	20	729	1,802	
		All	100	3,748	9,261	

Note: Area sizes may not sum due to rounding.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the Bartram's scrub-hairstreak, below.

Unit BSHB1: Everglades National Park Miami-Dade County, Florida

Unit BSHB1 consists of 2,313 ha (5,716 ac) in Miami-Dade County. This unit is composed entirely of lands in Federal ownership, 100 percent of which are located within the Lone Pine Key region of ENP. This unit is currently occupied by the Bartram's scrub-hairstreak and contains all the PBFs, including suitable habitat (pine rockland habitat of sufficient size), hostplant presence, natural or artificial disturbance regimes, low levels of nonnative vegetation and larval parasitism, hostplant, and restriction of pesticides and contains the PCE of pine rockland. The PBFs in this unit may require special management considerations or protection to address threats of fire suppression, habitat fragmentation, poaching, and sea level rise. However, in most cases these threats are being addressed or coordinated with the NPS to implement needed actions.

ENP is currently in the process of updating its FMP and Environmental Assessment, which will assess the impacts of fire on various environmental factors, including listed, proposed, and candidate species (Land, pers. comm. 2011; Sadle, pers. comm. 2013a). ENP is actively coordinating with the Service, as well as other members of the IBWG to review and adjust the prescribed burn practices outlined in the FMP to help maintain or increase Bartram's scrub-hairstreak population sizes, protect pine rocklands, expand or restore remnant patches of hostplants and ensure that short-term negative effects from fire (i.e., loss of hostplants, loss of eggs and larvae) can be avoided or minimized.

Unit BSHB2: Navy Wells Pineland Preserve, Miami-Dade County, Florida

Unit BSHB2 consists of 203 ha (502 ac) in Miami-Dade County. This unit comprises lands in State (62 ha (153 ac)) and private or other (141 ha (349 ac)) ownership. The 120-ha (296-ac) Navy Wells Pineland Preserve is jointly owned by Miami-Dade County (85 ha (211 ac)) and the State (35 ha (85 ac)). State lands are interspersed within Miami-Dade County Parks and Recreation Department lands, which are managed for conservation.

This unit begins in Homestead, Florida, on SW 304 Street, between SW 198 Avenue to SW 204 Avenue, then resumes between SW 340 Street and SW 344 Street, between SW 213 Avenue and SW 214 Avenue, then resumes between SW 344 Street and SW 360 Street on SW 209 Avenue, then resumes along SW 268 Street, between SW 202 Avenue and SW 205 Avenue, then resumes along SW 360 Street, between SW 202 Avenue and SW 188 Avenue, then resumes between SW 7 Street and SW 158 Street, in the vicinity of SW 180 Avenue, then resumes along Palm Drive and SW 3 Terrace, between SW 6 Avenue and SW 8 Avenue.

This unit is occupied by the Bartram's scrub-hairstreak and contains all the PBFs, including suitable habitat, hostplant, adult food sources, breeding sites, disturbance regimes, and restriction of pesticides and contains pine rockland and rockland hammock PCEs. The PBFs in this unit may require special management considerations or protection to address threats of fire suppression, habitat fragmentation, poaching, and sea level rise. However, in most cases these threats are being addressed or coordinated with our partners and landowners to implement needed actions.

Unit BSHB3: Camp Owaissa Bauer, Miami-Dade County, Florida

Unit BSHB3 consists of 146 ha (359 ac) in Miami-Dade County. This unit is comprised of lands in State (29 ha (71 ac)), private or other (117 ha (288 ac)) ownership of which one large fragment (40 ha (99 ac) is owned by Miami-Dade County-Camp Owaissa Bauer). State lands are interspersed within Miami-Dade County Parks and Recreation Department lands, which are managed for conservation.

This unit begins in Homestead, Florida, on SW 147 Ave, between SW 216 Street and SW 200 Street, then resumes on both sides of SW 157 Avenue, between SW 216 Street and SW 228 Street, then resumes along SW 232 Street, between SW 142 Avenue and SW 144 Avenue, then continues south of SW 232 Street along both sides of SW 142 Ave to SW 248 Street, then resumes along SW 248 Street, south to SW 256 Street, between SW 244 Avenue and the vicinity of SW 157 Avenue, then resumes along SW 240 Street, north to the vicinity of SW 238 Street, between SW 152 Avenue and SW 147 Avenue, then resumes between of SW 264 Street and SW 272 Street, along both sides of SW 155 Avenue, then resumes along both sides of SW 264 Street in the vicinity of SW 262 Avenue.

This unit is occupied by the Bartram's scrub-hairstreak and contains all the PBFs, including suitable habitat, hostplant, adult food sources, breeding sites, disturbance regimes, and restriction of pesticides required by the subspecies and contains pine rockland and rockland hammock PCEs. The PBFs in this unit may require special management considerations or protection to address threats of fire suppression, habitat fragmentation, poaching, and sea level rise. However, in most cases these threats are being addressed or coordinated with our partners and landowners to implement needed actions.

Unit BSHB4: Richmond Pine Rocklands, Miami-Dade County, Florida

Unit BSHB4 consists of 438 ha (1,082 ac) in Miami-Dade County. This unit comprises lands in both Federal (U. S. Coast Guard (Homeland Security) (29 ha (72 ac)), U.S. Army Corps of Engineers (DoD) (8 ha (20 ac)), National Oceanic Atmospheric Administration (NOAA) (4 ha (9 ac)), Federal Bureau of Prisons (Department of Justice (DoJ) (9 ha (21 ac)), State (32 ha (79 ac)), and private or other (356 ha (881 ac)) ownership. The unit includes some of the largest remaining contiguous fragments of pine rockland habitats outside of ENP known to be occupied by the Bartram's scrub-hairstreak.

This unit begins in Miami, Florida, at SW 120 Street, north to SW 112 Street, between SW 142 Avenue and the vicinity of SW 137 Avenue, then resumes along SW 124 Street south to SW 128 Street between SW127 Avenue and the vicinity of SW 137 Avenue, then resumes in the vicinity of SW 136 Street and SW 122 Avenue, then resumes on Coral Reef Road (State Road 992) south to SW 168 Street, between US 1 and SW 117 Avenue, then resumes from Coral Reef Road south to SW 184 Street, between US 1 and SW 137 Avenue.

This unit is currently occupied by the Bartram's scrub-hairstreak and contains all the PBFs, including suitable habitat, hostplant, adult food sources, breeding sites, disturbance regimes, and restriction of pesticides and contains pine rockland and rockland hammock PCEs. The PBFs in this unit may require special management considerations or protection to address threats of fire suppression, habitat fragmentation, poaching, and sea level rise. However, in most cases these threats are being addressed or coordinated with our partners and landowners to implement needed actions. The U.S. Army Corps of Engineers lands do not have an integrated natural resources management plan (INRMP) or other natural resource management plan.

Unit BSHB5: Big Pine Key, Monroe County, Florida

Unit BSHB5 consists of 559 ha (1,382 ac) in Monroe County. This unit includes Federal lands within National Key Deer Refuge (NKDR) (365 ha (901 ac)), State (90 ha (223 ac)), and property in private or other (104 ha (258 ac)) ownership. State lands are interspersed within NKDR lands and managed as part of the Refuge.

The unit begins on northern Big Pine Key on the southern side of Gulf Boulevard, continues south on both sides of Key Deer Boulevard (County Road 940 (CR 940)) to the vicinity of Osprey Lane on the western side of CR 940 and Tea Lane to the east of CR 940, then resumes on both sides of CR 940 from Osprey Lane to rest south of the vicinity of Driftwood Lane, then resumes south of Osceola Street, between Fern Avenue to the west and Baba Lane to the east, then resumes north of Watson Boulevard in the vicinity of Avenue C, then continues south on both sides of Avenue C to South Street, then resumes on both sides of CR 940 south to US 1 between Ships Way to the west and Sands Street to the east, then resumes south of US 1 from Newfound Boulevard to the west and Deer Run Trail to the east, then resumes south of US 1 from Palomino Horse Trail to the west and Industrial Road to the east.

This unit is currently occupied by the Bartram's scrub-hairstreak. This unit contains three of the PBFs, including suitable habitat, hostplant, adult food sources, and breeding sites required by the subspecies, and contains pine rockland and rockland hammock PCEs. The PBFs in this unit may require special management considerations or protection to address threats of disturbance regimes (fire), and pesticide applications, as well as habitat fragmentation, poaching, and sea level rise. However, in most cases these threats are being addressed or coordinated with our partners and landowners to implement needed actions.

Unit BSHB6: No Name Key, Monroe County, Florida

Unit BSHB6 consists of 50 ha (123 ac) in Monroe County. This unit includes Federal lands within National Key Deer Refuge (30 ha (75 ac)), State (9 ha (22 ac)), and property in private or other ownership (11 ha (26 ac)). State lands are interspersed within NKDR lands and managed as part of the Refuge. The unit extends from Watson Road entirely on National Key Deer Refuge lands just south of the vicinity of Spanish Channel Drive eastward to the vicinity of Paradise Drive, then resumes north of Watson Road from No Name Drive east to Paradise Lane.

This unit is not currently occupied by the Bartram's scrub-hairstreak but is essential to the conservation of the subspecies because it serves to protect habitat needed to recover the subspecies, reestablish wild populations within the historical range of the subspecies, and maintain populations throughout the historical distribution of the subspecies in the Florida Keys, and provides area for recovery in the case of stochastic events that otherwise hold the potential to eliminate the subspecies from the one or more locations where it is presently found. The Lower Key Refuges, CCP management objective number 11 provides specifically for maintaining and restoring butterfly populations of special conservation concern, including the Bartram's scrub-hairstreak.

Unit BSHB7: Little Pine Key, Monroe County, Florida

Unit BSHB7 consists of 39 ha (97 ac) in Monroe County. This unit comprises entirely lands in Federal ownership, 100 percent of which are located within National Key Deer Refuge. This unit is not currently occupied by the Bartram's scrub-hairstreak but is essential to the conservation of the subspecies because it serves to protect habitat needed to recover the subspecies, reestablish wild populations within the historical range of the subspecies, and maintain populations throughout the historical distribution of the subspecies in the Florida Keys, and it provides area for recovery in the case of stochastic events that otherwise hold the potential to eliminate the subspecies from one or more locations where it is presently found. The Lower Key Refuges, CCP management objective number 11 provides specifically for maintaining and restoring butterfly populations of special conservation concern, including the Bartram's scrub-hairstreak.

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 that 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 U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to 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 the Florida leafwing and Bartram's scrub-hairstreak. As discussed above, the role of critical habitat is to support life-history needs of these butterflies and provide for the conservation of these subspecies.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the Florida leafwing and Bartram's scrub-hairstreak. These activities include, but are not limited to:

(1) Actions that would significantly alter the pine rockland and associated rockland hammock ecosystem. Such activities may include, but are not limited to, residential, commercial, or recreational development including associated infrastructure.

(2) Actions that would significantly alter vegetation structure or composition, such as natural fire suppression or excessive prescribed burning, clearing vegetation for construction of residential, commercial, or recreational development, and associated infrastructure.

(3) Actions that would introduce nonnative plant species that would significantly alter vegetation structure or composition. Such activities may include, but are not limited to, residential and commercial development, and associated infrastructure.

(4) Actions that would introduce nonnative arthropod species that would significantly influence the natural histories of the Florida leafwing and Bartram's scrub-hairstreak. Such activities may include release of parasitic or predator species (flies or wasps) for use in agriculture-based biological control programs.

(5) Actions that would introduce chemical pesticides into the pine rockland and associated rockland hammock ecosystem in a manner that impacts the butterflies. Such activities may include use of adulticides for control of mosquitos or agricultural-related pests.

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that: ''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 INRMP 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 Department of Defense lands within the critical habitat designation area; however, none of the lands are covered by an INRMP. Accordingly, no lands that otherwise meet the definition of critical habitat are exempt under section 4(a)(3)(B)(i).

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise his discretion to exclude the area only if such exclusion would not result in the extinction of the species.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we are preparing an analysis of economic impacts of the proposed critical habitat designation and related factors. The draft economic analysis will be made available for public comment.

During the development of a final designation, we will consider economic impacts based on information in our economic analysis, public comments, and other new information, and areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands where a national security impact might exist. In preparing this proposal, we have determined that some lands within the proposed designation of critical habitat for the Florida leafwing and Bartram's scrub-hairstreak are owned or managed by the Department of Defense and the Department of Homeland Security. However, we anticipate no impact on national security. Consequently, the Secretary is not intending to exercise her discretion to exclude any areas from the final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors, including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this proposed rule, we have determined that there are currently no HCPs or other management plans for the Florida leafwing and Bartram's scrub-hairstreak. An HCP for Big Pine and No Name Keys in Monroe County, Florida, which was implemented in 2006, did not address the Florida leafwing and Bartram's scrub-hairstreak. However, in order to fulfill the HCP's mitigation requirements Monroe County has been actively acquiring parcels of high-quality pine rockland and placing them into conservation. These conservation actions have benefited the Florida leafwing and Bartram's scrub-hairstreak by protecting habitat. However, we anticipate no impact on the HCP from this proposed critical habitat designation. Furthermore, the proposed designation does not include any tribal lands or additional trust resources so we anticipate no impact on tribal lands or partnerships from this proposed critical habitat designation. Accordingly, the Secretary does not intend 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 proposed listing and critical habitat designation are based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during this public comment period.

We will consider all comments and information received during this comment period on this proposed rule during our preparation of a final determination. Accordingly, the final decision may differ from this proposal.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget 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. Executive Order 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 of 1996 (SBREFA; 5 U.S.C 801 *et seq.*), 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 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 to evaluate the potential incremental impacts of rulemaking only on those entities directly regulated by the rulemaking itself, and not the potential impacts to indirectly affected entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried by the Agency is not likely to adversely modify critical habitat. Therefore, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Under these circumstances, it is our position that only Federal action agencies will be directly regulated by this designation. Therefore, because Federal agencies are not small entities, the Service may certify that the proposed critical habitat rule will not have a significant economic impact on a substantial number of small entities.

We acknowledge, however, that in some cases, third-party proponents of the action subject to permitting or funding may participate in a section 7 consultation, and thus may be indirectly affected. We believe it is good policy to assess these impacts if we have sufficient data before us to complete the necessary analysis, whether or not this analysis is strictly required by the RFA. While this regulation does not directly regulate these entities, in our draft economic analysis we will conduct a brief evaluation of the potential number of third parties participating in consultations on an annual basis in order to ensure a more complete examination of the incremental effects of this proposed rule in the context of the RFA.

In conclusion, we believe that, based on our interpretation of directly regulated entities under the RFA and relevant case law, this designation of critical habitat will only directly regulate Federal agencies which are not by definition small business entities. And as such, we certify that, if promulgated, this designation of critical habitat would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required. However, though not necessarily required by the RFA, in our draft economic analysis for this proposal we will consider and evaluate the potential effects to third parties that may be involved with consultations with Federal action agencies related to this action.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. We do not expect the designation of this proposed critical habitat to significantly affect energy supplies, distribution, or use. 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 proposed rule would 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 lack the available economic information to determine if a Small Government Agency Plan is required. Therefore, we defer this finding until completion of the draft economic analysis is prepared under section 4(b)(2) of the Act.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), this rule is not anticipated to have significant takings implications. As discussed above, the designation of critical habitat affects only Federal actions. 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. Due to current public knowledge of the species protections and the prohibition against take of the species both within and outside of the proposed areas we do not anticipate that property values will be affected by the critical habitat designation. However, we have not yet completed the economic analysis for this proposed rule. Once the economic analysis is available, we will review and revise this preliminary assessment as warranted, and prepare a Takings Implication Assessment.

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 Florida. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical and biological 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 these local governments in long-range planning (because these governments no longer have to 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. To assist the public in understanding the habitat needs of the species, the rule identifies the elements of physical or biological features essential to the conservation of the species. The designated areas of critical habitat are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA: 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), 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 are currently occupied by the Florida leafwing and Bartram's scrub-hairstreak that contain the features essential for conservation of these subspecies, and no tribal lands unoccupied by the Florida leafwing and Bartram's scrub-hairstreak that are essential for the conservation of these subspecies. Therefore, we are not proposing to designate critical habitat for the Florida leafwing and Bartram's scrub-hairstreak 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 South Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this package are the staff members of the South Florida Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17— ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245; unless otherwise noted.

■ 2. In § 17.95, amend paragraph (i) by adding an entry for ''Bartram's Scrub-hairstreak Butterfly *(Strymon acis bartrami)*'' after the entry for ''Valley Elderberry Longhorn Beetle *(Desmocerus californicus dimorphus)*'' and an entry for ''Florida Leafwing Butterfly *(Anaea troglodyta floridalis)*'' after the entry for ''Fender's Blue Butterfly *(Icaricia icarioides fenderi)*'' to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(i) *Insects.*

* * * * *

Bartram's Scrub-hairstreak Butterfly *(Strymon acis bartrami)*

(1) Critical habitat units are depicted for Miami-Dade and Monroe Counties, Florida, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of the Bartram's scrub-hairstreak are:

(i) Areas of pine rockland habitat, and in some instances, associated rockland hammocks.

(A) Pine rockland habitat contains:

(1) Open canopy, semi-open subcanopy, and understory

(2) Substrate of oolitic limestone rock.

(3) A plant community of predominately native vegetation.

(B) Rockland hammock habitat associated with the pine rocklands contains:

(1) Canopy gaps and edges with an open to semi-open canopy, subcanopy, and understory.

(2) Substrate with a thin layer of highly organic soil covering limestone or organic matter that accumulates on top of the underlying limestone rock.

(3) A plant community of predominately native vegetation.

(ii) Competitive nonnative plant species in quantities low enough to have minimal effect on survival of Bartram's scrub-hairstreak butterfly.

(iii) The presence of the butterfly's hostplant, pineland croton, in sufficient abundance for larval recruitment, development, and food resources, and for adult butterfly nectar source and reproduction;

(iv) A dynamic natural disturbance regime or one that artificially duplicates natural ecological processes (e.g. fire, hurricanes or other weather events) that maintains the pine rockland habitat and associated plant community.

(v) Pine rockland habitat and associated plant community that allow for connectivity and are sufficient in size to sustain viable populations of Bartram's scrub hairstreak butterfly.

(vi) Pine rockland habitat with levels of pesticide low enough to have minimal effect on the survival of the butterfly or its ability to occupy the habitat.

(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.* Unit maps were developed using ESRI ArcGIS mapping software along with various spatial data layers. ArcGIS was also used to calculate the size of habitat areas. The projection used in mapping and calculating distances and locations within the units was North American Albers Equal Area Conic, NAD 83. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site (*http://www.fws.gov/verobeach/*), the Federal eRulemaking Portal (*http://www.regulations.gov* at Docket No. FWS–R4–ES–2013–0031 and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) **Note:** Index map of all critical habitat units for Bartram's scrub-hairstreak follows:

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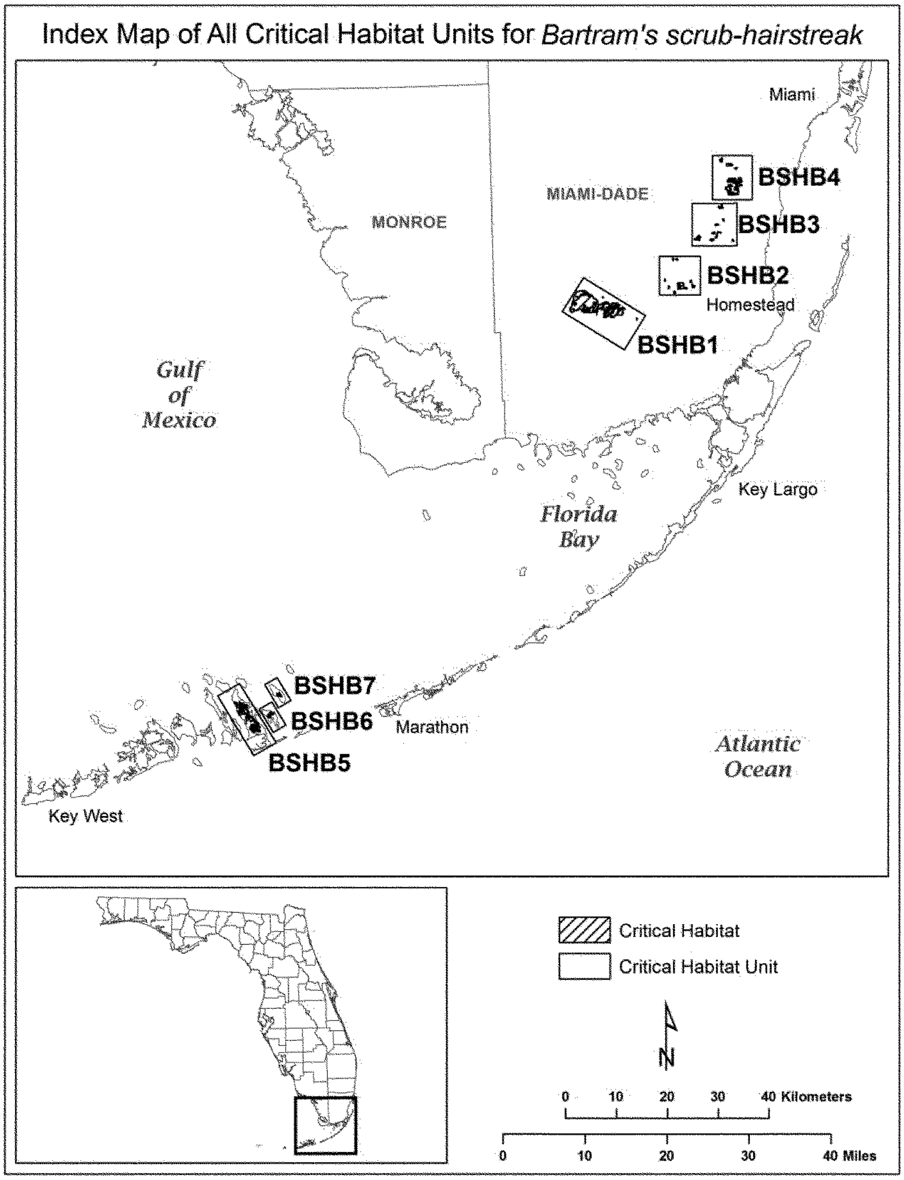
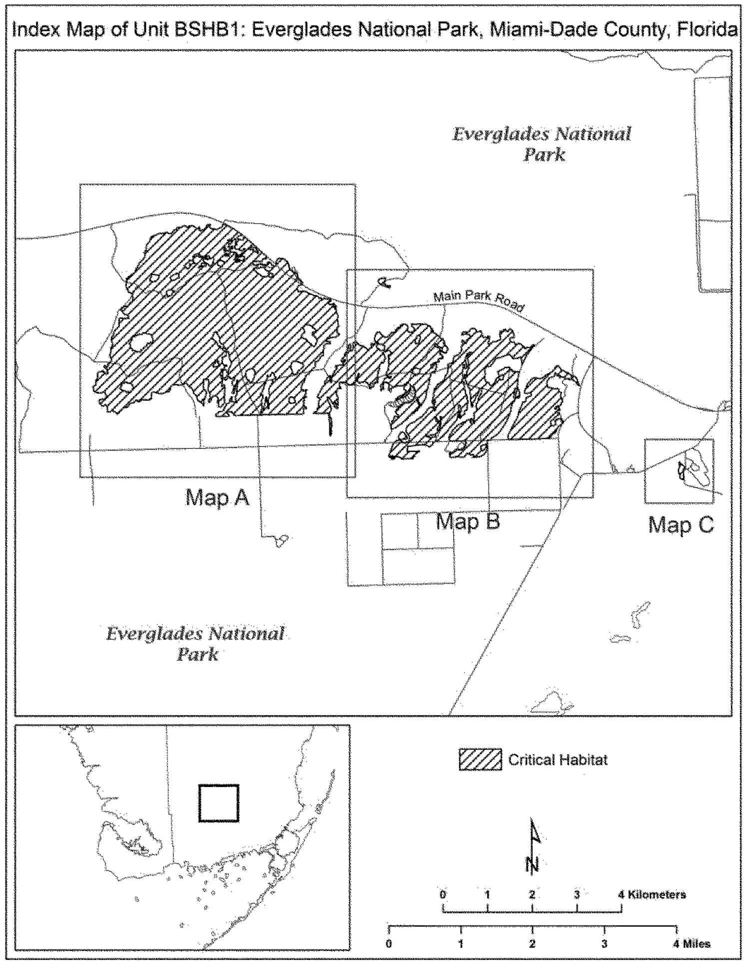


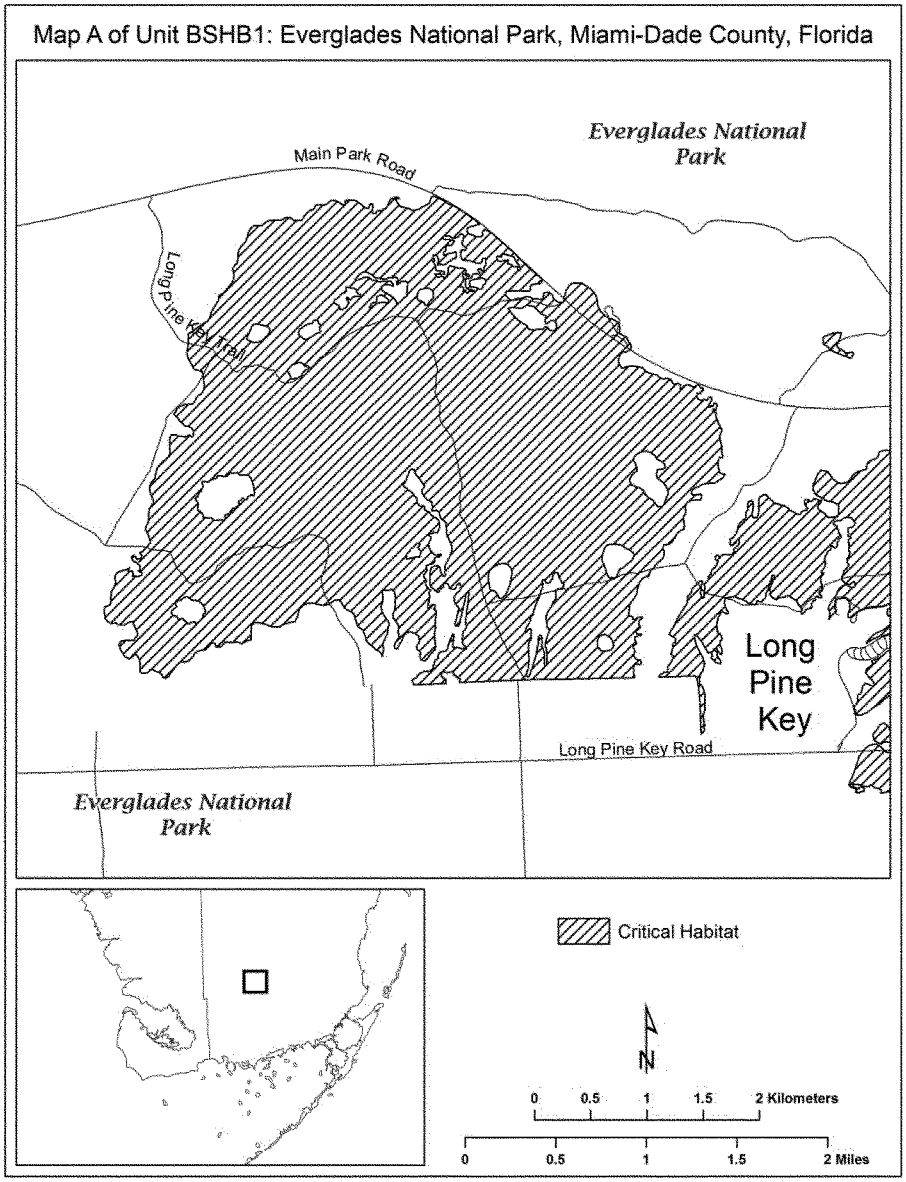
(6) **Note:** Unit BSHB1: Everglades National Park, Miami-Dade County, Florida.

(i) General description: Unit BSHB1 consists of 2,313 ha (5,716 ac) in Miami-Dade County and is composed entirely of lands in Federal ownership, 100 percent of which are located within the Long Pine Key region of Everglades National Park.

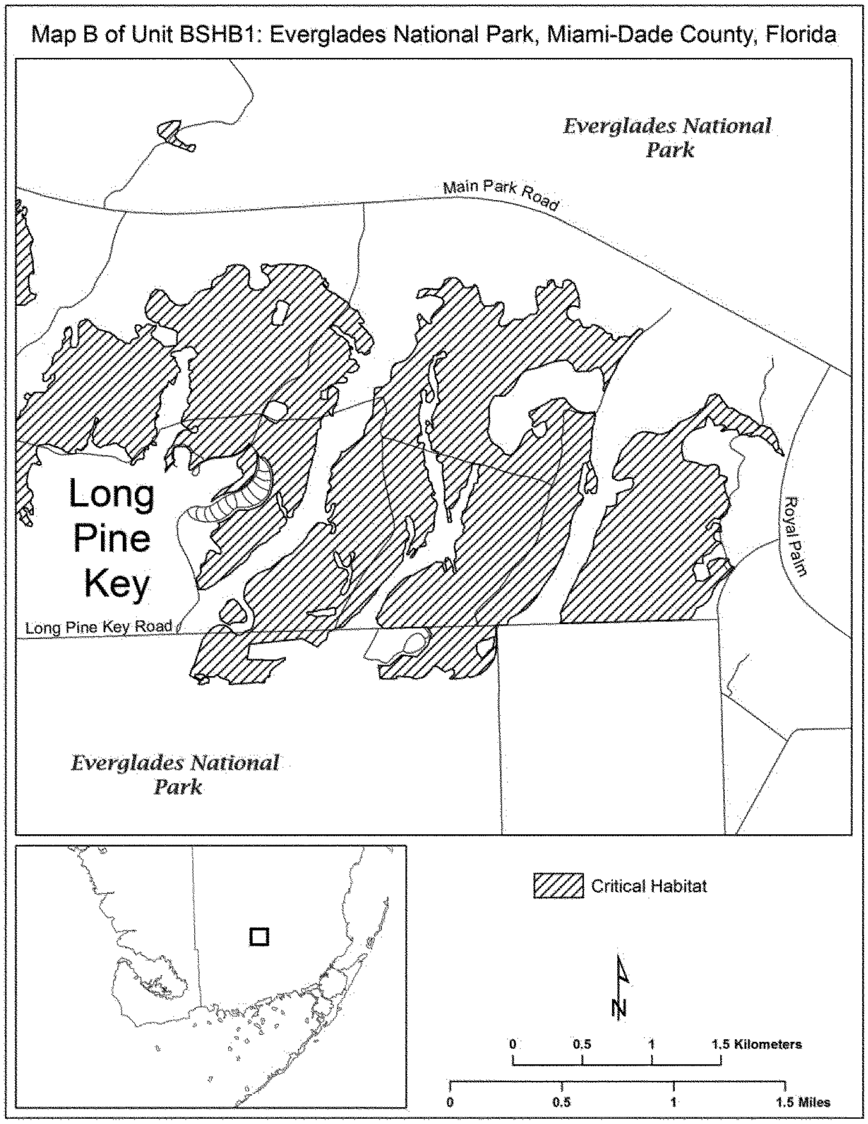
(ii) Index map of Unit BSHB1 follows:



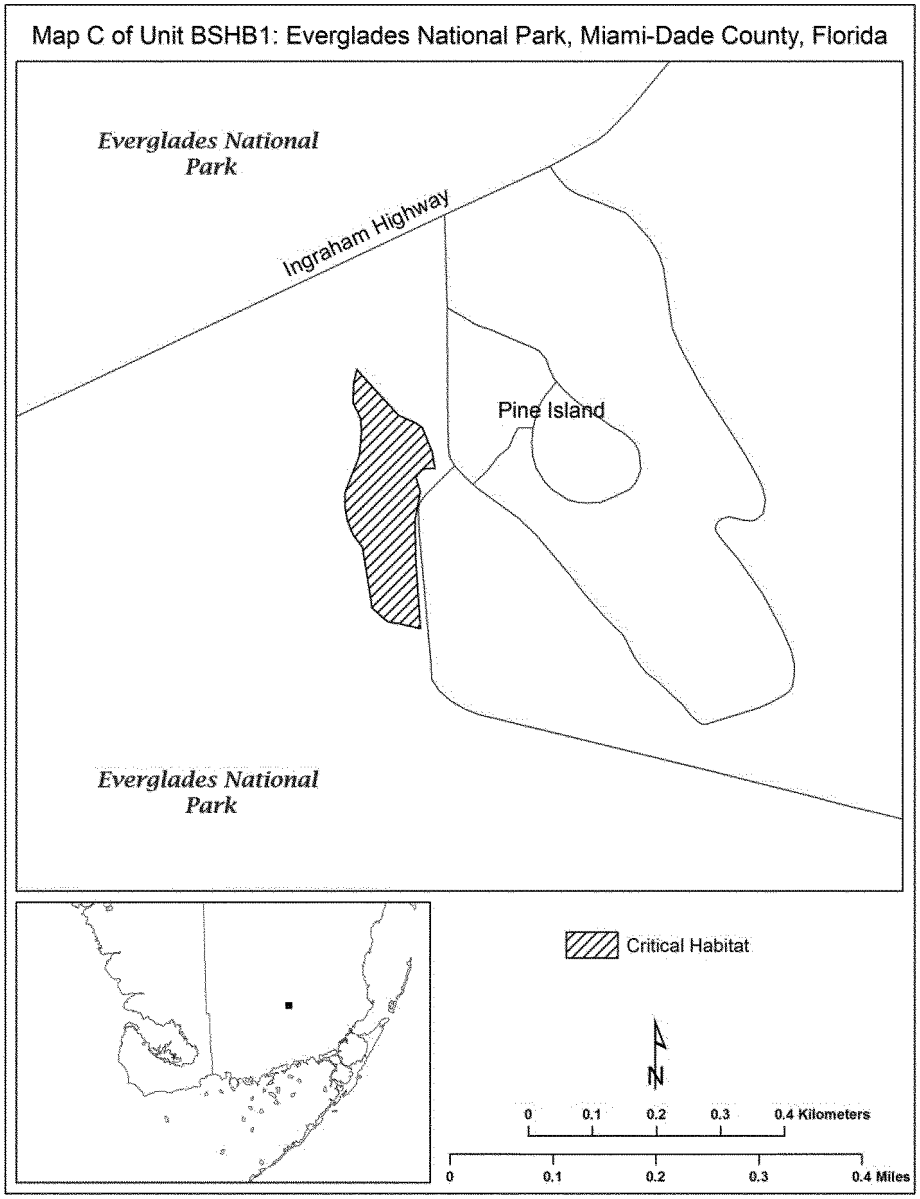
(A) Map A of Unit BSHB1: Everglades National Park, Miami-Dade County, Florida follows:



(B) Map B of Unit BSHB1: Everglades National Park, Miami-Dade County, Florida follows:



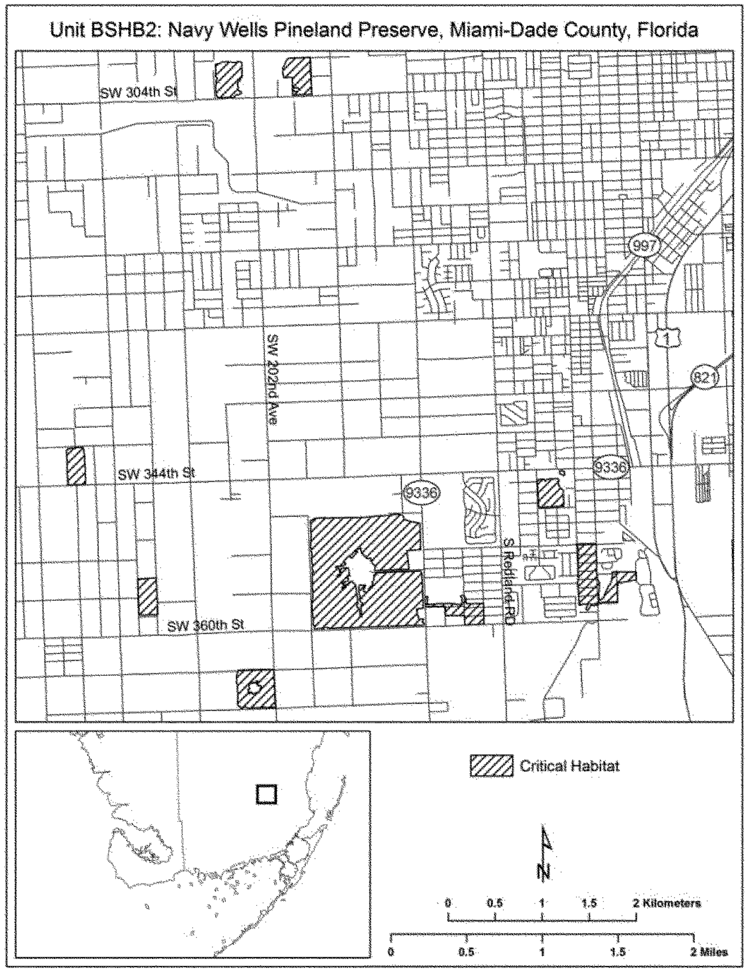
(C) Map C of Unit BSHB1: Everglades National Park, Miami-Dade County, Florida follows:



(7) Unit BSHB2: Navy Wells Pineland Preserve, Miami-Dade County, Florida.

(i) General description: Unit BSHB2 consists of 203 ha (502 ac) in Miami-Dade County and is composed of lands in State (62 ha (153 ac)), and private or other ownership (141 ha (349 ac)) including the County and State-owned Navy Wells Pineland Preserve.

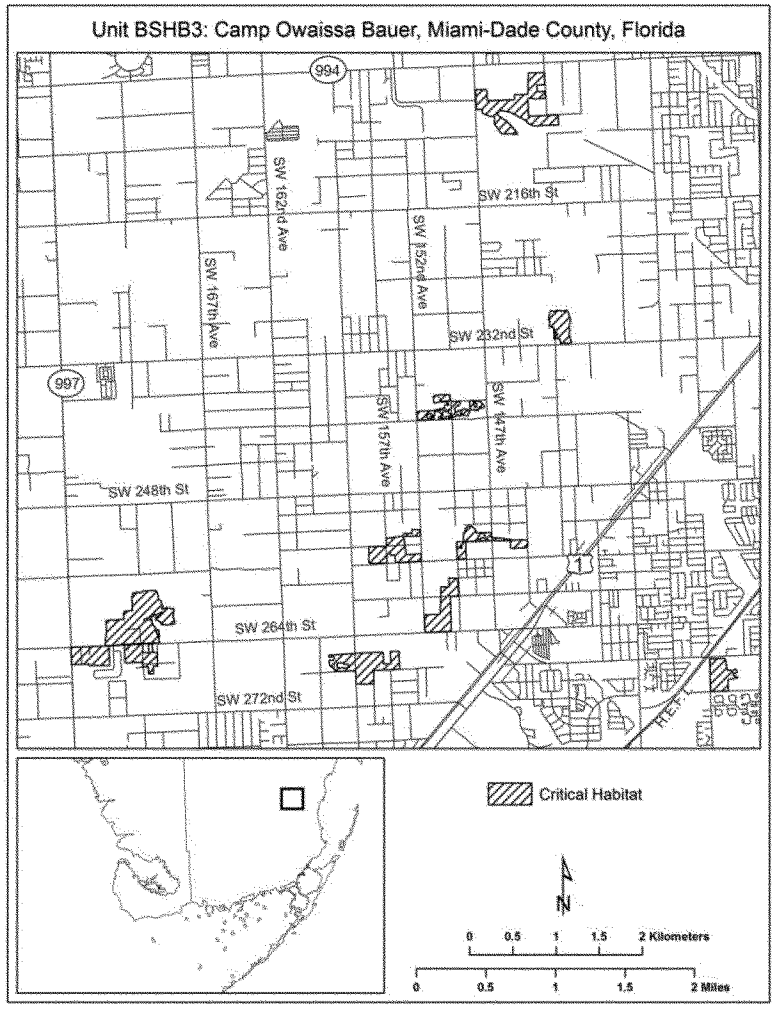
(ii) Map of Unit BSHB2 follows:



(8) Unit BSHB3: Camp Owaissa Bauer, Miami-Dade County, Florida.

(i) General Description: Unit BSHB3 consists of 146 ha (9359 ac)) in Miami-Dade County and is comprised of lands in State (29 ha (71 ac)), private or other ownership (117 ha (288 ac)) including 40 ha (99 ac) Miami-Dade County-owned Camp Owaissa Bauer.

(ii) Map of Unit BSHB3 follows:



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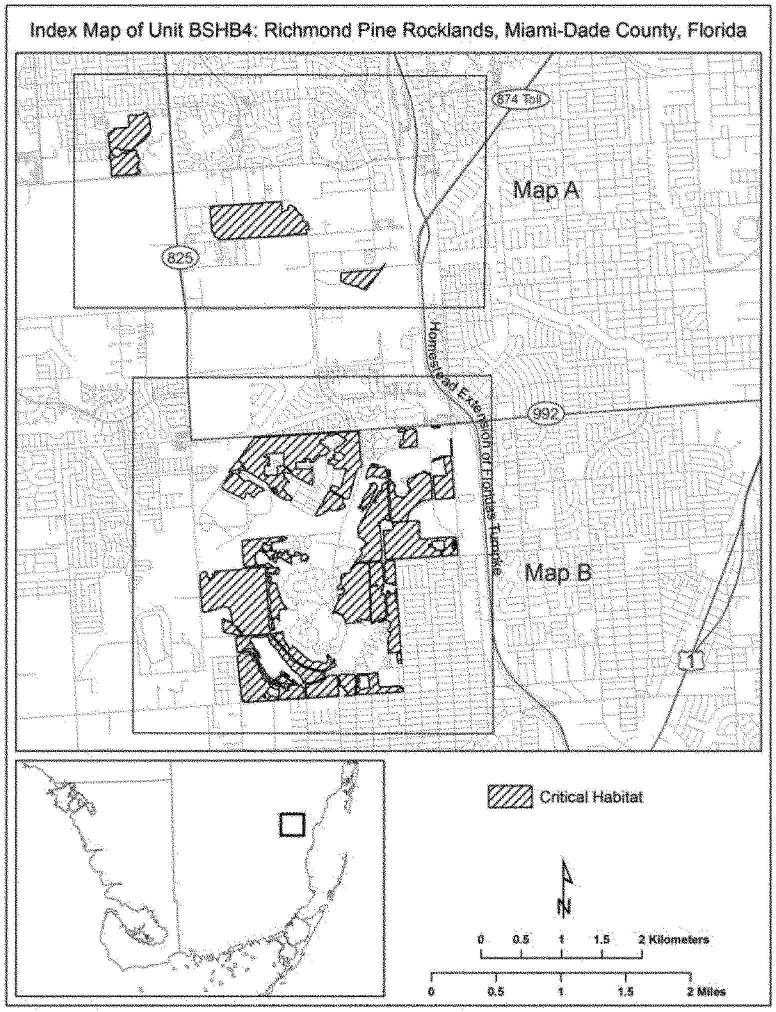
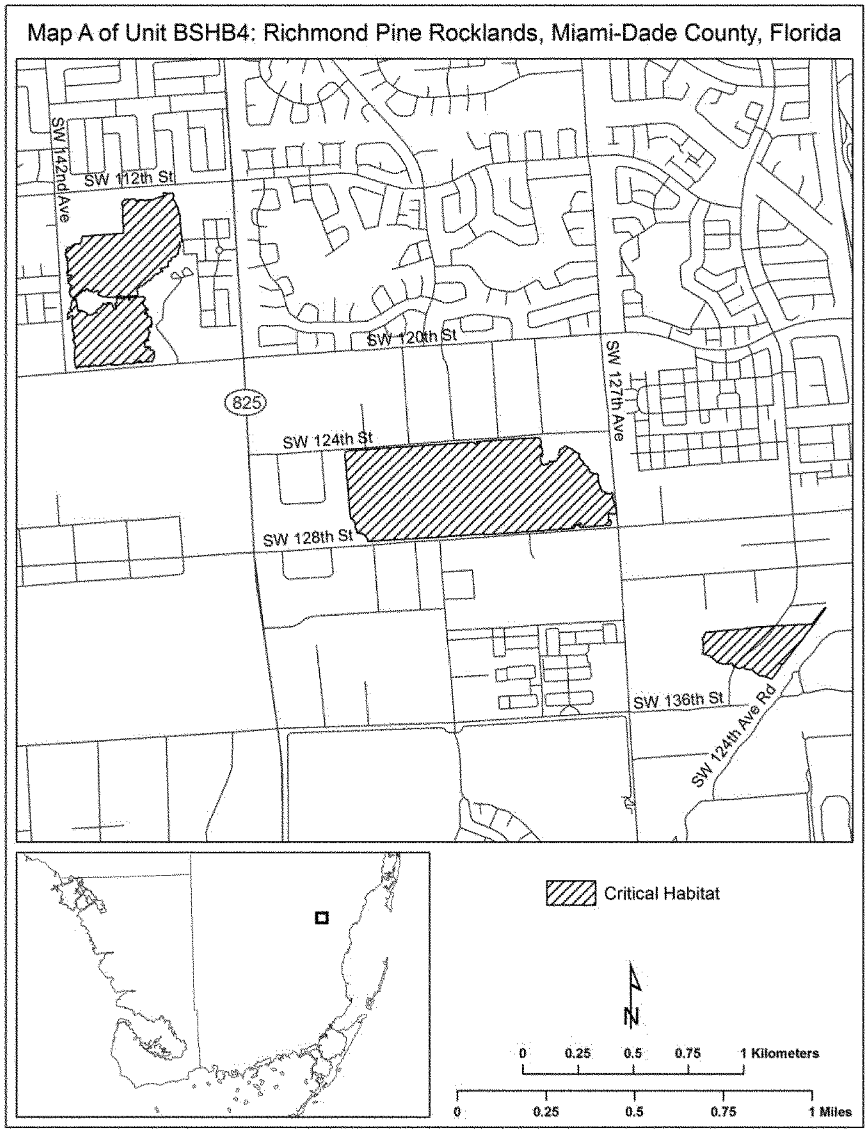
(9) Unit BSHB4: Richmond Pine Rocklands, Miami-Dade County, Florida.

(i) General Description: Unit BSHB4 consists of 438 ha (1,082 ac) in Miami-Dade County and is composed of lands in Federal (U.S. Coast Guard, U.S. Army Corps of Engineers, Federal Bureau of Prisons, and National Oceanic and Atmospheric Administration (50 ha (122 ac)), State (32 ha (79 ac)) and private or other (356 ha (881 ac)) ownership.

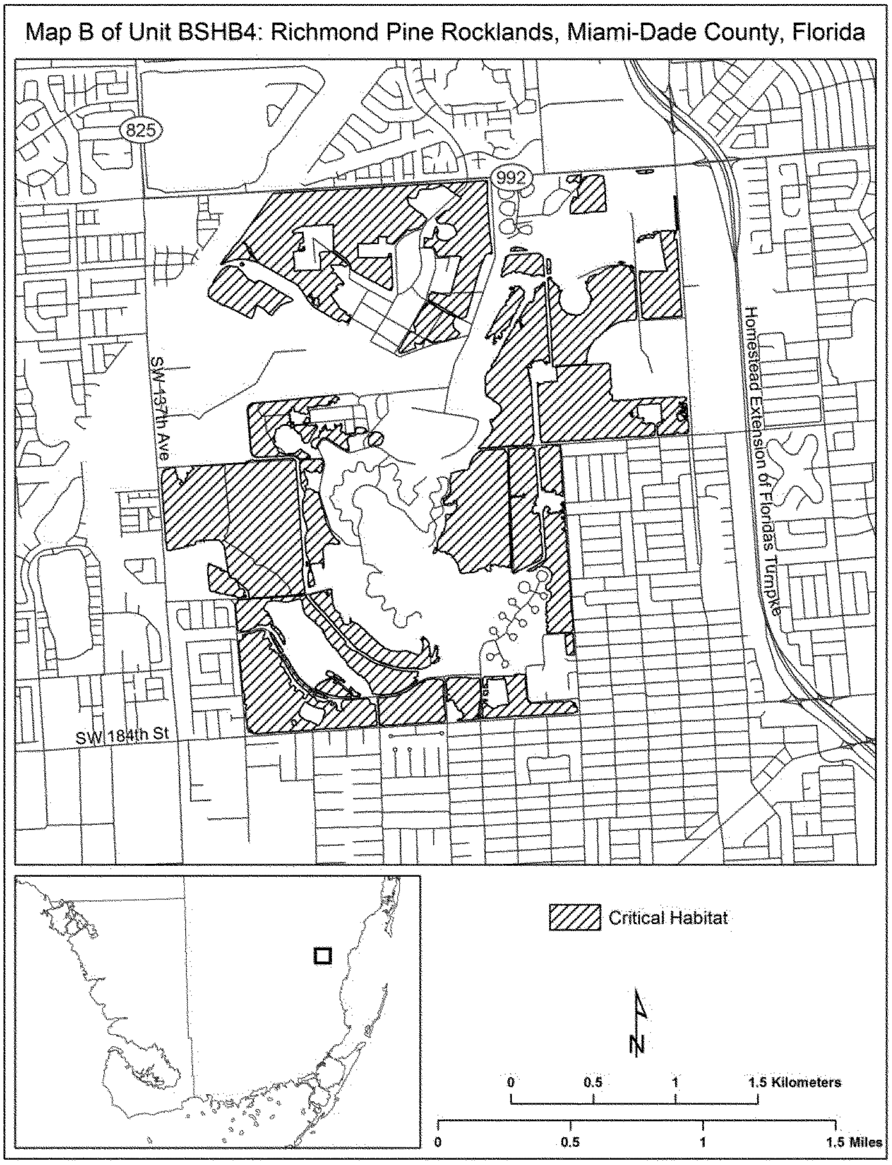
(ii) Index map of Unit BSHB4 follows:



(A) Map A of Unit BSHB4: Richmond Pine Rocklands, Miami-Dade County, Florida follows:



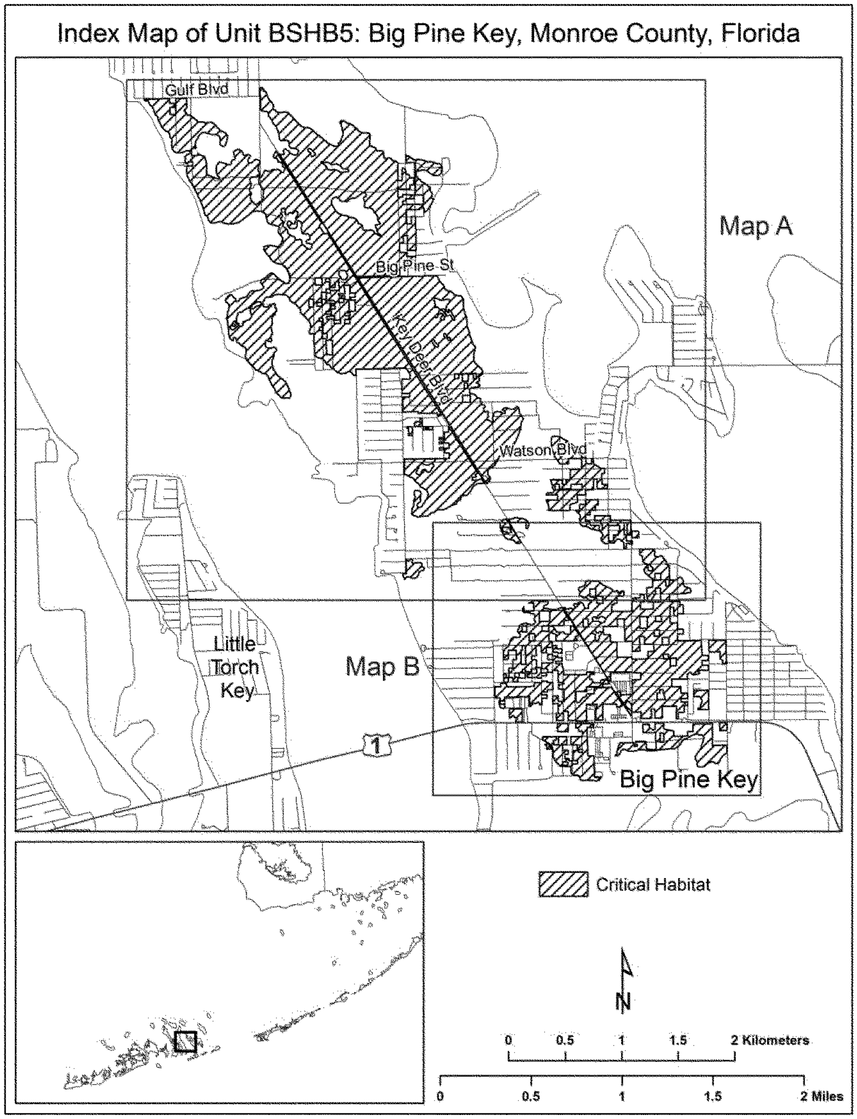
(B) Map B of Unit BSHB4: Richmond Pine Rocklands, Miami-Dade County, Florida follows:


Map B of Unit BSHB4: Richmond Pine Rocklands, Miami-Dade County, Florida
825
992
SW 137th Ave
SW 184th St
Homestead Extension of Floridas Turnpike
Critical Habitat
N
0 0.5 1 1.5 Kilometers
0 0.5 1 1.5 Miles

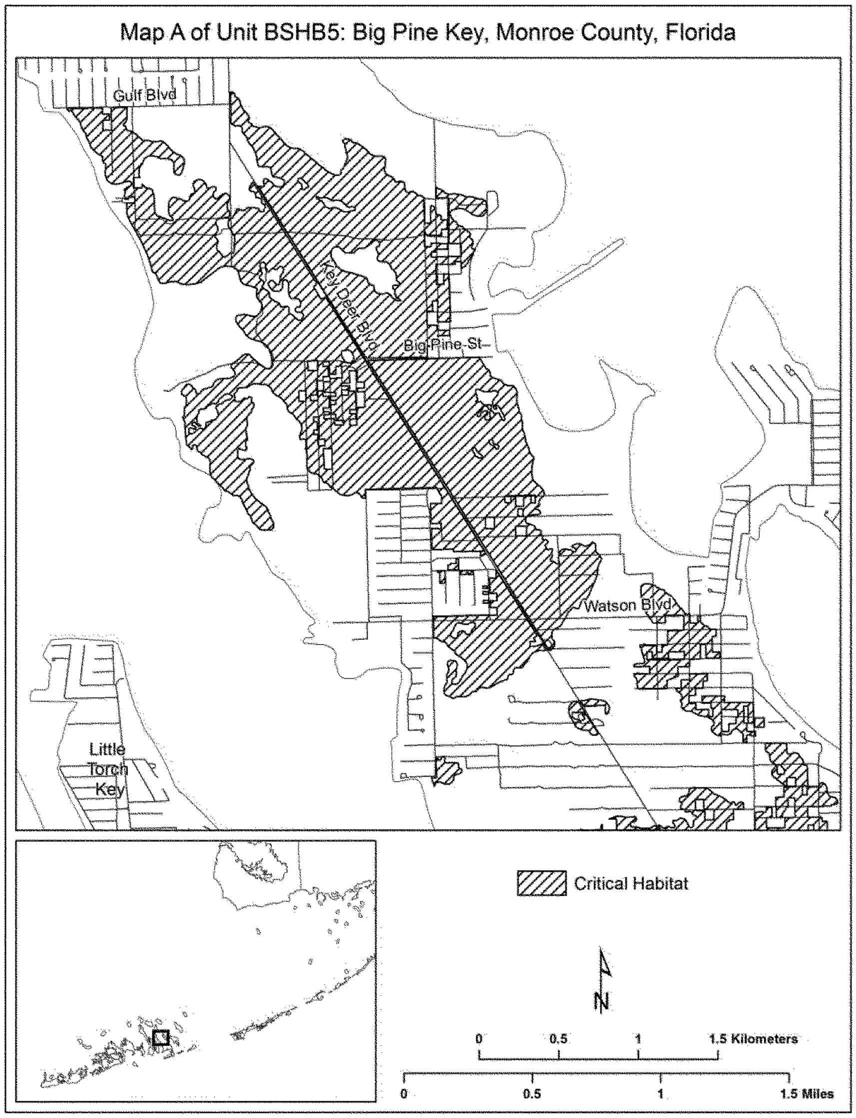
(10) Unit BSHB5: Big Pine Key, Monroe County, Florida.

(i) General description: Unit BSHB5 consists of 559 ha (1,382 ac) in Monroe County and is composed of lands in National Key Deer Refuge (365 ha (901 ac)), State ownership (90 ha (223 ac)), and private or other ownership (104 ha (258 ac)). State lands are interspersed within NKDR lands and managed as part of the Refuge.

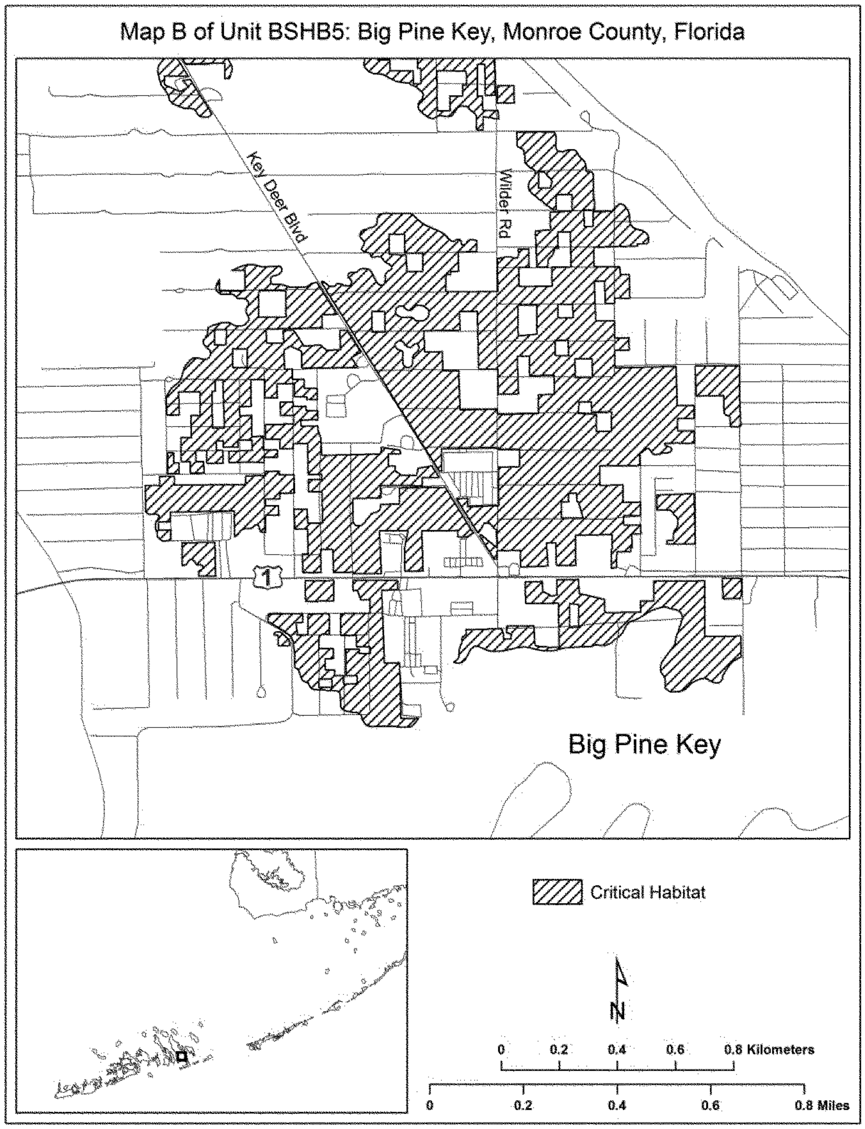
(ii) Index Map of Unit BSHB5: follows:



(A) Map A of Unit BSHB5: Big Pine Key, Monroe County, Florida follows:



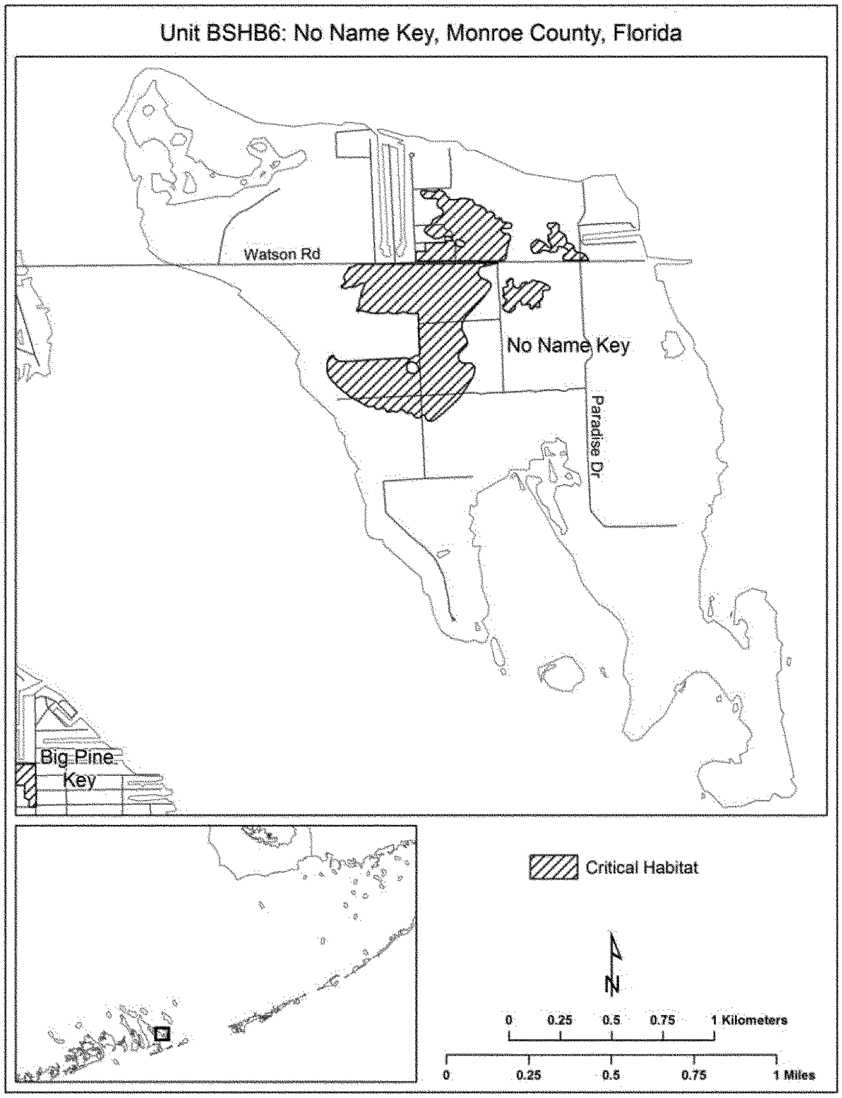
(B) Map B of Unit BSHB5: Big Pine Key, Monroe County, Florida follows:



(11) Unit BSHB6: No Name Key, Monroe County, Florida.

(i) General Description: Unit BSHB6 consists of 50 ha (123 ac) in Monroe County and is composed of lands in National Key Deer Refuge (30 ha (75 ac)), State ownership (9 ha (22 ac)), and private or other ownership (11 ha (26 ac)). State lands are interspersed within NKDR lands and managed as part of the Refuge.

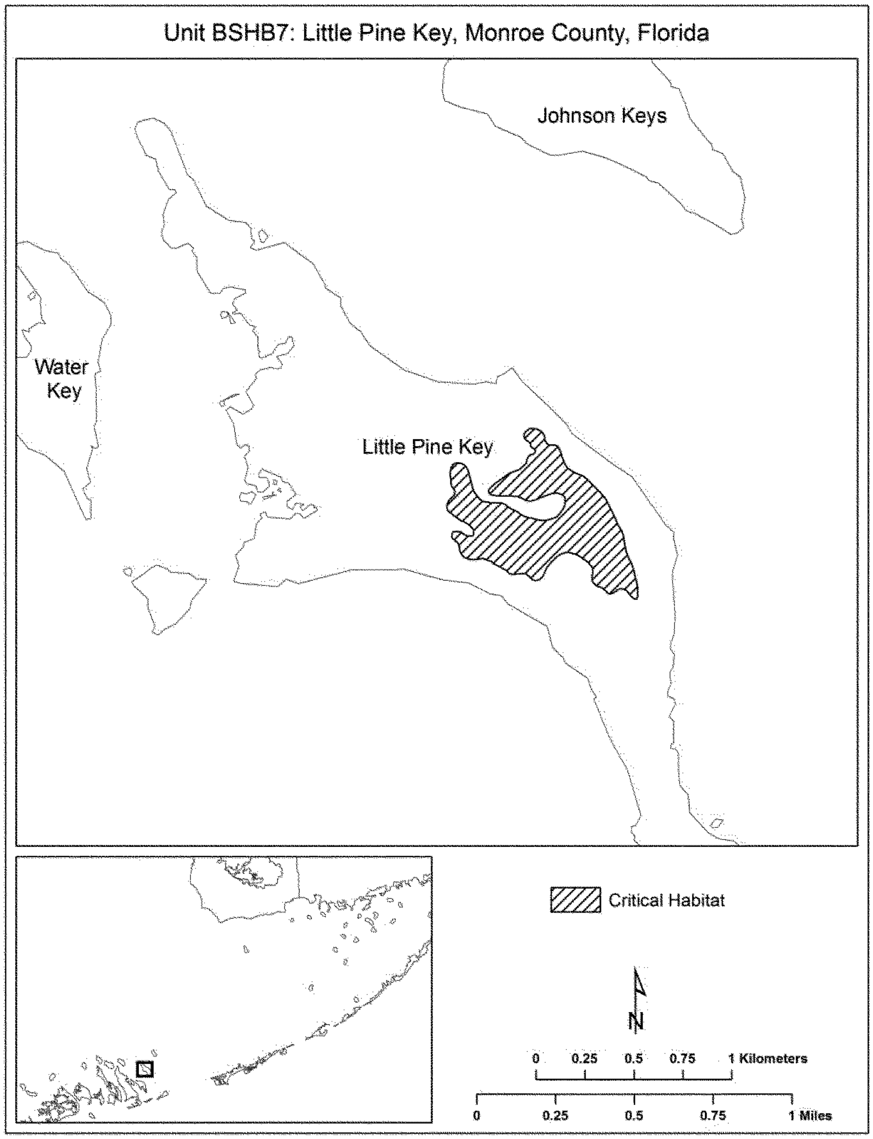
(ii) Map of Unit BSHB6: No Name Key, Monroe County, Florida follows:



(12) Unit BSHB 7: Little Pine Key, Monroe County, Florida.

(i) General Description: Unit BSHB7 consists of 39 ha (97 ac) in Monroe County. This unit is composed entirely of lands in Federal ownership, 100 percent of which are located within National Key Deer Refuge.

(ii) Map of Unit BSHB7: Little Pine Key, Monroe County, Florida follows:



* * * * *

Florida Leafwing Butterfly *(Anaea troglodyta floridalis)*

(1) Critical habitat units are depicted for Miami-Dade and Monroe Counties, Florida, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of the Florida leafwing butterfly consist of six components:

(i) Areas of pine rockland habitat, and in some locations, associated rockland hammocks.

(A) Pine rockland habitat contains:

(1) Open canopy, semi-open subcanopy, and understory.

(2) Substrate of oolitic limestone rock.

(3) A plant community of predominately native vegetation.

(B) Rockland hammock habitat associated with the pine rocklands contains:

(1) Canopy gaps and edges with an open to semi-open canopy, subcanopy, and understory.

(2) Substrate with a thin layer of highly organic soil covering limestone or organic matter that accumulates on top of the underlying limestone rock.

(3) A plant community of predominately native vegetation.

(ii) Competitive nonnative plant species in quantities low enough to have minimal effect on survival of the Florida leafwing.

(iii) The presence of the butterfly's hostplant, pineland croton, in sufficient abundance for larval recruitment, development, and food resources and for adult butterfly roosting habitat and reproduction.

(iv) A dynamic natural disturbance regime or one that artificially duplicates natural ecological processes (e.g. fire, hurricanes or other weather events, at 3- to 5-year intervals) that maintains the pine rockland habitat and associated plant community.

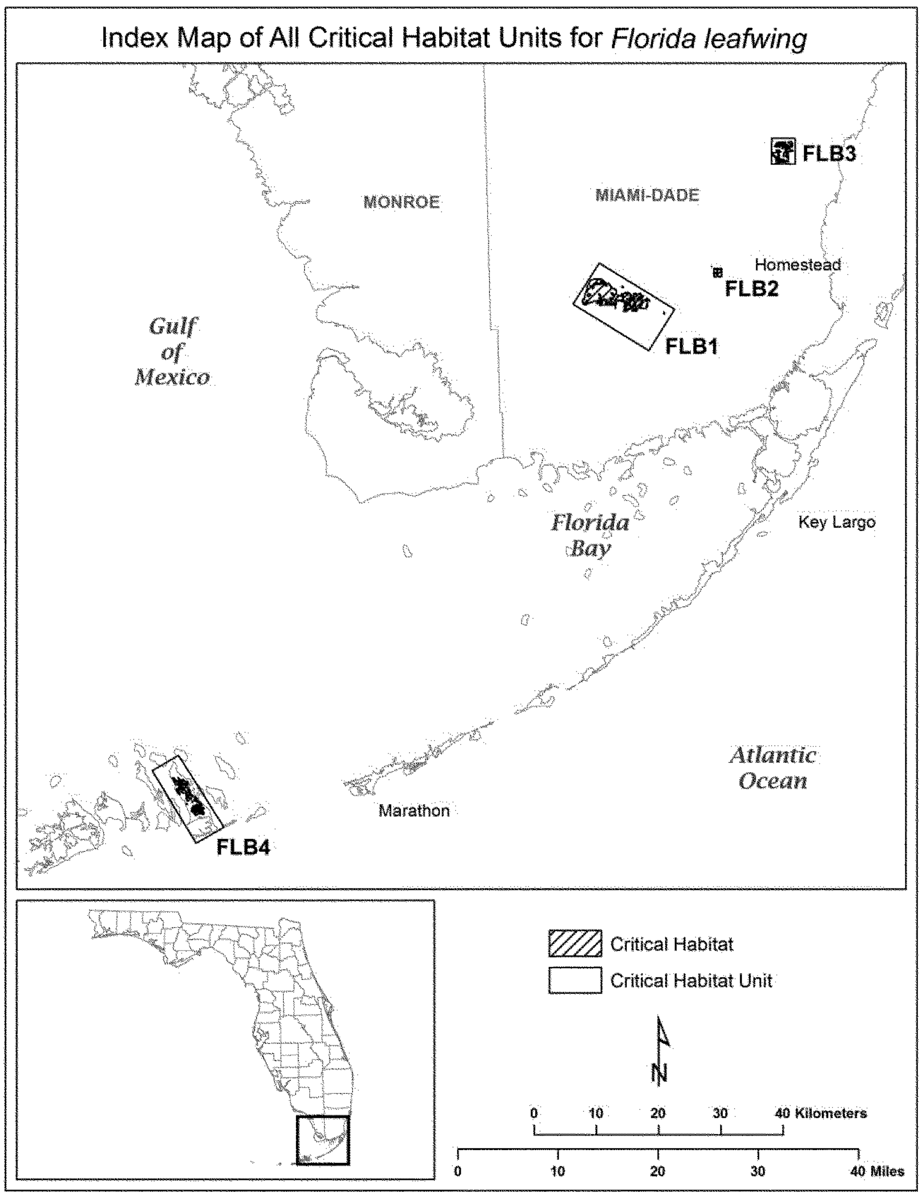
(v) Pine rockland habitat and associated plant community sufficient in size to sustain viable Florida leafwing populations.

(vi) Pine rockland habitat with levels of pesticide low enough to have minimal effect on the survival of the butterfly or its ability to occupy the habitat.

(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.* Unit maps were developed using ESRI ArcGIS mapping software along with various spatial data layers. ArcGIS was also used to calculate the size of habitat areas. The projection used in mapping and calculating distances and locations within the units was North American Albers Equal Area Conic, NAD 83. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site (*http://www.fws.gov/verobeach*), the Federal eRulemaking Portal (*http://www.regulations.gov* at Docket No. FWS–R4–ES–2013–0031), and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

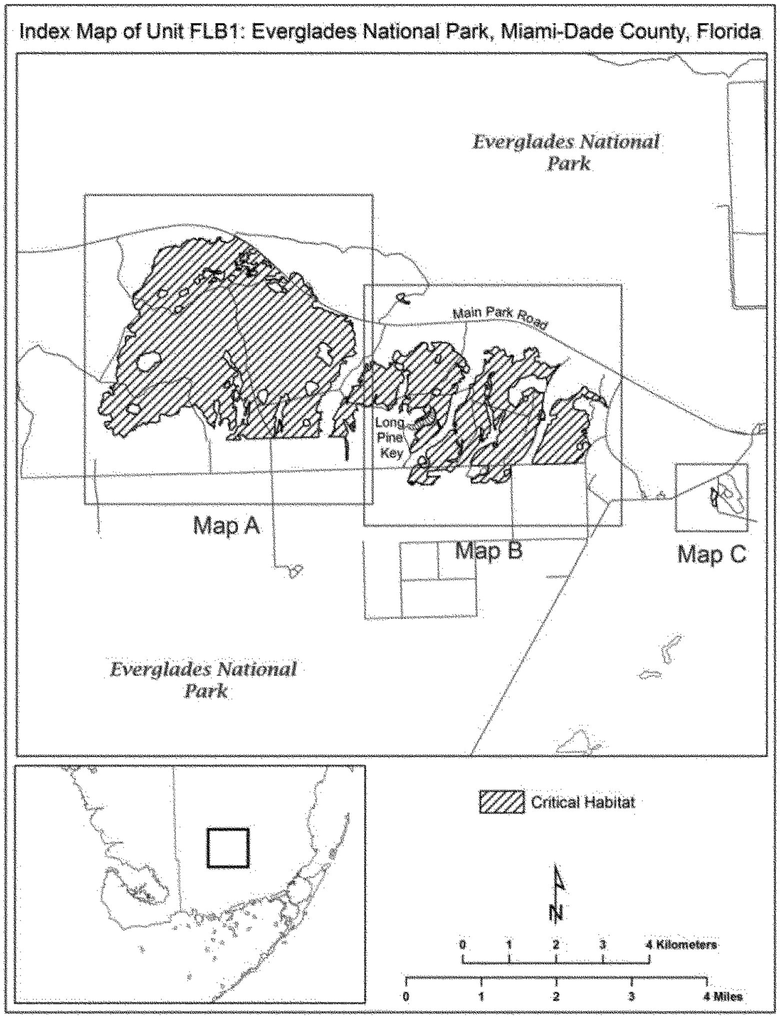
(5) **Note:** Index map of all critical habitat units for Florida leafwing follows:



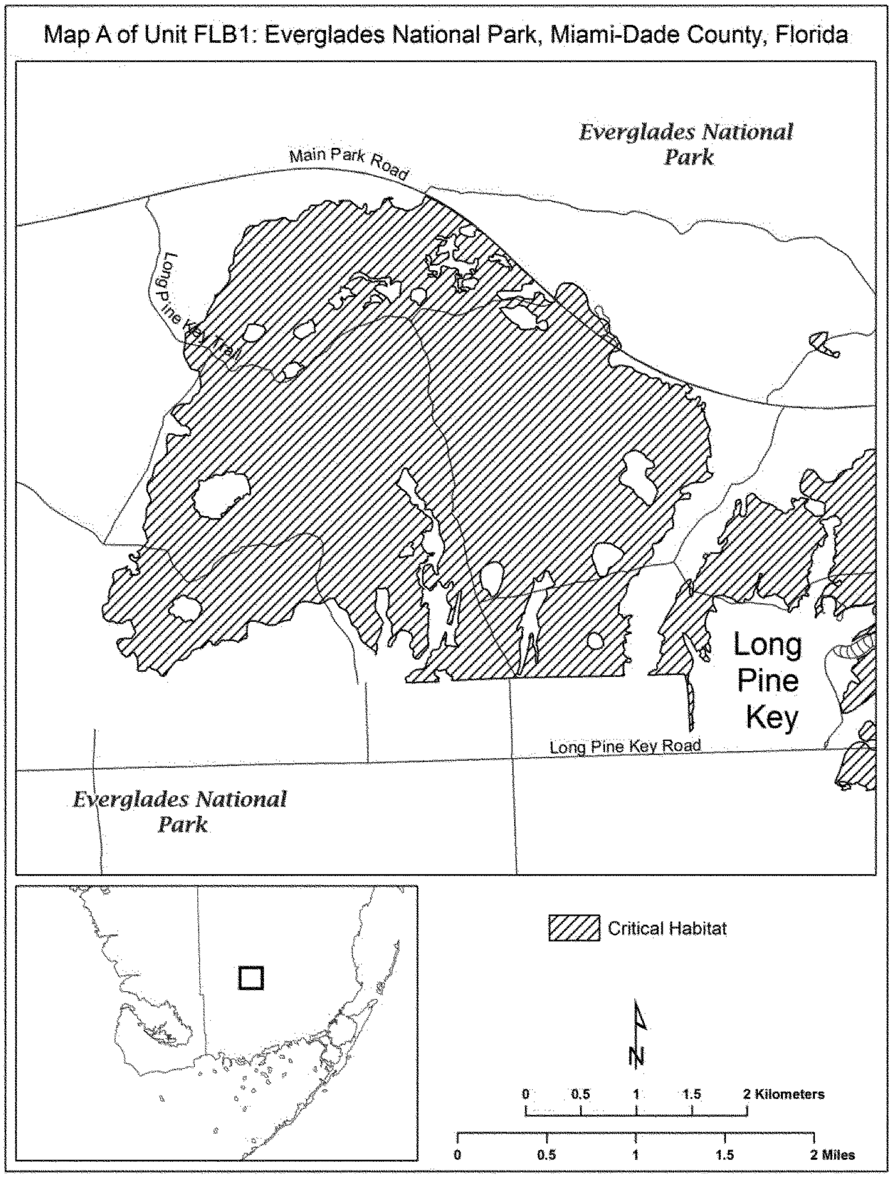
(6) Unit FLB1: Everglades National Park, Miami-Dade County, Florida.

(i) General Description: Unit FLB1 consists of 2,313 ha (5,716 ac) composed entirely of lands in Federal ownership, 100 percent of which are located within the Long Pine Key region of Everglades National Park.

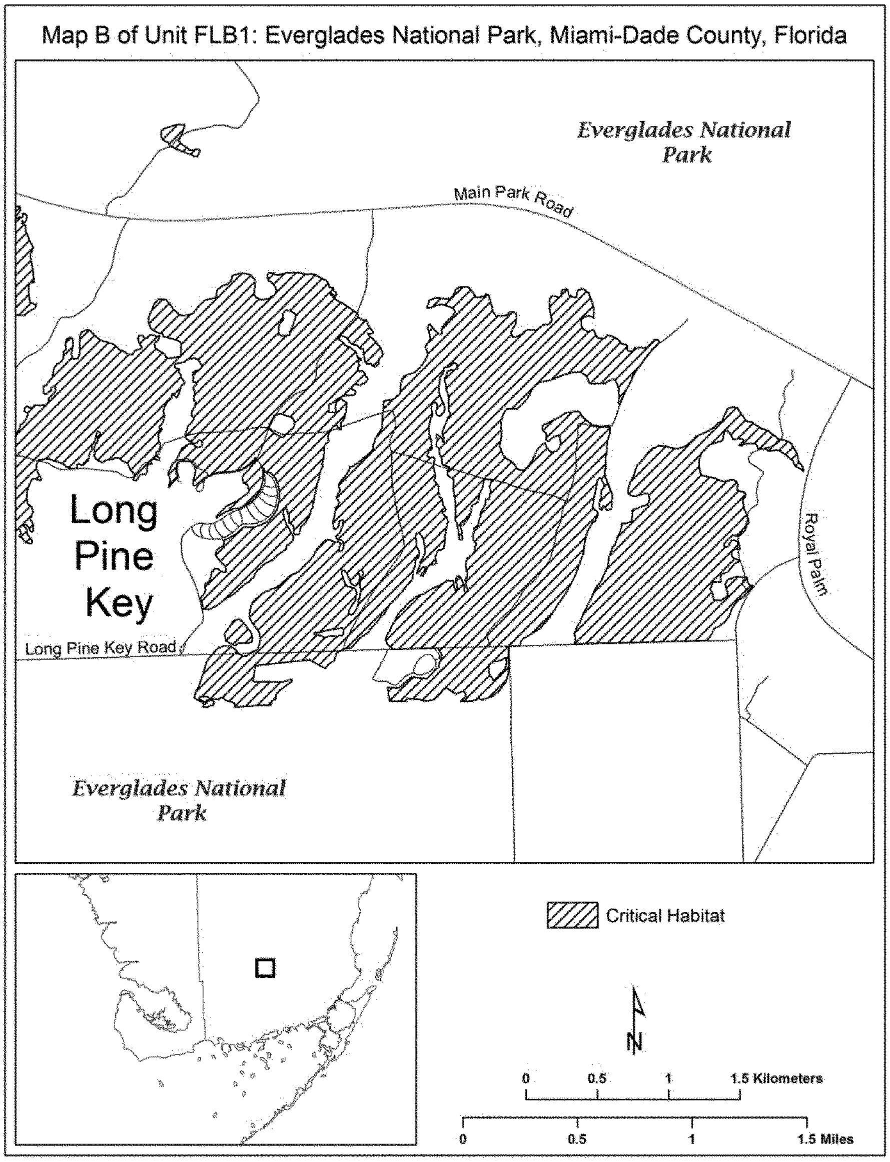
(ii) Index map of Unit FLB1 follows:



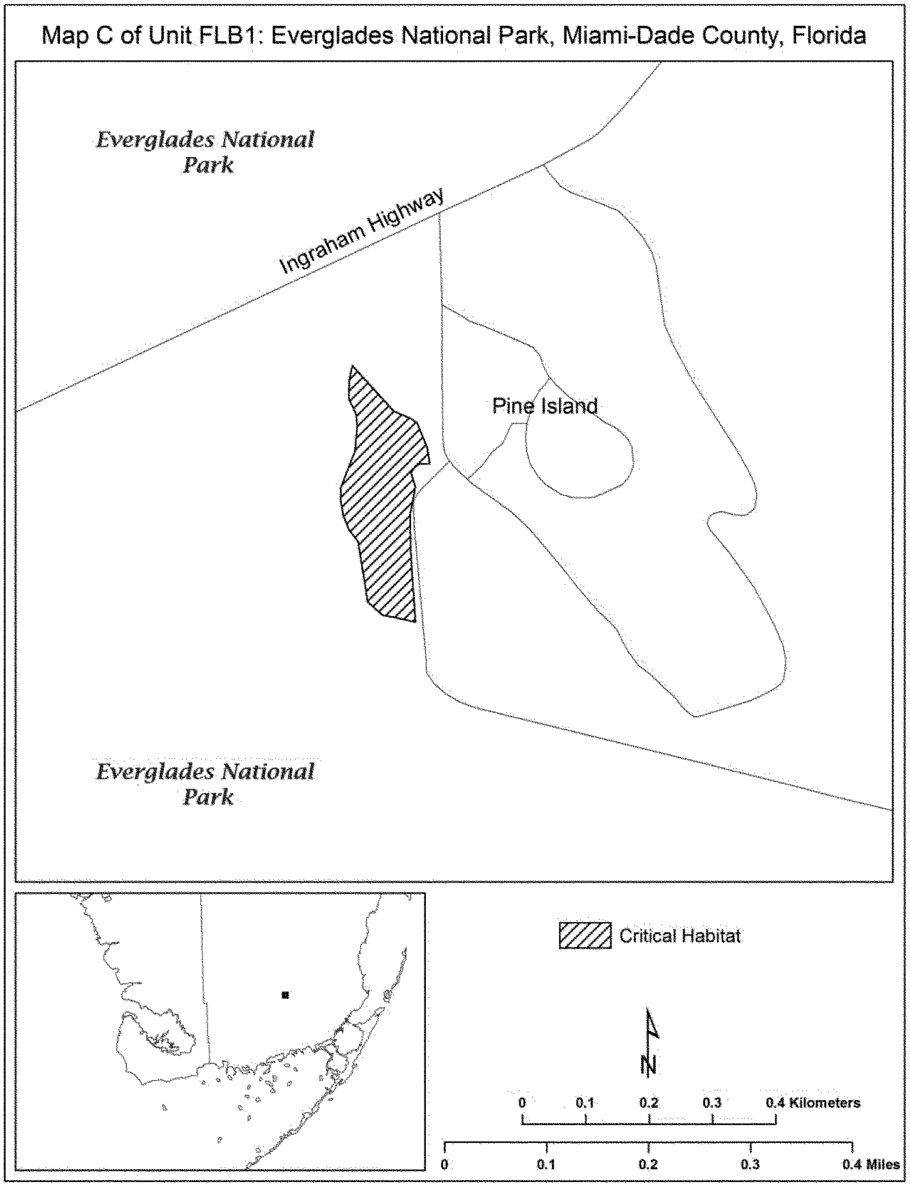
(A) Map A of Unit FLB1: Everglades National Park, Miami-Dade County, Florida, follows:



(B) Map B of Unit FLB1: Everglades National Park, Miami-Dade County, Florida, follows:



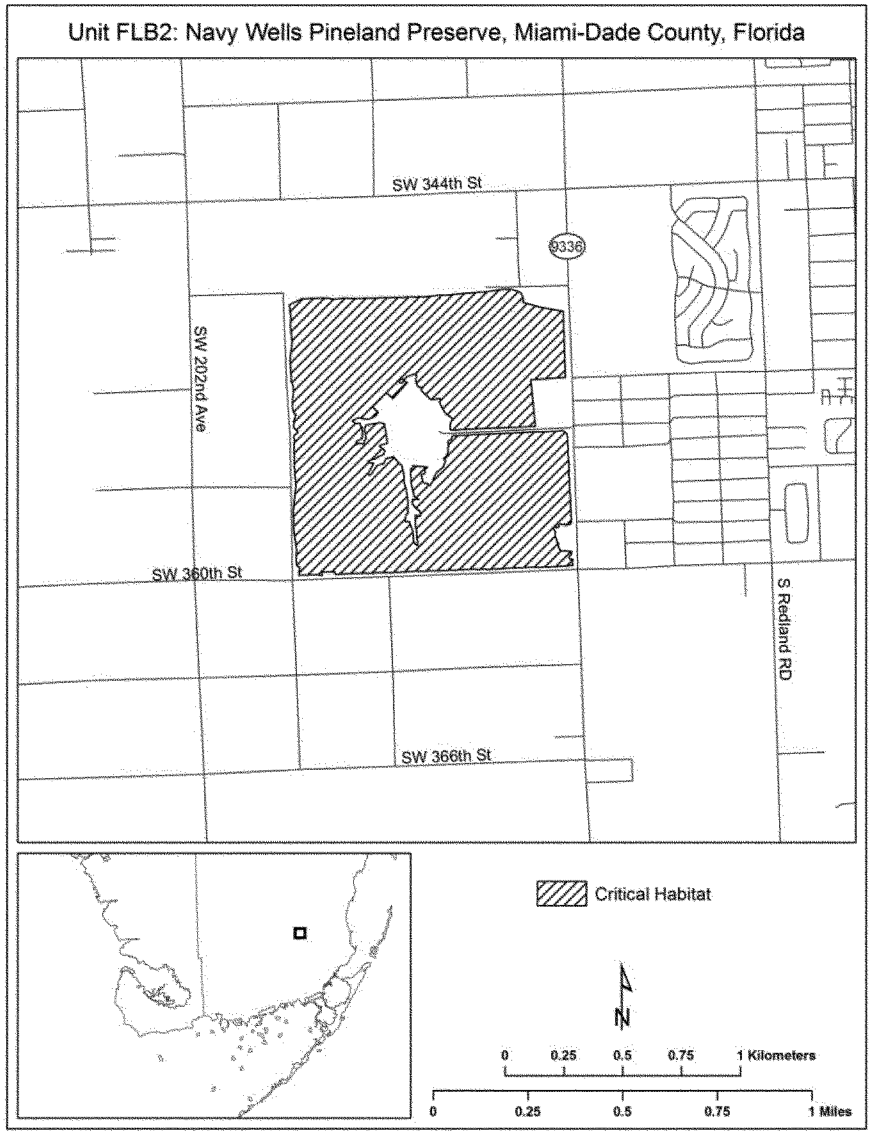
(C) Map C of Unit FLB1: Everglades National Park, Miami-Dade County, Florida, follows:



(7) Unit FLB2: Navy Wells Pineland Preserve, Miami-Dade County, Florida.

(i) General description: Unit FLB2 consists of 120 ha (296 ac) in Miami-Dade County composed entirely of lands in Miami-Dade County ownership, 100 percent of which are located within the Navy Wells Pineland Preserve.

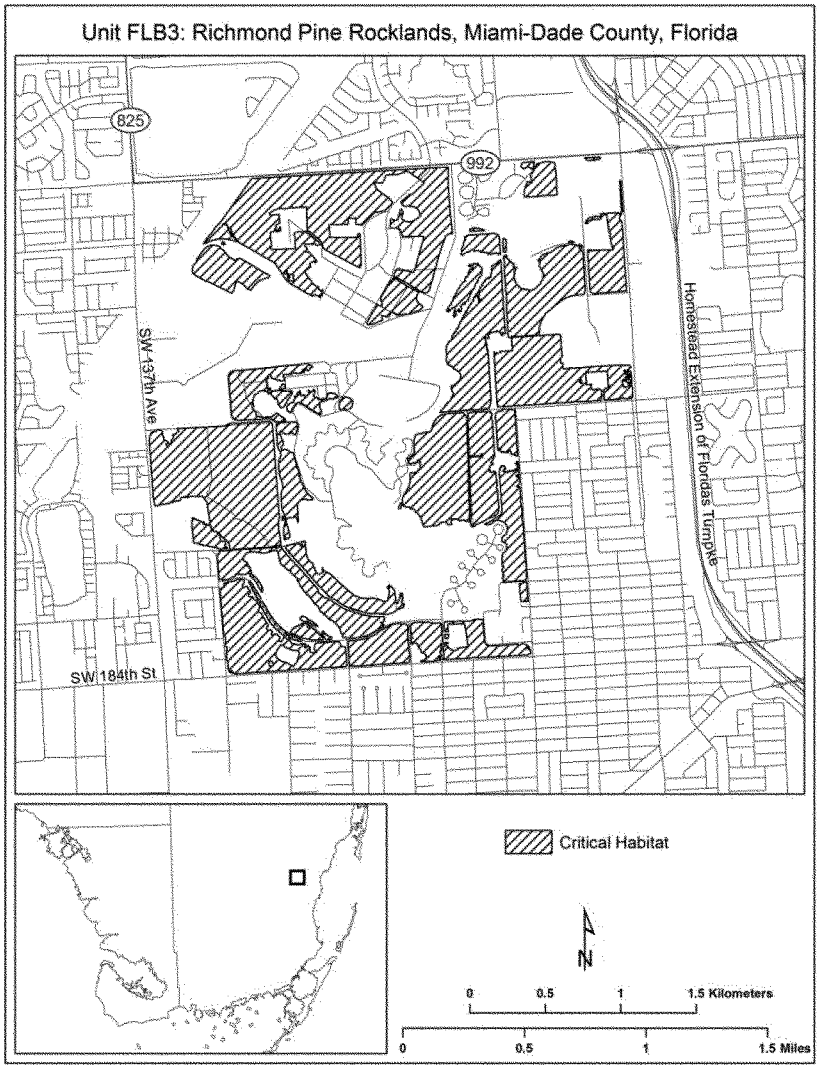
(ii) Index map of Unit FLB2 follows:



(8) Unit FLB3: Richmond Pine Rocklands, Miami-Dade County, Florida.

(i) General Description: Unit FLB3 consists of 359 ha (889 ac) in Miami-Dade County composed of lands in Federal (U.S. Coast Guard, U.S. Army Corps of Engineers, Federal Bureau of Prisons, and National Oceanic and Atmospheric Administration) (50 ha (122 ac)) and private or other (309 ha (767 ac)) ownership.

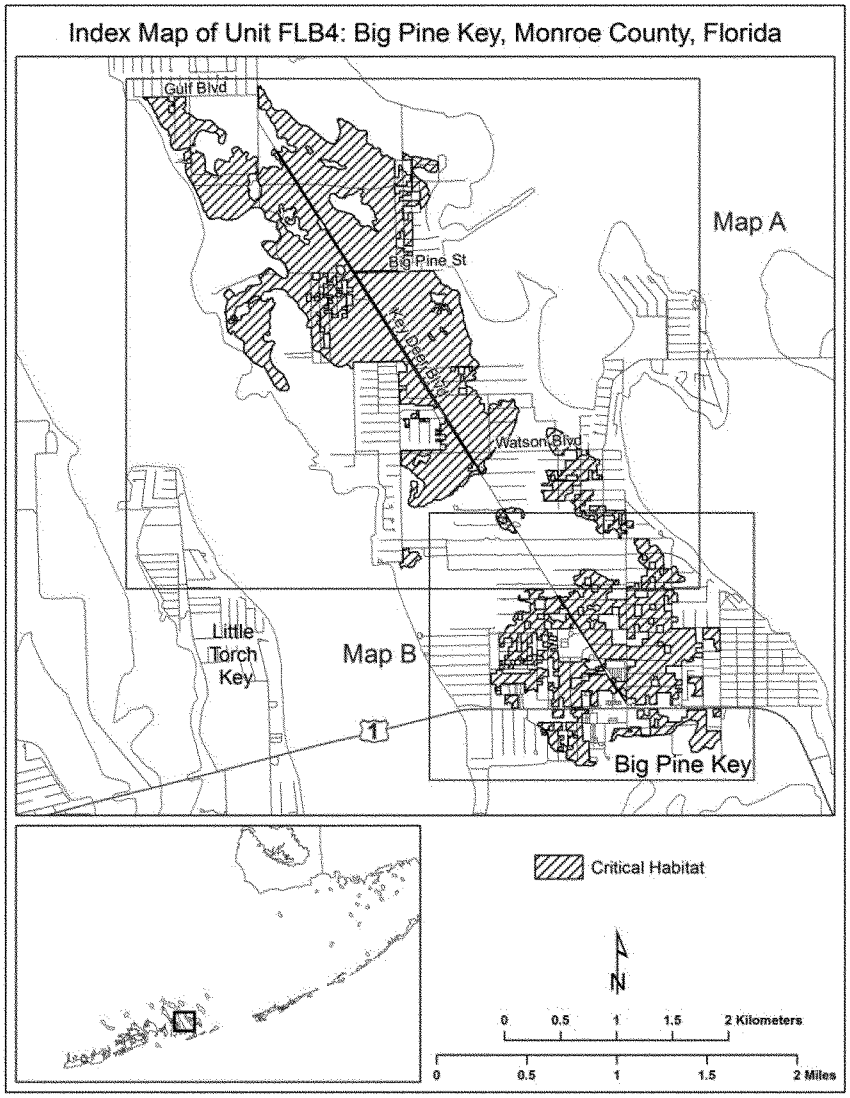
(ii) Index map of Unit FLB3 follows:



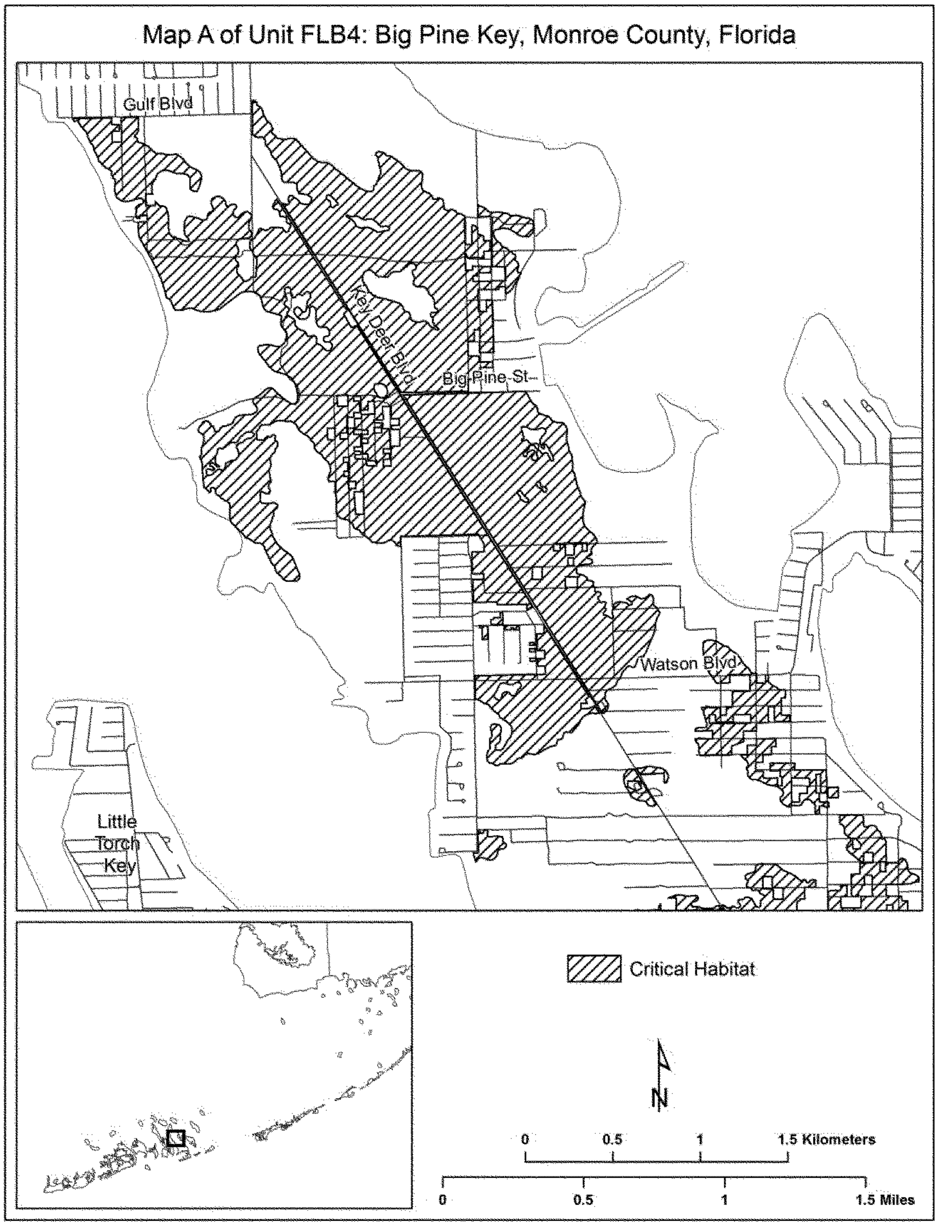
(9) Unit FLB4: Big Pine Key, Monroe County, Florida.

(i) General Description: Unit FLB4 consists of 559 ha (1,382 ac) in Monroe County composed of National Key Deer Refuge (365 ha (901 ac)), State lands (90 ha (223 ac)), and property in private or other ownership (104 ha (258 ac)). State lands are interspersed within NKDR lands and managed as part of the Refuge.

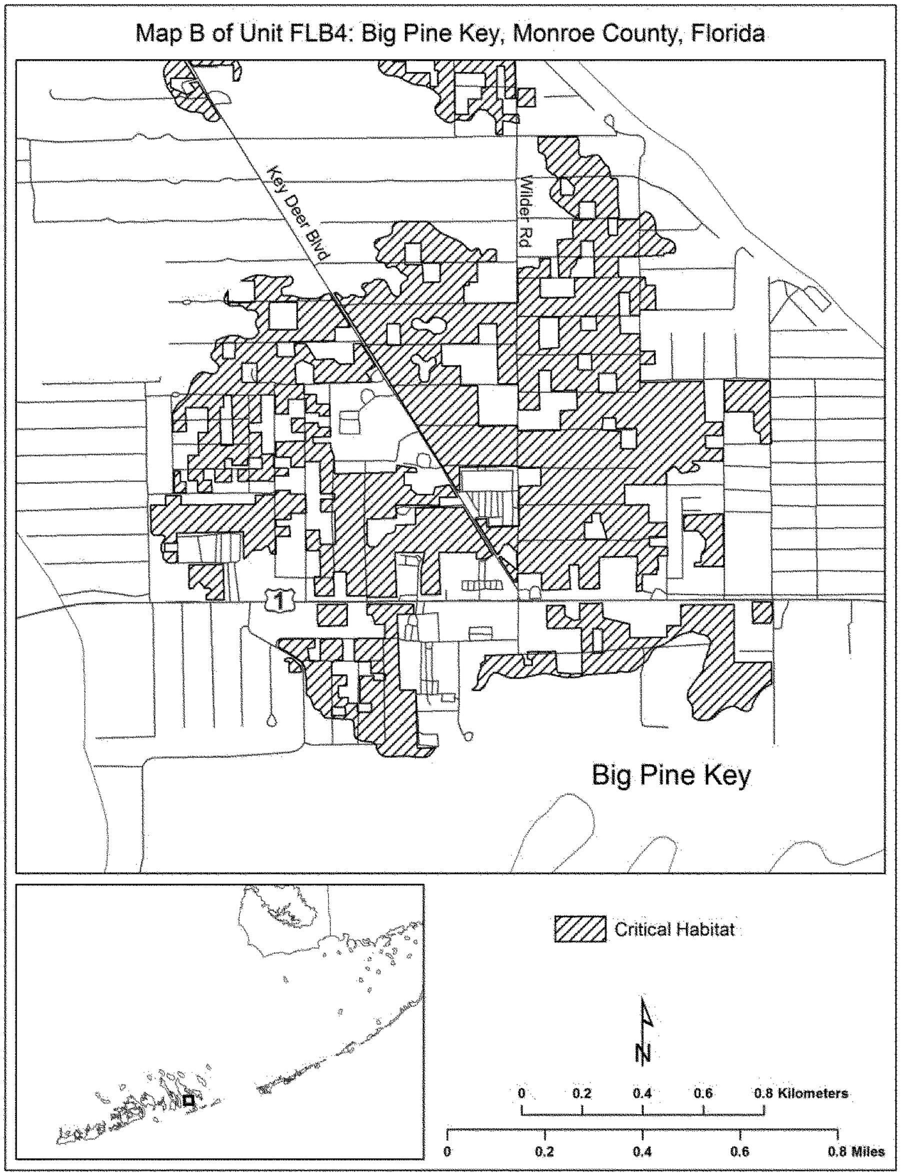
(ii) Index map of Unit FLB4 follows:



(A) **Note:** Map A of Unit FLB4: Big Pine Key, Monroe County, Florida, follows:



(B) **Note:** Map B of Unit FLB4: Big Pine Key, Monroe County, Florida, follows:



* * * * *

Dated: August 6, 2013.

Michael Bean,

Acting Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–19793 Filed 8–14–13; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2013–0084; RIN 1018–AZ08

Endangered and Threatened Wildlife and Plants; Endangered Status for the Florida Leafwing and Bartram's Scrub-Hairstreak Butterflies

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (USFWS), propose to list the Florida leafwing (*Anaea troglodyta floridalis*) and Bartram's scrub-hairstreak (*Strymon acis bartrami*) butterflies as endangered species under the Endangered Species Act. If we finalize this rule as proposed, it would extend the Act's protections to these species. The effect of these regulations is to conserve the Florida leafwing and Bartram's scrub-hairstreak under the Act.

DATES: We will accept comments received or postmarked on or before October 15, 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 **FOR FURTHER INFORMATION CONTACT** by September 30, 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–2013–0084, 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–2013–0084; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all information received 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: Larry Williams, Field Supervisor, U.S. Fish and Wildlife Service, South Florida Ecological Services Office, 1339 20th Street, Vero Beach, FL 32960, by telephone 772–562–3909, or by facsimile 772–562–4288. 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 a species is determined to be an endangered or threatened species 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 of critical habitat can be completed only by issuing a rule. Elsewhere in today's **Federal Register**, we propose to designate critical habitat for the Florida leafwing butterfly and Bartram's scrub hairstreak butterfly under the Act.

This rule consists of: A proposed rule to list the Florida leafwing butterfly (*Anaea troglodyta floridalis*) and the Bartram's scrub-hairstreak butterfly (*Strymon acis bartrami*) as endangered species. Both butterflies are 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 until now been precluded by other higher priority listing activities. This rule reassesses all available information regarding status of and threats to both butterfly subspecies.

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 the threats to both subspecies fall under all five factors, and consist of a lack of adequate fire management, small population size, isolation from habitat loss and fragmentation, loss of genetic diversity, inadequate regulatory mechanisms, pesticide applications, poaching, hurricanes and storm surge, and sea level rise.

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) Both species' 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, their 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, which are:

(a) The present or threatened destruction, modification, or curtailment of their 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 their continued existence.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to these species and regulations that may be addressing those threats; including the use and effects of pesticides to control mosquitos and other insects considered pests.

(4) The use of prescribed fire or other management tools to simulate historical natural disturbances to restore or maintain the species habitat.

(5) Additional information concerning the historical and current status, range, distribution, and population size of these species, including the locations of any additional populations of these species.

(6) Current or planned activities in the areas occupied by these species and possible impacts of these activities on these species.

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 **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

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, South Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

The Florida leafwing and Bartram's scrub-hairstreak (previously known as the Bartram's hairstreak) butterflies have the same history of being candidates for listing under the Act. Both butterflies were first recognized as candidates on May 22, 1984 (49 FR 21664). We assigned both species a listing priority number (LPN) of 2. Candidate species are assigned LPNs based on immediacy and magnitude of threats, as well as taxonomic status. The lower the LPN, the higher priority that species is for us to determine appropriate action using our available resources (September 21, 1983; 48 FR 43100). Category 2 species were defined as species for which we had information that proposed listing was possibly appropriate, but conclusive data on biological vulnerability and threats were not available to support a proposed rule at the time. Both species remained on the candidate list, as published in what is now known as the Candidate Notice of Review (CNOR), as category 2 species until 1994 (January 6, 1989, 54 FR 572; November 21, 1991, 56 FR 58830). Both species were removed from the candidate list from 1996 to 2005 because we did not have sufficient information on the species' biological vulnerability and threats to support issuance of a proposed rule. Both species were added to the candidate list in the 2006 CNOR and assigned an LPN of 3 (September 12, 2006, 71 FR 53760). An LPN of 3 meant that the magnitude of threats remained high and immediate with recognition of their taxonomic status as subspecies. Both species remained on the candidate list as published in the CNORs from 2007 to 2012 with the LPN of 3 (72 FR 69034, December 6, 2007; 73 FR 75176, December 10, 2008; 74 FR 578040, November 9, 2009; 75 FR 69222, November 10, 2010; 76 FR 66370, October 26, 2011; and November 21, 2012, 77 FR 69994).

On May 10, 2011, the Service announced a work plan to restore biological priorities and certainty to the Service's listing process. As part of an agreement with one of the agency's most frequent plaintiffs, the Service filed a work plan with the U.S. District Court for the District of Columbia. The work plan will enable the agency to, over a period of 6 years, systematically review and address the needs of more than 250 species listed within the 2010 Candidate Notice of Review, including the Florida leafwing and Bartram's scrub-hairstreak, to determine if these species should be added to the Federal Lists of Endangered and Threatened Wildlife and Plants. This work plan will enable the Service to again prioritize its workload based on the needs of candidate species, while also providing State wildlife agencies, stakeholders, and other partners clarity and certainty about when listing determinations will be made. On July 12, 2011, the Service reached an agreement with a frequent plaintiff group and further strengthened the workplan, which will allow the agency to focus its resources on the species most in need of protection under the Act. These agreements were approved on September 9, 2011. The timing of this proposed listing is, in part, therefore, an outcome of the workplan.

The Service's decision to propose listing of the Florida leafwing and Bartram's scrub-hairstreak resulted from our careful review of the status of these butterflies and assessments of their threats.

Elsewhere in today's **Federal Register**, we propose to designate critical habitat for the Florida leafwing and Bartram's scrub-hairstreak butterflies under the Act.

Status Assessment for the Florida Leafwing and Bartram's Scrub-Hairstreak Butterflies

Florida Leafwing

General Biology

The Florida leafwing butterfly is a medium-sized butterfly approximately 76 to 78 millimeters (mm) (2.75 to 3.00 inches (in)) in length with a forewing length of 34 to 38 mm (1.3 to 1.5 in) and an appearance characteristic of its genus (Comstock 1961, p. 44; Pyle 1981, p. 651; Opler and Krizek 1984, p. 172; Minno and Emmel 1993, p. 153). The upper-wing (or open wing) surface color is red to red-brown. The underside (closed wings) is gray to tan, with a tapered outline, cryptically looking like a dead leaf or the bark of slash pine trees (*Pinus elliottii* var. *densa*) when the butterfly is at rest. The Florida leafwing exhibits sexual dimorphism (male and female are different from each other), with females being slightly larger and with darker coloring along the wing margins than the males. The butterfly also has seasonal forms (Comstock 1961, pp. 44–45; Salvato and Hennessey 2003, p. 244). Comstock (1961, pp. 44–45) employed the terms ''summer'' and ''winter'' morph to differentiate between seasonal forms within the genus. The length of photoperiod exposure experienced by fifth-instar larvae (larvae several days prior to pupation), as well as the influence of seasonal moisture, have been identified as key factors in determining the seasonal forms within members of the *Anaea* genus of leafwing butterflies (Riley 1980, p. 333; 1988a, p. 266; 1988b, p. 226; Salvato and Hennessey 2003, p. 246). The summer form (wet-season or long-day form), occurring in late May to September, tends to have forewing margins that are blunt and hind-wings with a less pronounced tail; colors also tend to be brighter. The winter form (dry-season or short-day form), occurring in October to early May, tends to have the opposing characters, with pronounced tails and crescent-shaped forewings (Comstock 1961, pp. 44–45; Salvato 1999, p. 118; Salvato and Hennessey 2003, p. 246).

The Florida leafwing has only one known hostplant, the pineland croton (*Croton linearis*) (Euphorbiaceae). The immature stages of this butterfly feed on pineland croton for development. As in the adult butterfly stage, the larval development of the leafwing also displays a cryptic mimicry of the host plant. The first three instars (developmental life stages) of a five instar larval development begin what continues throughout larval development to be a cryptic mimicry of the hostplant. These stages appear like dead leaves, with a brown color and resting on a dead part of the plant during the day (Salvato 1999, p. 118; 2003, p. 244). Early instars tend to eat the leaves to the mid-vein and then dangle from them in camouflage. They dangle by creating a frass chain (strings composed of silk and feces) for protection from predators (Salvato and Salvato 2008, p. 327). Briefly, a frass chain is created when the larvae attach their fecal pellets to the mid-vein of a partially eaten croton leaf with silk (Minno *et al.* 2005, p. 115). The larvae crawl to the terminus of the strands to avoid predation. The two later instars are light green in color, with a tapering body from the cephalad (head capsule) to the caudal end (posterior), so that, when at rest, it also appears like a croton leaf in the spiral fashion of the terminal end of the leaf (Worth *et al.* 1996, p. 64). The head capsule during all stages bears many tiny setae (bristles), presenting the granular appearance of croton seeds (Worth *et al.* 1996, p. 64).

Taxonomy

The Florida leafwing butterfly (*Anaea troglodyta floridalis*) was first described by Johnson and Comstock in 1941. *Anaea troglodyta floridalis* is a taxon considered to be both endemic to south Florida and clearly derived from Antillean stock (the islands of the West Indies except for the Bahamas, separating the Caribbean Sea from the Atlantic Ocean) (Comstock 1961, p. 45; Brown and Heineman 1972, p. 124; Minno and Emmel 1993, p. 153; Smith *et al.* 1994, p. 67; Salvato 1999, p. 117; Hernandez 2004, p. 39; Pelham 2008, p. 393). Some authors (Comstock 1961, p. 44; Miller and Brown 1981, p. 164; Smith *et al.* 1994, p. 67; Hernandez 2004, p. 39) placed the Florida leafwing as a distinct species, *A. floridalis.* Others (Brown and Heineman 1972, p. 124; Minno and Emmel 1993, p. 153; Salvato 1999, p. 117; Opler and Warren 2003, p. 40) considered the Florida leafwing as a subspecies of *Anaea troglodyta* Fabricius. Smith *et al.* (1994, p. 67) suggested that further comparison between immature stages of the Florida leafwing and its Antillean relatives may aid in determining whether or not the Florida leafwing is distinct at the species or subspecies level. Opler and Warren (2003, p. 40) and Pelham (2008, p. 393) considered *Anaea troglodyta floridalis,* not *A. floridalis,* as the scientific name for the Florida leafwing.

The Integrated Taxonomic Information System (ITIS) (2013, p. 1) uses the name *Anaea troglodyta floridalis* (F. Johnson and W. Comstock, 1941) and indicates that this subspecies' taxonomic standing is valid. The Florida Natural Areas Inventory (FNAI) (2012, p. 19) uses the name *A. t. floridalis.*

Life History

Numerous authors have observed and documented the behavior and natural history of the Florida leafwing (Lenczewski 1980, p. 17; Pyle 1981, p. 651; Baggett 1982, pp. 78–79; Opler and Krizek 1984, p. 172; Schwartz 1987, p. 22; Hennessey and Habeck 1991, pp. 13–17; Smith *et al.* 1994, p. 67; Worth *et al.* 1996, pp. 4–6; Salvato 1999, pp. 116–122; Salvato and Hennessey 2003, pp. 243–249; Salvato and Salvato 2008, pp. 323–329; 2010a, pp. 91–97). Adults are rapid, wary fliers and have strong flight abilities and are able to disperse over large areas. The butterfly is extremely territorial, with both sexes flying out to pursue other leafwings, as well as other butterfly species (Baggett 1982, p. 78; Worth *et al.* 1996, p. 65; Salvato and Hennessey 2003, p. 246; Salvato and Salvato 2010a, p. 96). Minno (pers. comm. 2009) and Salvato and Salvato (2010a, p. 96) noted that males are generally more territorial. The Florida leafwing is multivoltine (*i.e.,* produces multiple generations per year), with an entire life cycle of about 2 to 3 months (Hennessey and Habeck 1991, p. 17) and maintains continuous broods throughout the year (Salvato 1999, p. 121). The precise number of broods per year remains unknown, but the leafwing has been recorded in every month (Baggett 1982, p. 78; Opler and Krizek 1984, p. 172; Minno and Emmel 1993, p. 153; Salvato and Hennessey 2003, p. 247; Salvato and Salvato 2010a, p. 96; 2010c, p. 140). Salvato and Salvato (2010a, p. 93) and Land (Everglades National Park (ENP), pers. comm. 2012b) encountered the butterfly throughout the year, but the majority of observations occurred from late fall to spring in ENP. By contrast, Salvato and Salvato (2010c, p. 139) reported finding the butterfly on Big Pine Key, abundantly throughout the year, particularly during the summer months.

Eggs are spherical and light cream-yellow in color (Worth *et al.* 1996, p. 64). Females lay eggs singly on both the upper and lower surface of the host (croton plant) leaves, normally on developing racemes (flowers) (Baggett 1982, p. 78; Hennessey and Habeck 1991, p. 16; Worth *et al.* 1996, p. 64; Salvato 1999, p. 120). Worth *et al.* (1996, p. 64) and Salvato (1999, p. 120) visually estimated that females may fly more than 30 meters (m) (98 feet (ft)) in search of a suitable host plant and usually require less than a minute to oviposit (lay) each egg.

Adult Florida leafwings will feed on tree sap, take minerals from mud, and occasionally visit flowers. Adults have also been observed feeding on rotting fruit and dung (Baggett 1982, p. 78; Opler and Krizek 1984, p. 172; Minno and Emmel 1993, p. 153), senescent (older) flowers of saw palmetto (*Serenoa repens*) (Hennessey and Habeck 1991, p. 13), a sliced orange (Salvato 1999, p. 121), sap of willow bustic (*Sideroxylon salicifolium*) excreted from feeding holes created by yellow-bellied sapsuckers (*Sphyrapicus varius*) (Salvato and Salvato 2008, p. 326), and sap from slash pines and wild tamarind (*Lysiloma latisiliquum*) (Salvato and Salvato 2008, p. 326; Salvato and Salvato 2010a, p. 96). Adults are not frequently attracted to flowers (Baggett 1982, p. 78; Opler and Krizek 1984, p. 172; Worth *et al.* 1996, p. 65). However, Salvato and Salvato (2010a, p. 96) observed freshly emerged adults taking nectar from a variety of plants, including Spanish needles (*Bidens alba*), shrub verbena (*Lantana camara*), and false mallow (*Malvastrum corchorifolium*) within a weedy, disturbed area on the extreme southern border of Long Pine Key in ENP. Lenczewski (1980, p. 17) observed adults at the edges of mud puddles. Salvato and Hennessey (2003, p. 248) also observed this puddling behavior by adult male Florida leafwings on Big Pine Key and in ENP.

Bartram's Scrub-Hairstreak

General Biology

The Bartram's scrub-hairstreak is a small butterfly approximately 25 mm (1 in) in length with a forewing length of 10.0 to 12.5 mm (0.4 to 0.5 in) and has an appearance (*i.e.,* dark gray-colored on the upper (open) wings, light gray-colored under (closed) wings, small size, body shape, distinctive white barring or dots on underwings, and tailed hindwings) characteristic of the genus (Pyle 1981, p. 480; Opler and Krizek 1984, pp. 107–108; Minno and Emmel 1993, p. 129). As with the Florida leafwing, pineland croton is the only known hostplant for the Bartram's scrub-hairstreak (Minno and Emmel 1993, p. 129; Smith *et al.* 1994, p. 118). The Bartram's scrub-hairstreak does not exhibit sexual or seasonal dimorphism, but does show some sexual differences in coloration. The abdomen of the male is bright white, while females are gray (Minno and Emmel 1993, p. 129; Minno and Minno 2009, p. 70).

Eggs are laid singly on the flowering racemes of pineland croton (Worth *et al.,* 1996, p. 62; Salvato and Hennessey 2004, p. 225). The immature stages of this butterfly feed on pineland croton for development. First and second instars remain well camouflaged amongst the white croton flowers, while the greenish later stages occur more on the leaves. Salvato and Hennessey (2004, p. 225) reported approximate body lengths of 2, 4, 6, and 11 mm (0.8, 0.16, 0.24, and 0.43 in) for Bartram's scrub-hairstreak for the second through fifth instar larvae, respectively.

Taxonomy

The Bartram's scrub-hairstreak butterfly (*Strymon acis bartrami*) was first described by Comstock and Huntington in 1943. Seven subspecies of *Strymon acis* have been described (Smith *et al.* 1994, p. 118). Smith *et al.* (1994, p. 118) indicated that perhaps no other butterfly in the West Indies has evolved as many distinct island subspecies as *S. acis.* Each group of Antillean islands appears to have its own particular set of *S. acis* hairstreaks, and these have been classified into two separate groups. The Type A subspecies are larger, darker colored and are found in the more southeastern Antillean islands. The Type B subspecies, to which the Bartram's scrub-hairstreak belongs, are smaller, more surface-grey colored.

The ITIS (2013, p. 1) uses the name *Strymon acis bartrami* and indicates that this subspecies' taxonomic standing is valid. FNAI (2012, p. 21) uses the name *S. a. bartrami.*

Life History

The Bartram's scrub-hairstreak is a sedentary butterfly rarely encountered more than 5 m (16.4 ft) from its host plant (Schwartz 1987, p. 16; Worth *et al.* 1996, p. 65; Salvato and Salvato 2008, p. 324). Females oviposit on the flowering racemes of pineland croton (Worth *et al.* 1996, p. 62; Salvato and Hennessey 2004, p. 225). Eggs are laid singly on the developing flowers. Hennessey and Habeck (1991, p. 18) observed a female oviposit three eggs over the course of 5 minutes. This long duration of oviposition likely enables females to serve as one of the major pollinating species for the host plant (Salvato 2003, p. 57).

The Bartram's scrub-hairstreak is most often observed visiting pineland croton flowers for nectar, but has also been observed using the flowers of other species, including: Pine acacia (*Acacia pinetorum*), Spanish needles, saw palmetto (*Serenoa repens*), button sage (*Lantana involucrata*), Bloggett's swallowwort (*Cynanchum blodgettii*), Everglades Key false buttonwood (*Spermacoce terminalis*), locustberry (*Byrsonima lucida*), and starrush whitetop (*Rhynchospora colorata*) (Minno and Emmel 1993, p. 129; Worth *et al.* 1996, p. 65; Calhoun *et al.* 2002, p. 14; Salvato and Hennessey 2004, p. 226; Salvato and Salvato 2008, p. 324; C. Anderson, pers. comm. 2010).

The Bartram's scrub-hairstreak has been observed during every month on Big Pine Key and ENP; however, the exact number of broods appears to vary sporadically from year to year (Salvato and Hennessey 2004, p. 226; Salvato and Salvato 2010b, p. 156). Baggett (1982, p. 81) indicated that the Bartram's scrub-hairstreak seemed most abundant October–December. Salvato and Salvato (2010b, p. 156) encountered the butterfly most often during March through June within ENP. Land (pers. comm. 2012b) has noted the butterfly to be most abundant in the spring and summer months. One of the earliest reports of *S. a. bartrami* phenology from Big Pine Key was provided by Schwartz (1987, p. 16) who encountered the butterfly only during April, November, and December, despite an extensive annual survey. Subsequent research by Hennessey and Habeck (1991, pp. 17–19), Emmel *et al.* (1995, pp. 14–15), and Minno and Minno (2009, pp. 70–76) reported occurrences of Bartram's scrub-hairstreak on Big Pine Key throughout the year with varying peaks in seasonal abundance. Salvato and Salvato (unpublished data) have reported finding the butterfly abundant throughout the year on Big Pine Key, particularly during the late spring. Salvato (1999, p. 47) suggests the butterfly can occur in high numbers during any season if suitable habitat and conditions are present. Service Biologist Chad Anderson (pers. comm. 2012a) has found them most active when the average temperature is consistently near 27 degrees Celsius (°C) (80 degrees Fahrenheit (°F)), which can occur at any time of year. In addition, reference plots and random survey transects on Big Pine Key have consistently indicated that peak relative abundances can differ among subpopulations within the same year (Anderson, pers. comm. 2012b).

Florida Leafwing and Bartram's Scrub-Hairstreak

Habitat

The Florida leafwing and Bartram's scrub-hairstreak occur only within pine rocklands, specifically those that retain their mutual and sole hostplant, pineland croton. Adult butterflies will also make use of rockland hammock vegetation when interspersed within the pine rockland habitat.

Pine Rockland

Pine rockland is characterized by an open canopy of South Florida slash pine (*Pinus elliottii* var. *densa*) with a patchy understory of tropical and temperate shrubs and palms and a rich herbaceous layer of mostly perennial species including numerous species endemic to South Florida. Outcrops of weathered oolitic (small rounded particles or grains) limestone, known locally as pinnacle rock, are common, and solution holes may be present. This subtropical, pyrogenic flatland can be mesic or xeric depending on landscape position and associated natural communities. There are differences in species composition between the pine rocklands found in the Florida Keys and the mainland (FNAI 2010a, p. 1).

Pine rockland has an open canopy of South Florida slash pine, generally with multiple age classes. The diverse, open shrub and subcanopy layer is composed of more than 100 species of palms and hardwoods (FNAI 2010a, p. 1), most derived from the tropical flora of the West Indies (FNAI 2010a, p. 1). Many of these species vary in height depending on fire frequency, getting taller with time since fire. These include saw palmetto (*Serenoa repens*), cabbage palm (*Sabal palmetto*), silver palm (*Coccothrinax argentata*), brittle thatch palm (*Thrinax morrisii*), wax myrtle (*Myrica cerifera*), myrsine (*Rapanea punctata*), poisonwood (*Metopium toxiferum*), locustberry (*Byrsonima lucida*), varnishleaf (*Dodonaea viscosa*), tetrazygia (*Tetrazygia bicolor*), rough velvetseed (*Guettarda scabra*), marlberry (*Ardisia escallonioides*), mangrove berry (*Psidium longipes*), willow bustic (*Sideroxylon salicifolium*), winged sumac (*Rhus copallinum*). Short-statured shrubs include running oak (*Quercus elliottii*), white indigoberry (*Randia aculeata*), Christmas berry (*Crossopetalum ilicifolium*), redgal (*Morinda royoc*), and snowberry (*Chiococca alba*).

Grasses, forbs, and ferns make up a diverse herbaceous layer ranging from mostly continuous in areas with more soil development and little exposed rock to sparse where more extensive outcroppings of rock occur. Typical herbaceous species include bluestems (*Andropogon* spp., *Schizachyrium gracile, S. rhizomatum,* and *S. sanguineum*), arrowleaf threeawn (*Aristida purpurascens*), lopsided indiangrass (*Sorghastrum secundum*), hairawn muhly (*Muhlenbergia capillaris*), Florida white-top sedge (*Rhynchospora floridensis*), pineland noseburn (*Tragia saxicola*), devil's potato (*Echites umbellata*), pineland croton, several species of sandmats (*Chamaesyce* spp.), partridge pea (*Chamaecrista fasciculata*), coontie (*Zamia pumila*), maidenhair pineland fern (*Anemia adiantifolia*), Bahama brake (*Pteris bahamensis*), and lacy bracken (*Pteridium aquilinum* var. *caudatum*) (FNAI 2010a, p. 1).

Pine rockland occurs on relatively flat, moderately to well drained terrain from 2 to 7 m (6.5 to 23 ft) above sea level (FNAI 2010a, p. 2). The oolitic limestone is at or very near the surface, and there is very little soil development. Soils are generally composed of small accumulations of nutrient-poor sand, marl, clayey loam, and organic debris in depressions and crevices in the rock surface. Organic acids occasionally dissolve the surface limestone causing collapsed depressions in the surface rock called solution holes (FNAI 2010a, p. 1). Drainage varies according to the porosity of the limestone substrate, but is generally rapid. Consequently, most sites are wet for only short periods following heavy rains. During the rainy season, however, some sites may be shallowly inundated by slow-flowing surface water for up to 60 days each year (FNAI 2010a, p. 1).

Pine rockland is maintained by regular fire, and susceptible to other natural disturbances such as hurricanes, frost events, and sea-level rise (Ross *et al.* 1994). Fires historically burned on an interval of approximately every 3 to 7 years (FNAI 2010a, p. 3) and were typically started by lightning strikes during the frequent summer thunderstorms (FNAI 2010a, p. 3).

Presently, prescribed fire must be periodically introduced into pine rocklands to sustain community structure, prevent invasion by woody species, maintain high herbaceous diversity (Loope and Dunevitz 1981, pp. 5–6; FNAI 2010a, p. 3), and prevent succession to rockland hammock. The amount of woody understory growth is directly related to the length of time since the last fire. Herbaceous diversity declines with time since last fire. The ecotone between pine rockland and rockland hammock is abrupt when regular fire is present in the system. However when fire is removed, the ecotone becomes more gradual and subtle as hammock hardwoods encroach into the pineland (FNAI 2010a, p. 3).

Rockland hammock

Rockland hammock is a species-rich tropical hardwood forest on upland sites in areas where limestone is very near the surface and often exposed. The forest floor is largely covered by leaf litter with varying amounts of exposed limestone and has few herbaceous species. Rockland hammocks typically have larger, more mature trees in the interior, while the margins can be almost impenetrable in places with dense growth of smaller shrubs, trees, and vines. Typical canopy and subcanopy species include, *Bursera simaruba, Lysiloma latisiliquum* (false tamarind), *Coccoloba diversifolia* (pigeon plum), *Sideroxylon foetidissimum* (false mastic), *Ficus aurea* (strangler fig), *Piscidia piscipula* (Jamaican dogwood), *Ocotea coriacea* (lancewood), *Drypetes diversifolia, Simarouba glauca* (paradisetree), *Sideroxylon salicifolium* (willow bustic), *Krugiodendron ferreum* (black ironwood), *Exothea paniculata* (inkwood), *Metopium toxiferum,* and *Swietenia mahagoni* (West Indies mahogany).

Mature hammocks can be open beneath a tall well-defined canopy and subcanopy. More commonly, in less mature or disturbed hammocks, dense woody vegetation of varying heights from canopy to short shrubs is often present. Species that generally make up the shrub layers within rockland hammock include several species of *Eugenia* (stoppers), *Thrinax morrisii* and *T. radiata* (thatch palms), *Amyris elemifera* (sea torchwood), *Ardisia escallonioides* (marlberry), *Psychotria nervosa* (wild coffee), *Chrysophyllum oliviforme* (satinleaf), *Sabal palmetto, Guaiacum sanctum* (lignum-vitae), *Ximenia americana* (hog plum), *Colubrina elliptica* (soldierwood), *Pithecellobium unguis-cati* and *Pithecellobium keyense, Coccoloba uvifera,* and *Colubrina arborescens* (greenheart). Vines can be common and include *Toxicodendron radicans* (eastern poison ivy), *Smilax auriculata* (earleaf greenbrier), *Smilax havanensis* (Everglades greenbrier), *Parthenocissus quinquefolia* (Virginia creeper), *Hippocratea volubilis* (medicine vine), and *Morinda royoc* (redgal). The typically sparse short shrub layer may include *Zamia pumila* (coontie), and *Acanthocereus tetragonus* (dildoe cactus). Herbaceous species are occasionally present and generally sparse in coverage. Characteristic species include *Lasiacis divaricata* (smallcane), *Oplismenus hirtellus* (woodsgrass) and many species of ferns (FNAI 2010b, p. 1).

Rockland hammock occurs on a thin layer of highly organic soil covering limestone on high ground that does not regularly flood, but it is often dependent upon a high water table to keep humidity levels high. Rockland hammocks are frequently located near wetlands; in the Everglades they can occur on organic matter that accumulates on top of the underlying limestone; in the Florida Keys they occur inland from tidal flats (FNAI 2010b, p. 1).

Rockland hammock is susceptible to fire, frost, canopy disruption, and ground water reduction. Rockland hammock can be the advanced successional stage of pine rockland, especially in cases where rockland hammock is adjacent to pine rockland. In such cases, when fire is excluded from pine rockland for 15 to 25 years it can succeed to rockland hammock vegetation. Historically, rockland hammocks in South Florida evolved with fire in the landscape, fire most often extinguished near the edges when it encountered the hammock's moist microclimate and litter layer. However, rockland hammocks are susceptible to damage from fire during extreme drought or when the water table is lowered. In these cases fire can cause tree mortality and consume the organic soil layer (FNAI 2010b, p. 2).

The lifecycle of both butterflies occur in the pine rocklands, and in some instances associated rockland hammock vegetation interspersed within this habitat. Adult leafwings prefer the transitional zones between pineland and hammock and will disperse and roost within the pine rockland canopy and associated rockland hammock vegetation (Minno, pers. comm. 2009; Salvato and Salvato 2008, p. 246; 2010a, p. 96). The leafwing, with its strong flight abilities, can disperse to make use of available habitat throughout pine rockland and associated rockland hammock habitat in ENP. Leafwing dispersed similarly into these habitats on Big Pine Key until it was extirpated. The hairstreak prefers more open pine rocklands and is more sedentary than the leafwing with adults rarely encountered more than 5 m (16 ft) from the hostplant.

Historical Ranges

The Florida leafwing and Bartram's scrub-hairstreak are endemic to south Florida including the lower Florida Keys. The butterflies were locally common within pine rockland habitat that once occurred within Miami-Dade and Monroe Counties and were less common and sporadic within croton-bearing pinelands in Collier, Martin (leafwing only), Palm Beach, and Broward Counties (Comstock and Huntington 1943, p. 65; Kimball 1965, pp. 45–46; Baggett 1982, p. 78; Smith *et al.* 1994, p. 67; Salvato 1999, p. 117; Salvato and Hennessey 2003, p. 243; 2004, p. 223).

There is little evidence that these butterflies ventured further north than southern Miami-Dade County to make use of localized, relict populations of hostplants that still persist as far north as Martin County (Salvato 1999, p. 117; Salvato and Hennessey 2003, p. 243; 2004, p. 223). Although these butterflies were widely reported from several locations in southern Miami until the mid-20th century (Smith *et al.* 1994, pp. 67; 118), Salvato (1999, p. 117) found few documented field sighting records or museum collection specimens from areas north of Monroe and Miami-Dade Counties, suggesting that they may not have been common further north historically (Salvato and Hennessey 2003, p. 243; 2004, p. 223).

Current Ranges

Populations of Florida leafwing and Bartram's scrub-hairstreak have become increasingly localized as pine rockland habitat has been lost or altered through anthropogenic activity (Lenczewski 1980, p. 43; Baggett 1982, p. 78; Hennessey and Habeck 1991, p. 4; Schwarz *et al.* 1996, p. 59; Salvato and Hennessey 2003, p. 243; Salvato and

Hennessey 2004, p. 223; Salvato and Salvato 2010a, p. 91; 2010b, p. 154). Long Pine Key in ENP retains the largest undisturbed tracts of pine rockland habitat totaling an estimated 2,313 hectares (ha) (5,716 acres (ac)) on the mainland (Salvato 1999, p. 3; Service 1999, p. 173; Salvato and Hennessey 2004, p. 223). Hennessey and Habeck (1991, p. 4) and Salvato (1999, p. 3) estimated that approximately 1,068 ha (2,638 ac) of appropriate croton-bearing pine rockland habitat occur within Long Pine Key. More recently, ENP fire effects staff have been systematically mapping current pineland croton abundance, distribution, and health throughout Long Pine Key (Land, pers. comm. 2012a; Sadle, pers. comm. 2013c). As of early 2013, approximately 12.5 kilometers (km) (7.7 miles (mi)) of pine rocklands have been evaluated and the hostplant has been documented consistently throughout Long Pine Key.

In Miami-Dade County, outside of ENP, approximately 375 pine rockland habitat fragments remain totaling approximately 1,780 ha (4,398 ac) in 1999 (Service 1999, p. 173). Several of these fragments, particularly those adjacent to ENP, such as Navy Wells and Richmond Pine Rocklands (a mixture of publically and privately owned lands), maintain localized populations of pineland croton as well as small or sporadic occurrences of Bartram's scrub-hairstreak (Salvato 1999, p. 123; Salvato and Hennessey 2004, p. 223; Salvato and Salvato 2010b, p. 154). However, Salvato and Hennessey (2003, p. 243) and Salvato (pers. comm. 2008) have generally failed to observe the Florida leafwing in these or other relict (surviving remnant) pine rockland areas outside ENP. During June 2007, one adult leafwing was observed within Navy Wells (Salvato, pers. comm. 2008); however, no evidence of larval activity was encountered suggesting this observation was a stray occurrence. In addition, no leafwing have been recorded outside of ENP since that time.

Breeding Florida leafwing populations have not been documented in pine rockland fragments adjacent to ENP for the past 25 years. The smallest of the former breeding populations was Navy Wells Pineland Preserve (Navy Wells) (owned and managed by Miami-Dade County), which is approximately 120 ha (296 ac) in size. The hairstreak retains breeding populations on Big Pine Key, on Long Pine Key in ENP, and within a number of pine rockland fragments adjacent to ENP, the smallest of which is approximately 7 ha (18 ac) in size. It is possible that leafwings require relatively larger patches of croton-bearing pine rockland habitat to persist than do hairstreaks. Although larger patches of habitat may be more suitable for these butterflies, the relationship between habitat patch size and suitability is not completely understood.

A geographic information system (GIS) analysis conducted by the Service using data collected by The Institute for Regional Conservation (IRC) in 2004 indicates that 65 pine rockland fragments (of various sizes but at least 1 hectare) containing pineland croton remain in private ownership in Miami-Dade County totaling approximately 190 ha (470 ac) (IRC 2006, page numbers not applicable). Another 12 fragments totaling 180 ha (446 ac) contain the croton and are in public ownership (IRC 2006, page numbers not applicable). In 2012, the Service funded Fairchild Tropical Botanic Gardens (FTBG) to conduct extensive surveys of Miami-Dade pine rockland fragments in order to determine current pineland croton abundance and distribution. Initial results from these surveys are expected in 2013.

In the lower Florida Keys, Big Pine Key retains the largest undisturbed tracts of pine rockland habitat totaling an estimated 560 ha (1,382 ac) (Zhang *et al.* 2010, p. 15; Roberts, pers. comm. 2012). At present, within the Florida Keys pineland croton is known to occur only on Big Pine Key. The last reports of the hostplant from other keys were from those adjacent to Big Pine Key on No Name Key in 1992 (Carlson *et al.* 1993, p. 923) and Little Pine Key in 1988 (Hennessey and Habeck 1991, p. 4). Recent surveys of relict pineland throughout the lower Florida Keys by Hennessey and Habeck (1991, p. 4), Emmel *et al.* (2005, p. 6), and Salvato (1999, p. 28; pers. comm. 2008) failed to locate the plant from any island other than Big Pine Key. The staff at National Key Deer Refuge (NKDR) estimated that approximately 243 ha (600 ac) of croton-bearing pineland exist on public lands on Big Pine Key (C. Anderson, pers. comm. 2012a). However, surveys indicate that only about 13 ha (32 ac) are regularly occupied by Bartram's scrub-hairstreak (C. Anderson, pers. comm. 2013). In addition, many of the plants in these areas show signs of senescence (growing older) (C. Anderson, pers. comm. 2013). Although the Bartram's scrub-hairstreak is extant on Big Pine Key, the Florida leafwing has not been seen on the island since 2006 (Minno and Minno 2009, pp. v, 9; Salvato and Salvato 2010c, p. 139).

Population Estimates and Status

Florida Leafwing

Based on results of all historical (Baggett 1982, p. 78; Schwartz 1987, p. 22; Hennessey and Habeck 1991, p. 17; Worth *et al.* 1996, p. 62; Schwarz *et al.* 1996, p. 59) and recent surveys and natural history studies (Salvato 1999, p. 1; 2001, p. 8; 2003, p. 53; Salvato and Hennessey 2003, p. 243; Salvato and Salvato 2010a, p. 91), the Florida leafwing is extant in ENP and, until recently, had occurred on Big Pine Key and historically in pineland fragments in mainland Miami-Dade County (Smith *et al.* 1994, p. 67; Salvato and Salvato 2010a, p. 91; 2010c, p. 139). Schwartz (1987, pp. 1–19), Hennessey and Habeck (1991, pp. 1–75), Emmel *et al.* (1995, pp. 5–7), and Salvato (1999, pp. 1–168) searched the lower Florida Keys extensively for the Florida leafwing, only encountering the butterfly on Big Pine Key. The butterfly's only remaining metapopulation (a series of small populations that have some level of interactions) at Long Pine Key within ENP has been well documented, (Hennessey and Habeck 1991, pp. 1–75; Smith *et al.* 1994, p. 67; Emmel *et al.* 1995, pp. 5–7; Salvato and Salvato 2010a, pp. 91–97). Results from all known historical surveys are provided in table 1. More recent studies are discussed below.

TABLE 1—SUMMARY OF HISTORIC FLORIDA LEAFWING SURVEYS

Population	Ownership	Years	Size or density numbers of adult butterflies	Source
National Key Deer Refuge—Big Pine Key	Federal—USFWS	1985–1986	34 observed or collected.	Schwartz (1987, p. 25).
National Key Deer Refuge—Watson Hammock.	Federal—USFWS	1988–1989	3.7 per ha (1.5 per acre).	Hennessey and Habeck (1991, pp. 1–75).

TABLE 1—SUMMARY OF HISTORIC FLORIDA LEAFWING SURVEYS—Continued

Population	Ownership	Years	Size or density numbers of adult butterflies	Source
Everglades National Park—Long Pine Key	Federal—NPS	1988–1989	3.7 per ha (1.5 per acre).	Hennessey and Habeck (1991, pp. 1–75).
Everglades National Park—Long Pine Key	Federal—NPS	1994–1995	22 observed	Emmel *et al.* (1995, p. 14).
National Key Deer Refuge—Big Pine Key	Federal—USFWS	1994–1995	19 observed	Emmel *et al.* (1995, p. 14).
National Key Deer Refuge—Watson Hammock.	Federal—USFWS	1997–1998	3.1 per ha (1.2 per acre).	Salvato (1999, p. 52).
Everglades National Park—Long Pine Key	Federal—NPS	1997–1998	2.4 per ha (1 per acre)	Salvato (1999, p. 52).

Surveys by Salvato and Salvato (2010c, pp. 139–140) indicate the average number of adult Florida leafwings recorded annually on Big Pine Key declined from a high of 11 per ha (4.4 per ac) in 1999 to 0 from late 2006 onward, based on monthly (1999 to 2006) or quarterly (2007 to 2012) surveys. Similar studies in Long Pine Key indicated that the average number of leafwings recorded annually ranged from a high of 22.5 per ha (9 per ac) (1999) to 1.5 per ha (0.6 per ac) (2005), based on monthly surveys conducted from 1999 through 2008 (Salvato and Salvato 2010a, p. 93).

Ongoing surveys conducted by Salvato (pers. comm. 2012) from 2009 to 2012 have recorded an average abundance of 2.6 adult Florida leafwings per ha (1 per ac), in Long Pine Key in ENP. In addition, Salvato and Salvato (2010a, p. 96) and Salvato (pers. comm. 2012) have encountered leafwing populations elsewhere within Long Pine Key as well as adjacent habitats within ENP (Palma Vista Hammock and several former agricultural and military lands) during 2005 to 2012. ENP staff also monitors leafwing larval densities at several transects within Long Pine Key monthly as part of studies on the recovery time of pineland croton in response to prescribed burns (Land, pers. comm. 2012a). Ongoing surveys conducted by ENP staff from 2005 to present have encountered approximately 34 and 216 leafwing adults and larvae, respectively, throughout Long Pine Key (Land, pers. comm. 2012a; Sadle, pers. comm. 2013b).

No leafwings have been documented on Big Pine Key in the Florida Keys since 2006 (Salvato and Salvato 2010c, p. 139). On the mainland, Salvato (pers. comm. 2012) has found that the extant leafwing population within ENP is maintained at several hundred or fewer, although it varies greatly depending upon season and other factors. However, Minno (pers. comm. 2009) estimated the extant leafwing population size at less than 100 at any given period.

In ENP, the butterfly is most often encountered from late fall through spring, and less abundantly during the summer (Salvato and Salvato 2010a, p. 95; Land, pers. comm. 2012b). However, the leafwing appeared to maintain a consistent year-round phenology (reproductive life cycle) when it occurred on Big Pine Key (Salvato and Salvato 2010a, p. 95; 2010c, p. 140), with a slight peak in abundance during the summer. Ongoing natural history studies of the leafwing by Salvato and Salvato (Salvato, pers. comm. 2012) designed to evaluate mortality factors amongst the butterfly's immature stages have identified a suite of predators, parasitoids, and pathogens that may substantially influence annual variability.

Bartram's Scrub-Hairstreak

Based on the results of historic (Baggett 1982, p. 80; Schwartz 1987, p. 16; Hennessey and Habeck 1991, pp. 117–119; Smith *et al.* 1994, p. 118; Emmel *et al.* 1995, pp. 1–24; Worth *et al.* 1996, pp. 62–65; Schwarz *et al.* 1996, pp. 59–61) and recent (Salvato 1999, p. 1; 2001, p. 8; 2003, p. 53; Salvato and Hennessey 2004, p. 223; Minno and Minno 2009, p. 76; Salvato and Salvato 2010b, p. 154; C. Anderson pers. comm. 2012a; Land pers. comm. 2012a) surveys and natural history studies, there are extant Bartram's scrub-hairstreak metapopulations in ENP and locally within pineland fragments in mainland Miami-Dade County, and on Big Pine Key in Monroe County. Results from all known historical surveys are provided in table 2. More recent studies are discussed below.

TABLE 2—SUMMARY OF HISTORIC BARTRAM'S SCRUB-HAIRSTREAK SURVEYS

Population	Ownership	Years	Size or density numbers of adult butterflies	Source
National Key Deer Refuge—Big Pine Key	Federal—USFWS	1985–1986	20 observed or collected.	Schwartz (1987, p. 16).
National Key Deer Refuge—Big Pine Key	Federal—USFWS	1988–1989	3.9 per ha (1.6 per ac)	Hennessey and Habeck (1991, pp. 49–50).
Everglades National Park—Long Pine Key	Federal—NPS	1988–1989	0.5 per ha (0.2 per ac)	Hennessey and Habeck (1991, pp. 49–50).
Everglades National Park—Long Pine Key	Federal—NPS	1994–1995	7 observed	Emmel *et al.* (1995, p. 14).
National Key Deer Refuge—Big Pine Key	Federal—USFWS	1994–1995	9 observed	Emmel *et al.* (1995, p. 14).
National Key Deer Refuge—Big Pine Key	Federal—USFWS	1997–1998	4.3 per ha (1.7 per ac)	Salvato (1999, p. 52).
Everglades National Park—Long Pine Key	Federal—NPS	1997–1998	0 per ha (0 per ac)	Salvato (1999, p. 60).

Ongoing surveys by Salvato and Salvato (unpublished data) indicate the average number of adult Bartram's scrub-hairstreaks recorded annually on Big Pine Key has declined considerably, from a high of 19.3 per ha (7.7 per ac) in 1999 to a low of less than 1 per ha (0.3 per ac) in 2011, based on monthly (1999–2006) or quarterly (2007 to 2012) surveys. Minno and Minno (2009, p. 76) recorded an average of 35 adults annually on Big Pine Key during monthly surveys conducted from 2006 to 2009. Recent annual North American Butterfly Association (NABA) ''Fourth of July'' counts on Big Pine Key reported zero and one individual hairstreaks during 2011 and 2012, respectively.

In order to more frequently survey hairstreak populations within NKDR, the Service, from 2010 to 2012, has implemented a standardized monitoring method to monitor the butterfly at three core pine rockland locations across Big Pine Key (C. Anderson, pers. comm. 2012a). Since that time, the mean monthly count across sites has ranged from 0.0 to 2.8 (with a standard error of ± 0.33) adult hairstreaks per ha (C. Anderson, pers. comm. 2012a). The maximum adult counts were 15 and 8 adults per ha for 2010 and 2011, respectively; however, the means were not significantly different between years (C. Anderson, pers. comm. 2012a). These densities are much higher than those encountered by Salvato and Salvato (unpublished data) in 2010 and 2011; this disparity may be due to the fact that NKDR has established survey transects at locations with more optimal hostplant abundance, where the latter studies continue to monitor long-term transects (15 to 25 years) that were historic strongholds for the butterfly, but have since become degraded. In other words, NKDR is monitoring at what may be current strongholds, while Salvato and Salvato are documenting the butterfly's status at former strongholds. Since early 2012, North Carolina State University personnel have collaborated with the Service to access detection probabilities, estimate abundances, and measure vegetation characteristics associated with butterfly populations on NKDR.

Due in large part to the benefits of an effective and systematic burn plan in ENP, Salvato and Salvato (2010b, p. 159) and Salvato (pers. comm. 2012) have encountered as many as 6.3 adult Bartram's scrub-hairstreaks per ha (2.5 per acre) annually from 1999 to 2012, based on monthly surveys in Long Pine Key. In addition, Salvato and Salvato (2010b, p. 156) and Salvato (pers. comm. 2012) have also monitored populations of the Bartram's scrub-hairstreak elsewhere within Long Pine Key during 2005–2012 and encountered similar densities. Ongoing surveys conducted by ENP staff from 2005 to present have encountered a total of approximately 24 and 30 hairstreak adults and larvae, respectively, throughout Long Pine Key (Land, pers. comm. 2012a; Sadle, pers. comm. 2013b).

Additional pine rockland fragments within Miami-Dade County that are known to maintain small, localized populations of pineland croton and sporadic occurrences of Bartram's scrub-hairstreak, based on limited survey work, include: Navy Wells (120 ha (297 acres)), Camp Owaissa Bauer (39 ha (99 ac)) (owned and managed by Miami-Dade County), and several parcels within the Richmond Pine Rocklands, including: Larry and Penny Thompson Memorial Park (109 ha (270 ac)), Miami Metro Zoo Preserve (300 ha (740 ac)), Martinez Pineland Park (53 ha (132 ac)), and Coast Guard lands in Homestead (29 ha (72 ac)) (Minno and Minno 2009, pp. 70–76; J. Possley, FTBG, pers. comm. 2010).

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; or (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Each of these factors is discussed below.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Habitat Loss

The Florida leafwing and Bartram's scrub-hairstreak have experienced substantial destruction, modification, and curtailment of their habitat and range (see Status Assessment section). The pine rockland community of south Florida, on which both butterflies and their hostplant depend, is critically imperiled globally (FNAI 2012, p. 27). Destruction of the pinelands for economic development has reduced this habitat community by 90 percent on mainland south Florida (O'Brien 1998, p. 208). All known mainland populations of the Florida leafwing and Bartram's scrub-hairstreak occur on publicly or privately owned lands that are managed for conservation (table 3). However, any unknown extant populations of these butterflies or suitable habitat that may occur on private land or nonconservation public land, such as within the Richmond Pine Rocklands, are vulnerable to habitat loss.

TABLE 3—LAND OWNERSHIP OF EXTANT FLORIDA LEAFWING AND BARTRAM'S SCRUB-HAIRSTREAK POPULATIONS

Location	Ownership	Size
	Bartram's Scrub-Hairstreak	
Big Pine Key	Public—Fish and Wildlife Service Public—Monroe County. Public—FDEP, FWC. Private.	559 ha (1,382 ac).
Everglades National Park—Long Pine Key	Federal—National Park Service	8,029 ha (19,840 ac).
Navy Wells Pineland Preserve	Public—Miami-Dade County	142 ha (353 ac).
Camp Owaissa Bauer	Public—Miami-Dade County	40 ha (99 ac).
Richmond Pine Rocklands	Public—Federal (Coast Guard)	359 ha (889 acres).
	Public—Miami-Dade County (Larry and Penny Thompson Memorial Park, Martinez Pineland Park, Miami Metro Zoo Preserve). Private–University of Miami.	

TABLE 3—LAND OWNERSHIP OF EXTANT FLORIDA LEAFWING AND BARTRAM'S SCRUB-HAIRSTREAK POPULATIONS—Continued

Location	Ownership	Size
Florida Leafwing		
Everglades National Park—Long Pine Key	Federal—National Park Service	8,029 ha (19,840 ac).

Similarly, most of the ecosystems on the Florida Keys have been impacted by humans, through widespread clearing of habitat in the 19th century for farming, or building of homes and businesses; extensive areas of pine rocklands have been lost (Hodges and Bradley 2006, p. 6). Overall, the human population in Monroe County is expected to increase from 79,589 to more than 92,287 people by 2060 (Zwick and Carr 2006, p. 21). All vacant land in the Florida Keys is projected to be developed by then, including lands currently inaccessible for development, such as islands not attached to the Overseas Highway (US 1) (Zwick and Carr 2006, p. 14). However, during 2006, Monroe County implemented a Habitat Conservation Plan (HCP) for Big Pine and No Name Keys. Subsequently, development on these islands has to meet the requirements of the HCP with the resulting pace of development changed accordingly. Furthermore, in order to fulfill the HCP's mitigation requirements, the County has been actively acquiring parcels of high-quality pine rockland, such as The Nature Conservancy's 20-acre Terrestris Tract on Big Pine Key, and managing them for conservation. However, land development pressure and habitat losses may resume when the HCP expires in 2023. If the HCP is not renewed, residential or commercial development could increase to pre-HCP levels. Consequently, remaining suitable habitat for Bartram's scrub-hairstreak and potential habitat for the Florida leafwing could be at significant risk to habitat loss and modification. Further losses will seriously affect the hairstreak's ability to persist in the wild and decrease the possibility of recovery or recolonization by the leafwing.

Fire Management

The threat of habitat destruction or modification is further exacerbated by a lack of adequate fire management (Salvato and Salvato 2010a, p. 91; 2010b, p. 154; 2010c, p. 139). Historically, lightning-induced fires were a vital component in maintaining native vegetation within the pine rockland ecosystem, including pineland croton (Loope and Dunevitz 1981, p. 5; Slocum *et al.* 2003, p. 93; Snyder *et al.* 2005, p. 1; Salvato and Salvato 2010b, p. 154). Resprouting after burns is the primary mechanism allowing for the persistence of perennial shrubs, including pineland croton, in pine habitat (Olson and Platt 1995, p. 101). Without fire, successional climax from tropical pineland to hardwood hammock is rapid, and displacement of native species by invasive nonnative plants often occurs.

Prescribed fire is used throughout the pine rocklands of Long Pine Key (ENP) and has been consistently used for the past 50 years (Loope and Dunevitz 1981, p. 5; Salvato and Salvato 2010b, p. 154). Little is known about the fire history in ENP prior to 1947, and initially fires were suppressed (Slocum *et al.* 2003, p. 93). Fire was reintroduced in the late 1950s, but its role remained poorly understood (Slocum *et al.* 2003, p. 93). However, many of the prescribed burns conducted in Long Pine Key during this earlier time period were quite extensive, with several large areas treated simultaneously. ENP is currently in the process of updating its Fire Management Plan (FMP) and Environmental Assessment, which will assess the impacts of fire on various environmental factors, including listed, proposed, and candidate species (Land, pers. comm. 2011; Sadle, pers. comm. 2013a). Since 2001, ENP fire staff has used partial and systematic prescribed burns to treat the Long Pine Key pine rocklands in their entirety over a 3-year window burning adjacent habitats alternately (National Park Service (NPS) 2005, p. 27). Although this has resulted in restoration of species-rich, herbaceous-dominated pine rocklands in many areas, including resurgence of pineland croton, populations of this hostplant appear fragmented (Salvato and Hennessey 2004, p. 223).

Cyclic and alternating treatment of burn units may have benefited the Florida leafwing throughout Long Pine Key (Salvato and Salvato 2010a, pp. 91–97). The leafwing, with its strong flight abilities, can disperse to make use of adjacent patches of hostplant and then quickly recolonize burned areas following hostplant resurgence (Salvato 1999, p. 5; 2003, p. 53; Salvato and Salvato 2010a, p. 95). Salvato and Salvato (2010a, p. 95) encountered similar adult leafwing densities pre- and postburn throughout their 10-year study within Long Pine Key, suggesting the leafwing can quickly recolonize pine rocklands following a fire. Surveys conducted shortly after burns often found adult leafwings actively exploring the recently burned locations in search of new hostplant growth (Land, pers. comm. 2009; Salvato and Salvato 2008, p. 326; 2010a, p. 95). In most instances croton returned to the burned parts of Long Pine Key within 1 to 3 months postburn; however, it may take up to 6 months before the leafwing will use the new growth for oviposition (Lenczewski 1980, p. 35; Land, pers. comm. 2009; Salvato and Salvato 2010a, p. 95). Land (pers. comm. 2009) indicated that 96 percent of pineland croton burned during prescribed fires on Long Pine Key had resprouted within a few months. Although Salvato and Salvato (2010a, p. 96) occasionally encountered signs of leafwing reproduction within recently burned Long Pine Key locations at approximately 6 weeks postburn, the majority of their observations indicated that oviposition and larval activity increased at about 3 to 6 months postburn. Similarly, Land (pers. comm. 2009) reported finding leafwing larval activity on resprouting croton at 6 months postburn. This finding suggests there may be some lag time between hostplant resurgence and compatibility with recolonization.

The influence of prescribed burns on the status and distribution of the hairstreak and croton is being evaluated by ENP throughout Long Pine Key. The effects of new burn techniques on the Bartram's scrub-hairstreak within Long Pine Key were not immediately obvious (Salvato and Salvato 2010b, p. 159). The hairstreak is rarely encountered more than 5 m (16.4 ft) from its hostplant (Schwartz 1987, p. 16; Worth *et al.* 1996, p. 65; Salvato and Salvato 2008, p. 324). Salvato and Hennessey (2004, p. 224) and Salvato and Salvato (2010b, p. 159) indicate that if the hairstreak is unable to disperse adequately during fire events, then only adults at the periphery of burned areas are likely to escape to adjacent pine rocklands. Ideally, as a result of cyclic burns and multiyear treatment intervals, the hairstreaks will move from the burned location to adjacent refugia (i.e., unburned areas of croton hostplant) and then back to burned area in numbers equal to or greater than before the fire. Starting in the fall of 2004 and continuing into early 2006, the hairstreak appeared to have benefited with population densities greater than those recorded in any previous studies (Salvato and Salvato 2010b, p. 159), and this trend has continued subsequently (Land pers. comm. 2011, 2012a; Salvato pers. comm. 2012).

ENP is actively coordinating with the Service, as well as other members of the Imperiled Butterfly Working Group to review and adjust the prescribed burn practices outlined in the FMP to help maintain or increase Florida leafwing and Bartram's scrub-hairstreak population sizes, protect pine rocklands, expand or restore remnant patches of hostplants and ensure that short-term negative effects from fire (i.e., loss of hostplants, loss of eggs and larvae) can be avoided or minimized.

Outside of the ENP, Miami-Dade County has implemented various conservation measures, such as burning in a mosaic pattern and on a small scale, during prescribed burns in order to protect the butterflies (Maguire, pers. comm. 2010). Miami-Dade County Parks and Recreation staff has burned several of their conservation lands on a fire return interval of approximately 3 to 7 years. In addition, prescribed burns on large conservation areas, such as Navy Wells, have been conducted in a cyclic and systematic pattern, which has provided refugia within or adjacent to treatment areas. As a result, the Bartram's scrub-hairstreak has retained populations within many of these County-managed conservation lands.

Recent natural or prescribed fire activity on Big Pine Key and adjacent islands within NKDR appears to be insufficient to prevent loss of pine rockland habitat (Carlson *et al.* 1993, p. 914; Bergh and Wisby 1996, pp. 1–2; O'Brien 1998, p. 209; Snyder *et al.* 2005; Bradley and Saha 2009, pp. 28–29; Bradley *et al.* 2011, pp. 1–16). As a result, many of the pine rocklands, across NKDR are being compromised by succession to hardwood hammock (Bradley and Saha 2009, pp. 28–29; Bradley *et al.* 2011, pp. 1–16). Pineland croton, which was historically documented from No Name and Little Pine Keys (Dickson 1955, p. 98; Hennessey and Habeck 1991, p. 4; Carlson *et al.* 1993, p. 923), is now absent from these locations (Emmel *et al.* 1995, p. 6; Salvato and Salvato 2010c, p. 139).

Fire management of pine rocklands in NKDR is hampered by the pattern of land ownership and development; residential and commercial properties are embedded within or in close proximity to pineland habitat (Snyder *et al.* 2005, p. 2; C. Anderson, pers. comm. 2012a). As a result, hand or mechanical vegetation management may be necessary at select locations on Big Pine Key (Emmel *et al.* 1995, p. 11; Minno, pers. comm. 2009; Service 2010, pp. 1–68) to maintain or restore pine rocklands. Clearing, such as that used to create firebreaks, can result in high croton densities. Anderson *et al.* (2012, page numbers not applicable) showed that croton densities were significantly higher in a fire break with annual mechanical treatments than adjacent areas with no management. However, even within fire breaks, hostplant density across NKDR has declined considerably in some areas over the past decade. Salvato and Salvato (unpublished data) have noted as much as a 100 percent loss of pineland croton from several of their long-term survey transects, which occur within both firebreaks and forested pine rocklands. These losses are believed to be due to a combination of mowing activity, habitat modification, and a lack of adequate fire management. Mechanical treatments may be less beneficial than fire because they do not quickly convert debris to nutrients, and remaining leaf litter may suppress croton seedling development; fire has also been found to stimulate seedling germination (C. Anderson, pers. comm. 2010). Because mechanical treatments may not provide the same ecological benefits as fire, NKDR continues to focus efforts on conducting prescribed fire where possible (C. Anderson, pers. comm. 2012a).

The NKDR is attempting to increase the density of hostplants within their pine rockland habitat through the use of prescribed fire. However, the majority of pine rocklands within NKDR are several years departed from the ideal fire return interval (5–7 years) suggested for this ecosystem (Synder *et al.* 2005, p. 2, Bradley and Saha 2011, pp. 1–16). Tree ring and sediment data show that pine rocklands in the lower Keys have burned at least every 5 years and sometimes up to three times per decade historically (Albritton 2009, pp. 123, Horn *et.al.,* 2013, pp. 1–67, Harley 2012, pp. 1–246). Prescribed fire implementation in the lower Keys has been hampered largely due to a shortage of resources, technical challenges, and expense of conducting prescribed fire in a matrix of public and private ownership. However, NKDR is taking steps to monitor croton before and after fire, provide refugia during treatments, and ensure that appropriate corridors are maintained during burns (C. Anderson, pers. comm. 2010). Given the difficulties in prescribed fire implementation on Big Pine Key, other options have been explored to increase the amount of available hostplant for extant Bartram's scrub-hairstreak populations, as well as to restore formerly occupied Florida leafwing habitat on Big Pine Key. For example, NKDR currently is growing pineland croton for use in habitat enhancement activities across the Refuge (more than a thousand have been planted to date) (C. Anderson pers. comm. 2012b).

Climate Change and Sea Level Rise Related to Habitat Loss and Alteration

Climatic changes, including sea level rise, are major threats to south Florida, including the Florida leafwing and Bartram's scrub-hairstreak. 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.

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).

With regard to our analysis for the Florida leafwing and Bartram's scrub-hairstreak, downscaled projections suggest that sea level rise is the largest climate-driven challenge to low-lying coastal areas and refuges in the subtropical ecoregion of southern Florida (U.S. Climate Change Science Program (CCSP) 2008, pp. 5–31, 5–32). The long-term record at Key West shows that sea level rose on average 0.224 centimeters (cm) (0.088 in) annually between 1913 and 2006 (National Oceanographic and Atmospheric Administration (NOAA) 2008, p. 1). This equates to approximately 22.3 cm (8.76 in) over the last 100 years (NOAA 2008, p. 1). IPCC (2008, p. 28) emphasized it is very likely that the average rate of sea level rise during the 21st century will exceed that rate, although it was projected to have substantial geographical variability.

Other processes to be affected by projected warming include temperatures, rainfall (amount, seasonal timing, and distribution), and storms (frequency and intensity). The Massachusetts Institute of Technology (MIT) modeled several scenarios combining various levels of sea level rise, temperature change, and precipitation differences with population, policy assumptions, and conservation funding changes. All of the scenarios, from small climate change shifts to major changes, indicate significant effects on the Florida Keys.

The Nature Conservancy (TNC) modeled several scenarios for the Florida Keys, and predicted that sea level rise will first result in the conversion of habitat, and eventually the complete inundation of habitat. In the best-case scenario, by the year 2100, a rise of 18 cm (7 in) would result in the inundation of 745 ha (1,840 ac) (34 percent) of Big Pine Key and the loss of 11 percent of the island's upland habitat (TNC 2010, p. 1). In the worst-case scenario, a rise of 140 cm (4.6 ft would result in the inundation of about 2,409 ha (5,950 ac) (96 percent) and the loss of all upland habitat on the Key (TNC 2010, p. 1). Extant populations of Bartram's scrub-hairstreak in the pine rocklands on Big Pine Key are located just slightly above mean sea level, and saturation or increase in salinity of the soil would correspondingly change the vegetation and habitat structure making the butterfly's survival at this location in the Keys very unlikely. In addition, the Florida leafwing also occurred on Big Pine Key until 2006, within the same locations as extant Bartram's scrub-hairstreak populations. Re-establishment of the Florida leafwing to this island will be a major component in recovering the butterfly. The loss of this portion of the Florida leafwing's range will further reduce their overall resiliency to threats and limit their capacity for survival and recovery.

Hydrology has a strong influence on plant distribution in these and other coastal areas (IPCC 2008, p. 57). Such communities typically grade from salt to brackish to freshwater species. From the 1930s to 1950s, increased salinity of coastal waters contributed to the decline of cabbage palm forests in southwest Florida (Williams *et al.* 1999, pp. 2056–2059), expansion of mangroves into adjacent marshes in the Everglades (Ross *et al.* 2000, pp. 9, 12–13), and loss of pine rockland in the Keys (Ross *et al.* 1994, pp. 144, 151–155). Furthermore, Ross *et al.* (2009, pp. 471–478) suggested that interactions between sea level rise and pulse disturbances (e.g., storm surges) can cause vegetation to change sooner than projected based on sea level alone. Alexander (1953, pp. 133–138) attributed the demise of pinelands on northern Key Largo to salinization of the groundwater in response to sea level rise. Patterns of human development will also likely be significant factors influencing whether natural communities can move and persist (IPCC 2008, p. 57; CCSP 2008, p. 7–6).

Drier conditions and increased variability in precipitation associated with climate change are expected to hamper successful regeneration of forests and cause shifts in vegetation types through time (Wear and Greis 2011, p. 58). Climate changes are forecasted to extend fire seasons and the frequency of large fire events throughout the Coastal Plain (Wear and Greis 2011, p. 65). Increases in the scale, frequency, or severity of wildfires could also have severe ramifications on the Florida leafwing and Bartram's scrub-hairstreak, considering their dependence on pine rocklands and general vulnerability due to their reduced population size, restricted range, few colonies, low fecundity, and relative isolation (see *Factor E*).

The ranges of recent projections of global sea level rise (Pfeffer *et al.* 2008, p. 1340; Vermeer and Rahmstorf 2009, p. 21530; Grinsted *et al.* 2010, pp. 469–470; Jevrejeva *et al.* 2010, Global Climate Change Impacts in the United States 2009, pp. 25–26) all indicate substantially higher levels than the projection by the IPCC in 2007, suggesting that the impact of sea level rise on south Florida could be even greater than indicated above. These recent studies also show a much larger difference (approximately 0.9 to 1.2 m (3 to 4 ft)) from the low to the high ends of the ranges, which indicates that the magnitude of global mean sea level rise at the end of this century is still quite uncertain.

Alternative Future Landscape Models

Various model scenarios developed at MIT have projected possible trajectories of future transformation of the south Florida landscape by 2060 based upon four main drivers: climate change, shifts in planning approaches and regulations, human population change, and variations in financial resources for conservation (Vargas-Moreno and Flaxman 2010, pp. 1–6). The Service used various MIT scenarios in combination with extant and historic Florida leafwing and Bartram's scrub-hairstreak occurrences and remaining hostplant-bearing pine rocklands to predict what may occur to the butterflies and their habitat.

In the best-case scenario, which assumes low sea level rise, high financial resources, proactive planning, and only trending population growth, analyses suggest that the Big Pine Key population of the Bartram's scrub-hairstreak may be lost or greatly reduced. Based upon the above assumptions, extant butterfly populations on Big Pine Key (Bartram's scrub-hairstreak) and Long Pine Key (Florida leafwing and Bartram's scrub-hairstreak) appear to be most susceptible for future losses, with losses attributed to increases in sea level and human population. In the worst-case scenario, which assumes high sea level rise, low financial resources, a ''business as usual'' approach to planning, and a doubling of human population, the habitat at Big Pine Key and Long Pine Key may be lost and the loss of habitat at Long Pine Key resulting in the complete extirpation of the Florida leafwing. Under the worst-case scenario, pine rockland habitat would remain within both Navy Wells and the Richmond Pine Rocklands, both of which currently retain Bartram's scrub-hairstreak populations. Actual impacts may be greater or less than anticipated based upon high variability of factors involved (e.g., sea level rise, human population growth) and assumptions made.

Everglades Restoration

Projects designed to restore the historic hydrology of the Everglades and other natural systems in southern Florida (collectively known as the Comprehensive Everglades Restoration Project (CERP)) may produce collateral impacts to extant pine rockland within Long Pine Key. Salvato (pers. comm. 2012) noted substantial flooding of pine rocklands at the gate 11 nature trail in Long Pine Key following Hurricane Isaac (August 2012) and subsequent above-average rainfall in the region. Although Long Pine Key has experienced storm damages in the recent past (Salvato and Salvato 2010a, p. 96), none of the prior activity produced the level (several feet) or duration (more than 2 months) of inundation noted in the aftermath of Isaac. However, by mid-December 2012, Salvato noted no apparent lasting influence on croton health or abundance from the inundation. Sadle (pers. comm. 2012) suggests various CERP projects (C–111 spreader canal; L–31N seepage barrier), specifically the operation of pumps and associated detention areas along the ENP boundary, may influence select portions of eastern Long Pine Key, including pineland croton populations at gate 11. However, Pace (pers. comm. 2013) attributed the pine rockland flooding event of late 2012 more to localized and above-average rainfall patterns than to a change in water management practices. Analysis of the hydrology associated with operation of these CERP-related structures along the Everglades boundary will be conducted following the initial years of operation. However, Service and NPS biologists realize the need to assess this potential threat.

Conservation Efforts To Reduce the Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

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, 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). The CCP for the Lower Florida Keys National Wildlife Refuges (NKDR, Key West National Wildlife Refuge, and Great White Heron National Wildlife Refuge) provides a description of the environment and priority resource issues that were considered in developing the objectives and strategies that guide management over the next 15 years. The CCP promotes the enhancement of wildlife populations by maintaining and enhancing a diversity and abundance of habitats for native plants and animals, especially imperiled species that are found only in the Florida Keys. The CCP also provides for obtaining baseline data and monitoring indicator species to detect changes in ecosystem diversity and integrity related to climate change. In the Lower Key Refuges, CCP management objective no. 11 provides specifically for maintaining and restoring butterfly populations of special conservation concern, including the Bartram's scrub-hairstreak and Florida leafwing butterflies.

As Federal candidates, the Florida leafwing and Bartram's scrub-hairstreak are afforded some protection through sections 7 and 10 of the Act and associated policies and guidelines. Service policy requires candidate species be treated as proposed species for purposes of intra-Service consultations and conferences where the Service's actions on National Wildlife Refuges may affect candidate species. Federal action agencies (e.g., Service, NPS) are to consider the potential effects (e.g., prescribed fire, pesticide treatments) to these butterflies and their habitat during the consultation and conference process. Applicants and action agencies are encouraged to consider candidate species when seeking incidental take for other listed species and when developing habitat conservation plans. However, candidate species do not receive the same level of protection that a listed species would under the Act.

The NPS is also currently preparing a revised General Management Plan for ENP (Sadle, NPS, pers. comm. 2013a). ENP's current Management Plan (initiated in 1979) serves to protect, restore, and maintain natural and cultural resources at the ecosystem level (NPS 2000, p. 10). The current GMP is not regulatory and its implementation is not mandatory. In addition, this GMP does not specifically address either the Florida leafwing or Bartram's scrub-hairstreak.

Fairchild Tropical Botanic Gardens (FTBG), with the support of various Federal, State, local and nonprofit organizations, has established the ''Connect to Protect Network.'' The objective of this program is to encourage widespread participation of citizens to create corridors of healthy pine rocklands by planting stepping-stone gardens and rights-of-way with native pine rockland species, and restoring isolated pine rockland fragments. By doing this, FTBG hopes to increase the probability that pollinators can find and transport seeds and pollen across developed areas that separate pine rocklands fragments to improve gene flow between fragmented plant populations and increase the likelihood that these species will persist over the long term. Although this project may serve as a valuable component toward the conservation of pine rockland species, it is dependent on continual funding, as well as participation from private landowners, both of which may vary through time.

Summary of Factor A

We have identified a number of threats to the habitat of the Florida leafwing and Bartram's scrub-hairstreak that have operated in the past, are impacting the butterflies now, and will continue to impact these butterflies in the future. Habitat loss, fragmentation, and degradation and associated pressures from increased human population are major threats; these threats are expected to continue, placing these butterflies at greater risk. Both butterflies may be impacted when pine rocklands are converted to other uses or when lack of fire causes the conversion to hardwood hammocks or other habitats that are unsuitable for these butterflies and their host plant. Routine land management activities (e.g., prescribed fire) may also cause impacts to hostplant abundance and availability of nectar sources. Environmental effects resulting from climatic change, including sea level rise, are occurring now and are expected to become severe in the future, resulting in additional habitat losses. Although efforts are being made to conserve natural areas and apply prescribed fire, the long-term effects of large-scale and wide-ranging habitat modification, destruction, and curtailment will last into the future.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Collection

Rare butterflies and moths are highly prized by collectors, and an international trade exists in specimens for both live and decorative markets, as well as the specialist trade that supplies hobbyists, collectors, and researchers (Collins and Morris 1985, pp. 155–179; Morris *et al.* 1991, pp. 332–334; Williams 1996, pp. 30–37). The specialist trade differs from both the live and decorative market in that it concentrates on rare and threatened species (U.S. Department of Justice (USDJ) 1993, pp. 1–3; *United States* v. *Skalski et al.,* Case No. CR9320137, U.S. District Court for the Northern District of California (USDC) 1993, pp. 1–86). In general, the rarer the species, the more valuable it is; prices can exceed $25,000 for exceedingly rare specimens. For example, during a 4-year investigation, special agents of the Service's Office of Law Enforcement executed warrants and seized more than 30,000 endangered and protected butterflies and beetles, with a total wholesale commercial market value of about $90,000 in the United States (USDJ 1995, pp. 1–4). In another case, special agents found at least 13 species protected under the Act, and another 130 species illegally taken from lands administered by the Department of the Interior and other State lands (USDC 1993, pp. 1–86; Service 1995, pp. 1–2). Law enforcement agents routinely see butterfly species protected under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) during port inspections in Florida, often without import declarations or the required CITES permits (McKissick, Service Law Enforcement, pers. comm. 2011).

In the past, when the Florida leafwing and Bartram's scrub-hairstreak were widespread on Big Pine Key and throughout southern Miami-Dade County, collecting likely exerted little pressure on these butterfly populations. At present, even limited collection from the small, remaining populations could have deleterious effects on reproductive and genetic viability and thus could contribute to their eventual extinction (see Factor E—Effects of Few, Small Populations and Isolation, below). Collection, which is prohibited on conservation lands, could occur (e.g., ENP, NKDR, State or County owned lands) without being detected, because these areas are all not actively patrolled (see Factor D—*The Inadequacy of Existing Regulatory Mechanisms,* below). Similarly, in some areas such as on Big Pine Key, where numerous pine rockland parcels within NKDR are interspersed among residential areas, there is no signage indicating that collection is prohibited (Salvato, pers. comm. 2012). Consequently, the potential for collection of eggs, larvae, pupae, and adult butterflies exists, and such collection could go undetected, despite the protection provided on Federal or other public lands.

We have direct evidence of interest in the collecting, as well as proposed commercial sale, of the Florida leafwing and Bartram's scrub-hairstreak. Salvato (pers. comm. 2011) has also been contacted by several individuals requesting specimens of the Florida leafwing, as well as information regarding locations where both butterflies may be collected in the field. Salvato (pers. comm. 2012) observed several individuals collecting butterflies at Navy Wells during 2005, including times when Bartram's scrub-hairstreak was present at this site.

We are also aware of multiple Web sites that offer or have offered specimens of south Florida butterflies for sale that are candidates for listing under the Act (Minno, pers. comm. 2009; Nagano, pers. comm. 2011; Olle, pers. comm. 2011). Until recently, one Web site offered male and female Florida leafwing specimens for €110.00 and €60.00 (euros), respectively (approximately $144 and $78). It is unclear from where the specimens originated or when they were collected, but this butterfly is now mainly restricted to ENP where collection is prohibited. The same Web site currently offers specimens of Bartram's scrub-hairstreak for €10.00 ($13). It is unclear from where these specimens originated or when they were collected. The hairstreak can be found on private lands on Big Pine Key and perhaps locally within Miami-Dade County. However, given that the majority of known populations of both butterflies now occur within protected Federal, State, and County lands, it is highly likely that some specimens are being poached.

Scientific Research

Some techniques (e.g., capture, handling) used to understand or monitor the leafwing and hairstreak butterflies have the potential to cause harm to individuals or habitat. Visual surveys, transect counts, and netting for identification purposes have been performed during scientific research and conservation efforts with the potential to disturb or injure individuals or damage habitat. Mark–recapture, a common method used to determine population size, has been used by some researchers to monitor Florida leafwing and Bartram's scrub-hairstreak populations (Emmel *et al.* 1995, p. 4; Salvato 1999, p. 24). This method has received some criticism. While mark–recapture may be preferable to other sampling estimates (e.g., count-based transects) in obtaining demographic data when used in a proper design on appropriate species, such techniques may also result in deleterious impacts to captured butterflies (Mallet *et al.* 1987, pp. 377–386; Murphy 1988, pp. 236–239; Haddad *et al.* 2008, pp. 929–940).

Although effects may vary depending upon taxon, technique, or other factors, some studies suggest that marking may damage (wing damage) or kill butterflies or alter their behaviors (Mallet *et al.* 1987, pp. 377–386; Murphy 1988, pp. 236–239). Salvato (pers. comm. 2012) ceased using mark-recapture shortly after initiating his long-term leafwing studies when he realized how much the tagging altered from the butterflies' cryptic (camouflage) underside as individuals alit (rested) on pineland foliage. Murphy (1988, p. 236) and Mattoni *et al.* (2001, p. 198) indicated that studies on various lycaenids (small butterflies known as hairstreaks and blues) have demonstrated mortality and altered behavior as a result of marking. Conversely, other studies have found that marking did not harm individual butterflies or populations (Gall 1984, pp. 139–154; Orive and Baughman 1989, p. 246; Haddad *et al.* 2008, p. 938). Emmel *et al.* (1995, p. 4) conducted mark-recapture studies on the hairstreak and noted no detrimental effects. In addition several individuals were re-encountered (recaptured) during the days following marking. However, researchers currently studying the populations of the endangered Miami blue in the Florida Keys have opted not to use mark–release–recapture techniques due to the potential for damage to this small, fragile lycaenid (Haddad and Wilson 2011, p. 3).

Summary of Factor B

Collection interest of imperiled butterflies is high, and there are ample examples of collection pressure contributing to extirpations. Although we do not have information indicating the extent to which the Florida leafwing and Bartram's scrub-hairstreak are being collected, we have evidence of both being recently offered for sale. Even limited collection from the remaining metapopulations could have deleterious effects on reproductive and genetic viability of both butterflies and could contribute to their extinction. Although the effects of various scientific studies on butterflies vary amongst species, we do have limited information to suggest that techniques such as mark–recapture may have deleterious impacts to the Florida leafwing and Bartram's scrub-hairstreak. We consider collection, including for scientific research, to be a significant threat to both butterflies due to the few remaining metapopulations, reduced population sizes, restricted range, and because collection could potentially occur at any time.

Factor C. Disease or Predation

Florida Leafwing

A number of predators have been documented to impact Florida leafwings throughout their life cycle. One of the earliest natural history accounts of the leafwing (Matteson 1930, p. 8) reported ants as predators of leafwing eggs in Miami. On Big Pine Key, Hennessey and Habeck (1991, p. 17) encountered a pupa of the Florida leafwing being consumed by ants. Land (pers. comm. 2009) observed a native twig ant (*Pseudomyrmex pallidus*) carrying a young leafwing larva in Long Pine Key. Salvato and Salvato (2012, p. 3) witnessed an older leafwing larva repelling *P. pallidus* attacks while attempting to pupate. Minno (pers. comm. 2009) noted that the larger nonnative graceful twig ant (*Pseudomyrmex gracilis*) is also known to consume immature butterflies and moths. Salvato and Salvato (2012, p. 3) have observed a graceful twig ant attempting to capture a young leafwing larva. Cannon (2006, pp. 7–8) reported high mortality of giant and Bahamian (*P. a. andraemon*) swallowtail eggs from a nonnative species of twig ant (*Pseudomyrmex* spp.) on Big Pine Key, within habitat formerly occupied by the Florida leafwing. Both native and nonnative *Pseudomyrmex* ants are abundant within Long Pine Key and are frequently encountered patrolling the racemes of pineland croton. Forys *et al.* (2001, p. 257) found high mortality among immature giant swallowtails (*Papilio cresphontes*) from imported red fire ant (*Solenopsis invicta*) predation in experimental trials and suggested other butterflies in southern Florida might also be influenced.

Additional predators of immature Florida leafwings include spiders (Rutkowski 1971, p. 137; Glassberg *et al.* 2000, p. 99; Salvato and Salvato 2010e, p. 6; 2011a, p. 103; 2012c, p. 3), ambush bugs (Salvato and Salvato 2008, p. 324), and possibly mites (Salvato and Salvato 2010e, p. 6). Salvato and Salvato (unpublished data) have examined the bite marks on wings of numerous adults in the field suggesting a variety of birds and lizards are among the predators of this butterfly.

A number of parasites have been documented to impact Florida leafwings throughout their life cycle. Hennessey and Habeck (1991, p. 16) and Salvato and Hennessey (2004, p. 247) noted that leafwing egg mortality within ENP and Big Pine Key, from trichogrammid wasp (*Trichogramma* sp. near (nr) *pretiosum*) parasitism, ranged from 70 to 100 percent. Salvato and Salvato (2011b, p. 2) continually encounter leafwing eggs that have been attacked by *Trichogramma* sp. nr *pretiosum,* suggesting this wasp remains a consistent parasitoid for the leafwing within ENP.

Caldas (1996, p. 89), Muyshondt (1974, pp. 306–314), DeVries (1987, p. 21) and Salvato and Hennessey (2003, p. 247) each indicated high parasitism rates from tachinid flies for larvae of *Anaea* or similar genera. Hennessey and Habeck (1991, p. 17) and Salvato *et al.* (2009, p. 101) each encountered Florida leafwing larvae within ENP that had been parasitized by *Chetogena scutellaris* (Diptera: Tachinidae). Ongoing studies of leafwing larvae in Long Pine Key have indicated that *C. scutellaris* serves as a consistent mortality factor to the butterfly in this part of its range (Salvato *et al.* 2009, p. 101; Salvato and Salvato 2010a, p. 95). Current studies suggest that leafwing mortality from the fly can vary considerably from year to year, thereby also influencing overall population numbers of the butterfly. In 2011, nearly all leafwing larvae observed to be parasitized by *C. scutellaris,* died prior to pupation. Conversely, in winter of 2012, three of four leafwing larvae observed to be heavily parasitized by the fly were found to successfully pupate and emerge (Salvato and Salvato 2012, p. 3).

Salvato *et al.* (2008, p. 237) observed a biting-midge, *Forcipomyia* (*Microhelea*) *fuliginosa* (Diptera: Ceratopogonidae), feeding on a young Florida leafwing larva within ENP.

Ongoing studies of *F.* (*M.*) *fuliginosa* and a second biting midge *F.* (*M.*) *eriophora* (Salvato *et al.* 2012, p. 232) indicate they consistently parasitize leafwing larvae within Long Pine Key throughout their development.

Salvato and Salvato (2012, p. 1) have monitored Florida leafwing immature development in the field for several years at Long Pine Key. To date these studies have measured mortality rates of more than 70 percent for immature leafwing, individuals dying from various parasites, predators, and other factors such as fungal pathogens (Salvato and Salvato 2012, p. 1). The majority of mortality noted thus far in these studies has occurred in the earliest, immature stages.

Bartram's Scrub-Hairstreak

Native parasites and predators have been documented to impact Bartram's scrub-hairstreaks. Hennessey and Habeck (1991, p. 19) collected an older hairstreak larva on Big Pine Key from which a single braconid wasp emerged during pupation. During 2010, Salvato *et al.* (2012, p. 113) encountered a hairstreak larva within Long Pine Key that had been parasitized by *C. scutellaris.* These are the only known records for a larval parasitoid on this butterfly. Tracking the fate of hairstreak pupae is extremely difficult because they pupate in the ground litter (Worth *et al.* 1996, p. 63). Collection of other parasitized hairstreak larvae is needed to determine the influence of parasitism on its early stages (Salvato and Hennessey 2004, p. 225).

Salvato and Salvato (2010d, p. 71) observed erythraeid larval mite parasites on an adult Bartram's scrub-hairstreak in Long Pine Key. Although mite predation on butterflies is rarely fatal (Treat 1975, pp. 1–362), the role of parasitism by mites in the natural history of the hairstreak requires further study. Salvato and Salvato (2008, p. 324) have observed dragonflies (Odonata) preying on adult hairstreaks. Crab spiders, orb weavers, ants, and number of other predators discussed as mortality factors for the leafwing have also been frequently observed on croton during hairstreak surveys and may also prey on hairstreak adults and larvae (Salvato and Hennessey 2004, p. 225; Salvato, pers. comm. 2012). NKDR biologists have witnessed nonnative Cuban anoles (*Anolis equestris*) attempting to prey on adult Bartram's scrub-hairstreaks (C. Anderson, pers. comm. 2013). Minno and Minno (2009, p. 72) also cite nonnative predators such as ants as a major threat to both butterflies.

Summary of Factor C

At this time, it is not known to what extent predation, parasitism, or disease may act as threats to the Florida leafwing and Bartram's scrub-hairstreak. Studies have documented a wide array of predators and parasitoids and, in some cases, high levels of mortality amongst immature leafwings, throughout development. Although many of the mortality factors of immature leafwing have also been shown to influence the hairstreak, to date, these studies have been limited. Disease, in the form of viruses or fungal pathogens, is known to cause mortality of the young leafwing larvae; these factors may also influence the young hairstreak larvae. Given the leafwing and hairstreak butterflies' low numbers and few occurrences, and limited distributions, it is unclear how the leafwing and hairstreak will respond to these factors.

D. The Inadequacy of Existing Regulatory Mechanisms

Under this factor, we examine whether existing regulatory mechanisms are inadequate to address the threats to the species discussed under the other factors. 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, plans, 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 strongest weight to statutes and their implementing regulations and to management direction that stems from those laws and regulations. An example would be State governmental actions enforced under a State statute or constitution, or Federal action under statute.

Having evaluated the significance of the threat as mitigated by any such conservation efforts, we analyze under Factor D the extent to which existing regulatory mechanisms are inadequate to address the specific threats to the species. Regulatory mechanisms, if they exist, may reduce or eliminate the impacts from one or more identified threats. In this section, we review existing State and Federal regulatory mechanisms to determine whether they effectively reduce or remove threats to the Florida leafwing and Bartram's scrub-hairstreak butterflies.

Existing regulatory mechanisms that could provide some protection for the Florida leafwing and Bartram's scrub-hairstreak butterflies include: (1) the National Park Service Organic Act and its implementing regulations; (2) the National Wildlife Refuge System Administration Act (16 U.S.C. 668dd–ee) as amended, and the Refuge Recreation Act (16 U.S.C. 460k–460k–4) and their implementing regulations.

Federal

National Park Service (NPS) regulations at 36 CFR 2.1 and 2.2 prohibit visitors from harming or removing wildlife, listed or otherwise, from ENP. In addition, NPS regulation 36 CFR 2.5 prohibits visitors from conducting research or collecting specimens without a permit. Although ENP was not able to provide specific information concerning poaching of butterflies or enforcement of NPS regulations protecting the butterflies and their habitats from harm the apparent online sales of the butterflies suggests that poaching could be occurring. Insufficient implementation or enforcement could become a threat to the two butterflies in the future if they continue to decline in numbers.

Special Use Permits (SUPs) are issued by the Refuges as authorized by the National Wildlife Refuge System Administration Act (16 U.S.C. 668dd–ee) as amended, and the Refuge Recreation Act. The Service's South Florida Ecological Services Office and NKDR coordinate annually on potential impacts to the Florida leafwing and Bartram's scrub-hairstreak prior to issuance of a SUP to the FKMCD (see Factor E—Pesticides, below). In addition, as discussed above (Factor A—Conservation Efforts to Reduce the Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range), the CCP for the Lower Key Refuges provides specifically for maintaining and restoring butterfly populations within NKDR, including the Bartram's scrub-hairstreak and Florida leafwing butterflies.

State

The Florida leafwing and Bartram' scrub-hairstreak butterflies are not currently listed by the State of Florida ESA, so there are no existing regulations designated to protect them.

Local

Under Miami-Dade County ordinance (Section 26–1), a permit is required to conduct scientific research (Rule 9) on county environmental lands. In addition, Rule 8 of this ordinance provides for the preservation of habitat within County parks or areas operated by the Parks and Recreation Department. We have no information to suggest that other counties within the range of the leafwing and hairstreak have regulatory mechanisms that provide any protections for these butterflies.

Summary of Factor D

In summary, existing regulatory mechanisms that help conserve the Florida leafwing and Bartram's scrub-hairstreak are present on Federal lands (ENP and NKDR) and within Miami-Dade County conservation areas. The butterflies are provided limited or no protections on State of Florida or Monroe County lands. Despite the existing regulatory mechanisms, habitat loss and modification, inconsistent fire management, poaching, and pesticide applications suggest that existing regulatory mechanisms have not been sufficient to provide for the conservation of either species.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Effects of Few, Small Populations and Isolation

The Florida leafwing and Bartram's scrub-hairstreak are vulnerable to extinction due to their severely reduced range, reduced population size, lack of metapopulation structure, few remaining populations, and relative isolation. Abundance of the Florida leafwing and Bartram's scrub-hairstreak is not known, but each butterfly is estimated to number in the hundreds, and at times, possibly much lower. Although highly dependent on individual species considered, a population of 1,000 has been suggested as marginally viable for an insect (Schweitzer, TNC, pers. comm. 2003). Schweitzer (pers. comm. 2003) has also suggested that butterfly populations of less than 200 adults per generation would have difficulty surviving over the long term. In comparison, in a review of 27 recovery plans for listed insect species, Schultz and Hammond (2003, p. 1377) found that 25 plans broadly specified metapopulation features in terms of requiring that recovery include multiple population areas (the average number of sites required was 8.2). The three plans that quantified minimum population sizes as part of their recovery criteria for butterflies ranged from 200 adults per site (Oregon silverspot *(Speyeria zerene hippolyta))* to 100,000 adults (Bay checkerspot *(Euphydryas editha bayensis)*) (Schulz and Hammond 2003, pp. 1374–1375).

Schultz and Hammond (2003, pp. 1372–1385) used population viability analyses to develop quantitative recovery criteria for insects whose population sizes can be estimated and applied this framework in the context of the Fender's blue *(Icaricia icarioides fenderi),* a butterfly listed as endangered in 2000 due to the threats on the remaining reduced population and limited remaining habitat. They found the Fender's blue to be at high risk of extinction due to agriculture practices, development activities, forestry practices, grazing, roadside maintenance, and commercial Christmas tree farming.

Losses in diversity within populations of the Florida leafwing and Bartram's scrub-hairstreak may have already occurred (Salvato, pers. comm. 2012). The leafwing and hairstreak have been extirpated from several locations where they were previously recorded (Baggett 1982, pp. 78–81; Salvato and Hennessey 2003, p. 243; 2004 p. 223). Initially described from Brickell Hammock in Coral Gables, Florida (present day Vizcaya Museum and Gardens), in the 1940s (Salvato, pers. comm. 2012), mainland populations of the leafwing have subsequently retreated with the loss, fragmentation and degradation of native pine rocklands throughout Miami-Dade County (Baggett 1982, pp. 78–81; Salvato and Hennessey 2003, p. 243). At present, the leafwing is extant only within ENP, and ongoing surveys suggest the butterfly actively disperses throughout the Long Pine Key region of the Park (Salvato and Salvato 2010, p. 91; 2010c, p. 139). Once locally common at Navy Wells and the Richmond Pine Rocklands (which occur approximately 8 and 27 km (5 and 17 mi) to the northeast of ENP, respectively), leafwings are not known to have bred at either location in more than 25 years (Salvato and Hennessey 2003, p. 243; Salvato pers. comm. 2012). In the lower Florida Keys, the leafwing had maintained a stronghold for many decades on Big Pine Key, within NKDR, until 2006 when that population disappeared due to a variety of factors (Salvato and Salvato 2010c, pp. 139–140).

The Bartram's scrub-hairstreak is extant within ENP, Navy Wells, Camp Owaissa Bauer, Richmond Pine Rocklands, as well as on Big Pine Key (Baggett 1982, pp. 80–81; Smith *et al.* 1994, pp. 118–119; Salvato and Salvato 2010b, p. 154). However, given the limited dispersal abilities of this butterfly, the distance between these sites, (Worth *et al.* 1996, p. 63; Salvato and Hennessey, p 223) and their fragmentation, it is unlikely there is any genetic exchange between locations.

Another south Florida lycaenid, the Miami blue (*Cyclargus thomasi bethunebakeri*), also appears to have been impacted by relative isolation similar to that of the hairstreak. Over the past decade, this blue butterfly was known from only two contemporary populations, Bahia Honda Key and Key West National Wildlife Refuge. Saarinen (2009, p. 79) suggested that the separation of genetic exchange between these extant populations was only recent (within the past few decades). Despite fluctuations in annual and seasonal population sizes, the Bahia Honda blue population was thought to have retained an adequate amount of genetic diversity to maintain the butterfly. However, as of 2010, the Miami blue population on the island was extirpated.

Extant hairstreak populations are likely experiencing a similar lack of continuity in genetic exchange given their current fragmented distribution. Based upon modeling with a different butterfly species, Fleishman *et al.* (2002, pp. 706–716) argued that factors such as habitat quality may influence metapopulation dynamics, driving extinction and colonization processes, especially in systems that experience substantial natural and anthropogenic environmental variability (see *Environmental Stochasticity* below). If only one or a few metapopulations remain, it is absolutely critical that remaining genetic diversity and gene flow are retained. Conservation decisions to augment or reintroduce populations should not be made without careful consideration of habitat availability, genetic adaptability, the potential for the introduction of maladapted genotypes, and other factors (Frankham 2008, pp. 325–333; Saarinen *et al.* 2009, p. 36; See Factors A–D above).

In general, isolation, whether caused by geographic distance, ecological factors, or reproductive strategy, will likely prevent the influx of new genetic material and can result in a highly inbred population with low viability or fecundity (Chesser 1983, p. 68). Natural fluctuations in rainfall, hostplant vigor, or predation may weaken a population to such an extent that recovery to a viable level would be impossible. Isolation of habitat can prevent recolonization from other sites and result in extinction. The leafwing and hairstreak are restricted to one (leafwing) or a few small (hairstreak) localized populations. The extent of habitat fragmentation makes these butterflies vulnerable to extinction.

Environmental Stochasticity

The climate of southern Florida and the Florida Keys is driven by a combination of local, regional, and global events, regimes, and oscillations. There are three main ''seasons'': (1) The wet season, which is hot, rainy, and humid from June through October, (2) the official hurricane season that extends 1 month beyond the wet season (June 1 through November 30) with peak season being August and September, and (3) the dry season, which is drier and cooler from November through May. In the dry season, periodic surges of cool and dry continental air masses influence the weather with short-duration rain events followed by long periods of dry weather.

According to the Florida Climate Center, Florida is by far the most vulnerable State in the United States to hurricanes and tropical storms *(http://coaps.fsu.edu/climate_center/tropicalweather.shtml)*. Based on data gathered from 1856 to 2008, Klotzbach and Gray (2009, p. 28) calculated the climatological and current-year probabilities for each State being impacted by a hurricane and major hurricane. Of the coastal States analyzed, Florida had the highest climatological probabilities, with a 51 percent probability of a hurricane and a 21 percent probability of a major hurricane over a 52-year time span. Florida had a 45 percent current-year probability of a hurricane and an 18 percent current-year probability of a major hurricane (Klotzbach and Gray 2009, p. 28). Given the Florida leafwing and Bartram's scrub-hairstreaks' low population sizes and few isolated occurrences within locations prone to storm influences, these butterflies are at substantial risk from hurricanes, storm surges, or other extreme weather. Depending on the location and intensity of a hurricane or other severe weather event, it is possible that the leafwing and hairstreak could become locally extirpated or extinct as a result of one event.

Other processes to be affected by climate change include temperatures, rainfall (amount, seasonal timing, and distribution), and storms (frequency and intensity). Temperatures are projected to rise from 2 °C to 5 °C (3.6 °F to 9 °F) for North America by the end of this century (IPCC 2007, pp. 7–9, 13). Based upon modeling, Atlantic hurricane and tropical storm frequencies are expected to decrease (Knutson *et al.* 2008, pp. 1–21). By 2100, there should be a 10 to 30 percent decrease in hurricane frequency with a 5 to 10 percent wind increase. This is due to more hurricane energy available for intense hurricanes. However, hurricane frequency is expected to drop because more wind shear will impede initial hurricane development. In addition to climate change, weather variables are extremely influenced by other natural cycles, such as El Niño Southern Oscillation with a frequency of every 4 to 7 years, solar cycle (every 11 years), and the Atlantic Multi-decadal Oscillation. All of these cycles influence changes in Floridian weather. The exact magnitude, direction, and distribution of all of these changes at the regional level are difficult to project.

The Florida leafwing and Bartram's scrub-hairstreak have adapted over time to the influence of tropical storms and other forms of adverse weather conditions (Minno and Emmel 1994, p. 671; Salvato and Salvato 2007, p. 154). However, given the substantial reduction in the historic range of these butterflies in the past 50 years, the threat and impact of tropical storms and hurricanes on their remaining populations is much greater than when their distribution was more widespread (Salvato and Salvato 2010a, p. 96; 2010b, p. 157; 2010c, p. 139).

During late October 2005, Hurricane Wilma caused substantial damage to the pine rocklands of northwestern Big Pine Key (Salvato and Salvato 2010c, p. 139), specifically within the Watson Hammock region of NKDR, the historic stronghold for the Florida leafwing on the island. In historical instances when leafwing and hairstreak population numbers were larger on Big Pine, such as following Hurricane Georges in 1998, these butterflies appeared able to recover soon after a storm (Salvato and Salvato 2010c, p. 139). In ENP, where leafwing and hairstreak densities remained stable, these butterflies were minimally affected by the 2005 hurricane season (Salvato and Salvato 2010a, p. 96, 2010b, p. 157). However, for the leafwing, given its substantial decline on Big Pine Key prior to Wilma, it is possible that the impact of this storm served to further hinder and reduce extant populations of the butterfly on the island (Salvato and Salvato 2010c, p. 139).

Environmental factors have likely impacted both butterflies and their habitat within their historical and current ranges. For example, unusually cold temperatures were encountered throughout southern Florida during the winters of 2009 and 2010. Sadle (pers. comm. 2009) noted frost damage on croton at ENP on Long Pine Key in late 2009, but observed living larvae earlier that year, when temperatures were at or barely above freezing (2.2 °C; 36 °F) and frost was on the ground. Frost in winter 2010 resulted in substantial dieback of native plants, including damage and widespread defoliation of the croton in Long Pine Key (Sadle, pers. comm. 2010; Land, pers. comm. 2010; Hallac *et al.* 2010, pp. 2–3). Fifty percent of the individual leafwing larvae were impacted by the cold and observed to be dead or without nearby food supplies within Long Pine Key (Hallac *et al.* 2010, p. 3). Although Salvato and Salvato (2011, p. 2) did not record increased butterfly larval mortality on their survey sites in ENP during early 2010, they did encounter larvae on frost-killed plants and indicated those larvae unable to successfully reach healthier adjacent hostplants likely perished.

During late 2010, Salvato and Salvato (2011, p. 2) noted increased larval leafwing mortality on their survey sites due to a number of factors, including cold. Sadle (pers. comm. 2011) also observed significant leaf and stem damage to croton during the same time period. A single dead leafwing larva was observed on a frost-damaged croton plant, though it is unclear if the mortality was a direct or indirect consequence of the freezing temperatures (Sadle, pers. comm. 2011). Salvato and Salvato (2011, p. 2) examined several (n = 4) dark, apparently frozen leafwing larvae during this time period, but later determined these had likely been killed from tachinid fly parasitism prior to the freeze. Sadle (pers. comm. 2011) and Salvato and Salvato (2011, p. 2) noted living larvae following the late 2010 freeze, largely in areas unaffected by the frost. From these observations, Sadle (pers. comm. 2011) suggested that frost damage may produce similar effects to loss of aboveground plant parts that results from fire. It is not clear what the short- or long-term impacts of prolonged cold periods may be on leafwing or hairstreak populations; however, it is likely that prolonged cold periods have some negative impacts on both the butterflies and their hostplant (Sadle, pers. comm. 2010; Land, pers. comm. 2010).

As described above (see *Factor C*), ongoing natural history studies by Salvato and Salvato (2012c, p. 1) indicate that the extant leafwing population within Long Pine Key experiences up to 80 percent mortality amongst immature larval stages. A similarly high mortality has been noted for the endangered Schaus swallowtail in southern Florida (Emmel 1997, p. 11). Such high levels of mortality may explain why leafwing population densities vary considerably from year to year. As with the influence of tropical storms, population-level recoveries from high rates of parasitism or other factors at a select location would historically be offset from less-affected adjacent populations. Opportunities for such population-level recovery are now severely restricted (see ''Effects of Few, Small Populations and Isolation'' in this section).

Pesticides

Efforts to control mosquitoes and other insect pests have increased as human activity and population have increased in south Florida. To control mosquito populations, organophosphate (naled) and pyrethroid (permethrin) adulticides are applied by mosquito control districts throughout south Florida. In a rare case in upper Key Largo, another organophosphate (malathion) was applied in 2011 when the number of permethrin applications reached its annual limit. All three of these compounds have been characterized as being highly toxic to nontarget insects by the U.S. Environmental Protection Agency (2002, p. 32; 2006a, p. 58; 2006b, p. 44). The use of such pesticides (applied using both aerial and ground-based methods) for mosquito control presents a potential risk to nontarget species, such as the Florida leafwing and Bartram's scrub-hairstreak.

The potential for mosquito control chemicals to drift into nontarget areas and persist for varying periods of time has been documented. Hennessey and Habeck (1989, pp. 1–22; 1991, pp. 1–68) and Hennessey *et al.* (1992, pp. 715–721) illustrated the presence of mosquito spray residues long after application in habitat of the federally endangered Schaus swallowtail (*Papilio aristodemus ponceanus*),), as well as the Florida leafwing, Bartram's scrub-hairstreak, and other imperiled species in both the upper (Crocodile Lake NWR, North Key Largo) and lower Keys (NKDR). Residues of aerially applied naled were found 6 hours after application in a pineland area that was 750 meters (820 yards) from the target area; residues of fenthion (an adulticide no longer used in the Keys) applied via truck were found up to 50 meters (55 yards) downwind in a hammock area 15 minutes after application in adjacent target areas (Hennessey *et al.* 1992, pp. 715–721).

More recently, Pierce (2009, pp. 1–17) monitored naled and permethrin deposition following application in and around NKDR from 2007 to 2009. Permethrin, applied by truck, was found to drift considerable distances from target areas with residues that persisted for weeks. Naled, applied by plane, was also found to drift into nontarget areas but was much less persistent, exhibiting a half-life of approximately 6 hours. To expand this work, Pierce (2011, pp. 6–11) conducted an additional deposition study in 2010 focusing on permethrin drift from truck spraying and again documented low but measurable amounts of permethrin in nontarget areas. In 2009, Bargar (pers. comm. 2011) conducted two field trials on NKDR that detected significant naled residues at locations within nontarget areas on the Refuge that were up to 402 meters (440 yards) from the edge of zones targeted for aerial applications. After this discovery, the Florida Key Mosquito Control District recalibrated the on-board model (Wingman©). Naled deposition was reduced in some of the nontarget zones following recalibration (Bargar 2012b, p. 3).

In addition to mosquito control chemicals entering nontarget areas, the toxic effects of mosquito control chemicals to nontarget organisms have also been documented. Lethal effects on nontarget moths and butterflies have been attributed to fenthion and naled in both south Florida and the Florida Keys (Emmel 1991, pp. 12–13; Eliazar and Emmel 1991, pp. 18–19; Eliazar 1992, pp. 29–30). Zhong *et al.* (2010, pp. 1961–1972) investigated the impact of single aerial applications of naled on the endangered Miami blue butterfly larvae in the field. Survival of butterfly larvae in the target zone was 73.9 percent, which was significantly lower than in both the drift zone (90.6 percent) and the reference (control) zone (100 percent), indicating that direct exposure to naled poses significant risk to Miami blue larvae. Fifty percent of the samples in the drift zone also exhibited detectable concentrations, once again exhibiting the potential for mosquito control chemicals to drift into nontarget areas. Bargar (pers. comm. 2011) observed cholinesterase activity depression, to a level shown to cause mortality in the laboratory, in great southern white and Gulf fritillary butterflies exposed to naled during an application on NKDR in both target and nontarget zones.

In the lower Keys, Salvato (2001, pp. 8–14) suggested that declines in populations of the Florida leafwing were also partly attributable to mosquito control chemical applications. Salvato (2001, p. 14; 2002, pp. 56–57) found relative populations of the Florida leafwing, when extant on Big Pine Key within NKDR, to increase during drier years when adulticide applications over the pinelands decreased, although Bartram's scrub-hairstreak did not follow this pattern. Salvato (2001, p. 14) suggested that butterflies, such as the leafwing, were particularly vulnerable to aerial applications based on their tendency to roost within the pineland canopy, an area with maximal exposure to aerial treatments. Because roosting sites for the Bartram's hairstreak are not well documented, more study is needed to assess their potential exposure. The role of vegetation in limiting exposure is unknown, but could be important when considering that spraying operations are conducted during early morning and late evening hours when, presumably, nontarget butterflies would be occupying roost sites (C. Anderson, pers. comm. 2013).

Toxicity data on Florida native butterflies exposed to permethrin and naled in the laboratory (Hoang *et al.* 2011, pp. 997–1005) were used to calculate hazard quotients (concentrations in the environment—concentrations causing an adverse effect) in order to assess the risk that concentrations of naled and permethrin found in the field pose to butterflies. A hazard quotient where the environmental concentration is greater than the concentration known to cause an adverse effect (mortality in this case), indicates significant risk to the organism. Environmental exposures for naled and permethrin were taken from Zhong *et al.* (2010, pp. 1961–1972) and Pierce (2009, pp. 1–17), respectively, and represent the highest concentrations of each chemical that were quantified during field studies in the Florida Keys. When using the lowest median lethal concentrations from the laboratory study, the hazard quotients for permethrin and naled indicated potential acute hazards to butterflies. Bargar (2012a, pp. 5–6) also conducted a probabilistic risk assessment using naled deposition values from NKDR and estimated that field-measured naled concentrations did pose a risk to adult butterflies of some species, particularly for species with large surface area to weight ratios.

Based on these studies, it can be concluded that mosquito control activities that involve the use of both aerial and ground-based spraying methods have the potential to deliver pesticides in quantities sufficient to cause adverse effects to nontarget species in both target and nontarget areas. It should be noted that many of the studies referenced above dealt with single application scenarios and examined effects on only one to two butterfly life stages. Under a realistic scenario, the potential exists for exposure to all life stages to occur over multiple applications in a season. In the case of a persistent compound like permethrin where residues remain on vegetation for weeks, the potential exists for nontarget species to be exposed to multiple pesticides within a season (e.g., permethrin on vegetation coupled with aerial exposure to naled).

Spraying practices by the Florida Keys Mosquito Control District (FKMCD) at NKDR have changed to reduce pesticide use over the years. In addition, larvicide treatments to surrounding islands have significantly reduced adulticide use on Big Pine Key, No Name Key, and the Torch Keys since 2003 (FKMCD 2012, p. 11). According to the Special Use Permit issued by the Service, the number of aerially applied naled treatments allowed on NKDR has been limited since 2008 (FKMCD 2012, pp. 10–11).

The Service's Integrated Pest Management (IPM) Policy (569 FW 1) establishes procedures and responsibilities for pest management activities on and off Service lands. These may include (1) Preparing pesticide use proposals (PUPs) for approval before applying pesticides; (2) entering pesticide usage information annually into the online IPM and Pesticide Use Proposal System (PUPS) database; (3) conducting Endangered Species Act consultations; and (4) following National Environmental Protection Act policies. Since these butterflies have been on the candidate list, the Service's South Florida Ecological Services Office and NKDR coordinate annually on potential impacts to the Florida leafwing and Bartram's scrub-hairstreak prior to issuance of a PUP to the FKMCD. Based on this consultation, 478 ha (1,180 ac) (705 ha (1,741 ac) of pine rockland) in the NKDR have been designated no-spray zones by agreement (as of May 2012) between the Service and FKMCD that includes the core habitat used by pine rockland butterflies (C. Anderson, pers. comm. 2012a; Service 2012, p. 32). In addition, several linear miles of pine rockland habitat within the Refuge-neighborhood interface were excluded from truck spray applications in the most sensitive habitats. These exclusions and buffer zones encompass over 95 percent of extant croton distribution on Big Pine Key, and include the majority of known extant and historical Florida leafwing and Bartram's scrub-hairstreak population centers on the island (Salvato, pers. comm. 2012). However, some areas of pine rocklands within NKDR are still sprayed with naled (aerially applied adulticide), and buffer zones remain at risk from drift; additionally, private residential areas and roadsides across Big Pine Key are treated with permethrin (ground-based applied adulticide) (Salvato 2001, p. 10). Therefore, the hairstreak and, if extant, the leafwing and their habitat on Big Pine Key may be directly or indirectly (via drift) exposed to adulticides used for mosquito control at some unknown level. Although there is evidence that mosquito control practices may influence butterfly species, limited information currently exists about population-level impacts. Actual impacts to the Florida leafwing and Bartram's scrub-hairstreak from mosquito control are unknown at this time; however, additional research is under way to quantify risk.

The Service will ensure compliance with our Pest Management Policy and the Act. We anticipate the need to expand existing buffer and no spray zones to include all hostplant-containing areas on the NKDR, as well as implement other measures (e.g., use more larvicides and less adulticides) to prevent adverse impacts to the butterflies and their habitat (on and off NKDR). Any changes to the pesticide application protocol will be closely coordinated with FKMCD. In addition, field monitoring may be required to demonstrate that application of pesticides in areas adjacent to Florida leafwing and Bartram's scrub-hairstreak habitat does not result in drift into the no spray zones, as has been documented in previous studies.

In general Long Pine Key in ENP does not appear to be regularly impacted by mosquito control practices, except for the use of adulticides (e.g., Sumithrin (Anvil)) in Park residential areas and campgrounds. Housing areas, maintenance areas, outside work areas for park maintenance staff and contractors, and areas near buildings have been sprayed in the past (Perry, pers. comm. 2007). Spraying occurred within ENP following hurricanes in 2005 (Perry, pers. comm. 2008). Subsequently, however, no spraying has been conducted in or near Long Pine Key. Populations of these butterflies occurring adjacent to and outside ENP in suitable and potential habitat within Miami-Dade County are also vulnerable to the lethal and sublethal effects of adulticide applications. However, mosquito control pesticide use within Miami-Dade County pine rockland areas is limited (approximately 2 to 4 times per year, and only within a portion of proposed critical habitat) (Vasquez, pers. comm. 2013)

In summary, although substantial progress has been made in reducing impacts, the potential effects of mosquito control applications and drift residues remain a threat to both butterflies.

Summary of Factor E

Based on our analysis of the best available information, we have identified several natural and manmade factors affecting the continued existence of the Florida leafwing and Bartram's scrub-hairstreak. Effects of small population size, isolation, and loss of genetic diversity are likely significant threats. Given the existing few populations and small size of the populations, environmental stochasticity may also contribute to imperilment. Other natural (e.g., changes to habitat) and anthropogenic factors (e.g., pesticides, fire, processes affected by climate change) are also identifiable threats.

Cumulative Effects of Threats Under Factor E

The limited distributions and small population sizes of the Florida leafwing and Bartram's scrub-hairstreak make them extremely susceptible to habitat loss, degradation, and modification and other anthropogenic threats. Mechanisms leading to the decline of the Florida leafwing and Bartram's scrub-hairstreak, as discussed above, range from local (e.g., a lack of adequate fire management, fragmentation, poaching), to regional (e.g., development, pesticides), to global influences (e.g., climate change, sea level rise). The synergistic (interaction of two or more components) effects of threats (such as hurricane effects on a species with a limited distribution consisting of just a few small populations) make it difficult to predict population viability. While these stressors may act in isolation, it is more probable that many stressors are acting simultaneously (or in combination) on Florida leafwing and Bartram's scrub-hairstreak populations.

Cumulative Effects: Factors A Through E

Florida Leafwing

The Florida leafwing has been extirpated (no longer in existence) from nearly 96 percent of its historical range; the only known extant population occurs within ENP in Miami-Dade County. Threats of habitat loss and fragmentation, including climatic change (*Factor A*), poaching (*Factor B*), parasitism, predation (*Factor C*), small population size, restricted range, and influence of chemical pesticides used for mosquito control (*Factor E*), still exist for the only remaining population.

Because there is only one small extant population of this butterfly, and limited law enforcement, collection has and continues to be a significant threat to this butterfly. Existing regulatory mechanisms (*Factor D*) are inadequate to protect this butterfly. The leafwing may be impacted when pine rocklands are converted to other uses or when lack of fire causes the conversion to habitats that are unsuitable for this butterfly. Because the remaining population is isolated and the butterfly has a limited ability to recolonize historically occupied habitats that are now highly fragmented, it is vulnerable to natural or human-caused changes in its habitats. As a result, impacts from increasing threats, singly or in combination, are likely to result in the extinction of the butterfly as there is no redundancy of populations.

Bartram's Scrub-Hairstreak

The Bartram's scrub-hairstreak has been extirpated from nearly 93 percent of its historical range; only five isolated metapopulations remain on Big Pine Key in Monroe County, Long Pine Key in ENP, and relict pine rocklands adjacent to the Park in Miami-Dade County. All 5 of these populations are, in part, on protected lands. Threats of habitat loss and fragmentation from lack of fire (*Factor A*), poaching (*Factor B*), disease, predation (*Factor C*), small population size, restricted range, influence of chemical pesticides used for mosquito control, and sea level rise (*Factor E*) still exist for the remaining populations. Because there are only five small populations of the hairstreak, and limited law enforcement, collection has and continues to be a significant threat to this butterfly. Existing regulatory mechanisms (*Factor D*) are inadequate to protect this butterfly from poaching. Because populations are isolated and the butterfly has a limited ability to recolonize historically occupied habitats that are now highly fragmented, it is vulnerable to natural or human-caused changes in its habitats. The remaining populations become less resilient and are not capable of recovering from the threats. As a result, impacts from increasing threats, singly or in combination, are likely to result in the extinction of the hairstreak.

Habitat loss, fragmentation, and degradation, and associated pressures from increased human population are major threats; these threats are expected to continue, placing these butterflies at greater risk. Although efforts are being made to conserve natural areas and apply prescribed fire, the long-term effects of large-scale and wide-ranging habitat modification, destruction, and curtailment will last into the future. Based on our analysis of the best available information, there is no evidence to suggest that vulnerability to collection and risks associated with scientific or conservation efforts will change and, instead, are likely to continue into the future. At this time, we consider predation, parasitism, and disease to be threats to both butterflies due to their current tenuous statuses. We have no information to suggest that vulnerability to these threats will change in the future. Based on our analysis of the best available information, we find that existing regulatory mechanisms, due to their inherent limitations and constraints, are inadequate to address threats to these butterflies throughout their ranges. We have no information to indicate that poaching, inconsistent fires, pesticide use, or habitat loss will be ameliorated in the future by enforcement of existing regulatory mechanisms.

Therefore, we find it reasonably likely that the effects on the Florida leafwing and Bartram's scrub-hairstreak will continue at current levels or potentially increase in the future. Effects of small population size, isolation, and loss of genetic diversity are likely significant threats as well as natural changes to habitat and anthropogenic factors (e.g., pesticides, fire, processes affected by climate change). Collectively, these threats have impacted the butterflies in the past, are impacting these butterflies now, and will continue to impact these butterflies in the future.

Determination

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Florida leafwing and Bartram's scrub-hairstreak butterflies. As described in detail above, both butterflies are currently at risk throughout all of their respective ranges due to the immediacy, severity, and scope of threats from habitat destruction and modification (*Factor A*), overutilization (*Factor B*), disease or predation (*Factor C*), inadequacy of existing regulatory mechanisms (*Factor D*), and other natural or manmade factors affecting their continued existence (*Factor E*). These stressors have had profound adverse effects on Florida leafwing and Bartram's scrub-hairstreak populations and the pine rockland habitat. As a result, impacts from increasing threats, singly or in combination, are likely to result in the extinction of these butterflies.

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.'' We find that the Florida leafwing butterfly is presently in danger of extinction throughout its entire range based on the severity and immediacy of threats currently impacting the subspecies. The overall range has been significantly reduced; the remaining habitat and population is threatened by a variety of factors acting in combination to reduce the overall viability of the subspecies. The risk of extinction is high because the remaining population is small, isolated, and the potential for recolonization is limited based on habitat loss and fragmentation, mosquito control, poaching, parasitism, predation, and climatic change.

The Florida leafwing and Bartram's scrub-hairstreak butterflies are highly restricted in their ranges and threats occur throughout their ranges. Therefore, we assessed the status of the species throughout their entire ranges. The threats to the survival of the species occur throughout the species' ranges and are not restricted to any particular significant portion of those ranges. Accordingly, our assessment and proposed determination applies to both the species throughout their entire ranges.

Therefore, on the basis of the best available scientific and commercial information, we propose listing the Bartram's scrub-hairstreak butterfly as endangered in accordance with sections 3(6) and 4(a)(1) of the Act. We find that a threatened species status is not appropriate for the Bartram's scrub-hairstreak butterfly because of the severity and immediacy of the threats, its restricted range (93 percent loss), threats are occurring rangewide and are not localized, its five small populations, and because the threats are ongoing and expected to continue into the future.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened 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 and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan identifies site-specific management actions that set a trigger for review of the five factors that control whether a species remains endangered or 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 South Florida 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 range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If these butterflies are 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, under section 6 of the Act, the State of Florida would be eligible for Federal funds to implement management actions that promote the protection and recovery of Florida leafwing and Bartram's scrub-hairstreak butterflies. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Although Florida leafwing and Bartram's scrub-hairstreak are only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for these butterflies. Additionally, we invite you to submit any new information on these butterflies 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 consultation with the Service.

Federal agency actions within these butterflies' habitat that may require conference or consultation or both as described in the preceding paragraph include management and any other landscape-altering activities on Federal lands administered by the Department of Defense, National Park Service, and U.S. Fish and Wildlife Service; construction and maintenance of roads or highways by the Federal Highway Administration; flood insurance and disaster relief efforts conducted by the Federal Emergency Management Agency; and pesticide treatments required by the U.S. Department of Agriculture or Florida Department of Agriculture and Consumer Services in the event of emergency pest outbreak.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions of section 9(a)(2) of the Act, codified at 50 CFR 17.21 for endangered wildlife, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. Under the Lacey Act (18 U.S.C. 42–43; 16 U.S.C. 3371–3378), it is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

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.

The Service acknowledges that it cannot fully address some of the natural threats facing the Florida leafwing and Bartram's scrub-hairstreak (e.g., hurricanes, tropical storms) or even some of the other significant, long-term threats (e.g., climatic changes, sea level rise). However, through listing, we provide protection to the known population(s) and any new population of these butterflies that may be discovered (see section 9 of Available Conservation Measures below). With listing, we can also influence Federal actions that may potentially impact these butterflies (see section 7 below); this is especially valuable if they are found at additional locations. With this action, we are also better able to deter illicit collection and trade.

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 estimate that the following activities would be likely to result in a violation of section 9 of the Act; however, possible violations are not limited to these actions alone:

(1) Unauthorized possession, collecting, trapping, capturing, killing, harassing, sale, delivery, or movement, including interstate and foreign commerce, or harming or attempting any of these actions, of the Florida leafwing or Bartram's scrub-hairstreak butterflies (research activities where the Florida leafwing or Bartram's scrub-hairstreak are handled, captured (e.g., netted, trapped), marked, or collected will require authorization pursuant to the Act).

(2) Incidental take of the Florida leafwing or Bartram's scrub-hairstreak without authorization pursuant to section 7 or section 10(a)(1)(B) of the Act.

(3) Sale or purchase of specimens of these taxa, except for properly documented antique specimens at least 100 years old, as defined by section 10(h)(1) of the Act.

(4) Unauthorized destruction or alteration of the Florida leafwing or Bartram's scrub-hairstreak habitat (including unauthorized grading, leveling, plowing, mowing, burning, herbicide spraying, or pesticide application) in ways that kills or injures individuals by significantly impairing these butterflies' essential breeding, foraging, sheltering, or other essential life functions.

(5) Unauthorized use of pesticides or herbicides resulting in take of the Florida leafwing or Bartram's scrub-hairstreak butterflies.

(6) Unauthorized release of biological control agents that attack any life stages of these taxa.

(7) Unauthorized removal or destruction of pineland croton, the hostplant utilized by the Florida leafwing or Bartram's scrub-hairstreak butterflies, within areas used by the butterflies that result in harm to the butterflies.

(8) Release of nonnative species into occupied Florida leafwing and Bartram's scrub-hairstreak habitat that may displace the butterflies or their native host plants.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Field Supervisor of the Service's South Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**). Requests for copies of regulations regarding listed species and inquiries about prohibitions and permits should be addressed to the U.S. Fish and Wildlife Service, Ecological Services Division, Endangered Species Permits, 1875 Century Boulevard, Atlanta, GA 30345 (Phone 404–679–7140; 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 our listing designation is based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during this public comment period.

We will consider all comments and information received during this comment period on this proposed rule during our preparation of a final determination. Accordingly, the final decision may differ from this proposal.

Public Hearings

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Required Determinations

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 an endangered or threatened species under the Endangered Species 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 references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the South Florida Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the South Florida 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 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; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; unless otherwise noted.

■ 2. In § 17.11(h) add new entries for ''Butterfly, Bartram's scrub-hairstreak'' and ''Butterfly, Florida leafwing'' to the List of Endangered and Threatened

Wildlife in alphabetical order under Insects to read as set forth below:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endanged or threatened	Status	Family	When listed	Critical habitat	Special rules
Common name	Scientific name							
*	*	*	*		*	*		*
INSECTS								
*	*	*	*		*	*		*
Butterfly, Bartram's scrub-hairstreak.	*Strymon acis bartrami*.	U.S.A. (FL)	Entire	E	Lycaenidae	....	....	NA
*	*	*	*		*	*		*
Butterfly, Florida leafwing.	*Anaea troglodyta floridalis*.	U.S.A. (FL)	Entire	E	Nymphalidae ...	....	....	NA
*	*	*	*		*	*		*

Dated: August 2, 2013.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2013–19794 Filed 8–14–13; 8:45 am]

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CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

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