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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2011–0040]

RIN 0579–AD52

Importation of Mangoes From Australia Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning the importation of fruits and vegetables to allow the importation of fresh mangoes from Australia into the continental United States. As a condition of entry, the mangoes would have to be produced in accordance with a systems approach employing a combination of mitigation measures for the fungus *Cytosphaera mangiferae* and would have to be inspected prior to exportation from Australia and found free of this disease. The mangoes would have to be imported in commercial consignments only and would have to be treated by irradiation to mitigate the risk of the mango seed weevil and fruit flies. The mangoes would also have to be accompanied by a phytosanitary certificate with an additional declaration that the conditions for importation have been met. This action would allow the importation of mangoes from Australia while continuing to protect against the introduction of plant pests into the United States.

DATES: *Effective Date:* October 21, 2013.

FOR FURTHER INFORMATION CONTACT: Dr. Inder P. S. Gadh, Senior Risk Manager–Treatments, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 851–2018.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–59, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

The national plant protection organization (NPPO) of Australia has requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow fresh mangoes from Australia to be imported into the continental United States under a combination of mitigations to reduce the risk of introducing plant pests.

On October 25, 2011, we published in the **Federal Register** (76 FR 65988–65991, Docket No. APHIS–2011–0040) a proposal [1] to amend the regulations concerning the importation of fruits and vegetables to allow the importation of fresh mangoes from Australia into the continental United States. We prepared a pest risk assessment (PRA), titled ''Importation of Fresh Fruit of Mango, *Mangifera indica* L., from Australia into the Continental United States: A Pathway-initiated Risk Analysis'' (June 2011). The PRA evaluated the risks associated with the importation of mangoes into the continental United States from Australia. Based on the information contained in the PRA, APHIS determined that measures beyond standard port-of-entry inspection are required to mitigate the risks posed by these quarantine pests. To recommend specific measures to mitigate those risks, we prepared a risk management document (RMD).

Based on the RMD, we proposed requirements for mangoes to be produced in accordance with a systems approach employing a combination of mitigation measures for the fungus *Cytosphaera mangiferae* and to be inspected prior to exportation from Australia and found free of this disease. We proposed to require the mangoes to be imported in commercial consignments only and to be treated by irradiation to mitigate the risk of the mango seed weevil and fruit flies. We also proposed to require the mangoes to be accompanied by a phytosanitary certificate with an additional declaration that the conditions for importation have been met.

We solicited comments concerning the PRA and RMD for 60 days ending December 27, 2011. We received three comments by that date. They were from a State department of agriculture, a group of State departments of agriculture, and the Government of Australia. The comments are discussed below.

In order to mitigate the risks posed by *C. mangiferae,* which we consider to be of medium risk of introduction and dissemination within the continental United States, we proposed three options: (1) The mangoes be treated with a broad-spectrum post-harvest fungicidal dip, (2) the mangoes originate from an orchard that was inspected prior to the beginning of harvest during the growing season and the orchard was found free of *C. mangiferae,* or (3) the mangoes originate from an orchard that was treated with a broad-spectrum fungicide during the growing season and was inspected prior to harvest and the fruit was found free of *C. mangiferae.*

One commenter was in support of these three mitigation options for *C. mangiferae;* however, the commenter stated that requiring packinghouse inspection to determine freedom from symptoms is unnecessary if one of the fungicide treatment options is administered.

We consider the inspection at the packinghouse to be necessary to ensure that the fungicide treatments were effective. Conducting a final phytosanitary inspection to ensure freedom from pests is standard procedure for all import commodities. Overlapping mitigation measures such as treatment and inspection are characteristic of system approaches. APHIS requires the same mitigation options for *C. mangiferae* for mangoes imported from India and Pakistan, a policy that has resulted in no interceptions of the disease at U.S. ports of entry.

One commenter suggested that the systems approach include both the use of a pre-harvest broad spectrum fungicide and the use of a broad-spectrum post-harvest fungicidal dip to prevent the introduction of *C.*

[1] To view the proposed rule, PRA, RMD, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0040.*

mangiferae, in addition to packinghouse and port of entry inspections.

We have determined that requiring both treatments is unnecessary since *C. mangiferae* has not been found during inspections of mangoes imported from India and Pakistan under the same mitigation measures, which indicates that those measures are effective.

One commenter requested the removal of all mitigation measures for *Fusarium* spp. associated with mango malformation disease (MMD). The commenter stated that MMD is not considered a quarantine pest by the United States with respect to mangoes imported from other countries. In addition, the commenter presented evidence that MMD has been successfully eradicated from Australia and that the sole pathogen associated with MMD in Australia is *Fusarium mangiferae,* which is already present in the United States. Furthermore, the commenter stated that studies indicate that commercially produced mangoes are not a pathway for the introduction of MMD.

We consider MMD to be a quarantine pest for all countries; when susceptible commodities have been authorized for importation without MMD mitigations, we have administratively added requirements for MMD. However, based on the information provided by the commenter, we have determined that *F. mangiferae* is the sole causal agent associated with MMD in Australia and that it is absent from Australia due to Australia's successful official control efforts for MMD. In response, we have revised the PRA and the RMD to reflect Australia's freedom from causal agents associated with MMD, and this final rule omits the proposed mitigations for *Fusarium* spp. complex associated with MMD.

The PRA identified *Lasiodiplodia pseudotheobromae, Neoscytalidium novaehollandiae, Neofusicoccum mangiferae,* and *Pseudofusicoccum adansoniae* as pathogens associated with mangoes. One commenter stated that there is no evidence that these pathogens are associated with mango fruit in natural environments; all work cited in the PRA as establishing these pathogens as pests of mangoes was under artificial conditions. The commenter noted the conditions proposed for Australian mangoes require that mangoes be imported to the continental United States in commercial consignments only, which would remove these pathogens from the pathway. In addition, the commenter stated that the PRA only mentions *N. mangiferae* in the introduction and presents no evidence that this species is associated with mango fruit. Therefore, the commenter requested that requirements related to these pathogens be removed from the rule.

The PRA addressed *N. mangiferae* and included additional references that document the stem end rot (SER) of mango fruit caused by *N. mangiferae* known to occur in Australia. The pathogen also has been documented under many synonyms (*Dothiorella mangiferae, Nattrassia mangiferae,* and *Fusicoccum mangiferum*), which may account for the confusion about this species associated with mango fruit rot in Australia.

The remaining species, *L. pseudotheobromae, N. novaehollandiae,* and *P. adansoniae,* are recently reported and appear to have limited distribution in Australia. These pathogens were isolated from stems and twigs of mango trees showing dieback and canker symptoms in orchards, were shown to infect fruit in artificial inoculations, and were not isolated from naturally infected mango fruit. However, a range of other related fungal species cause SER of mango, including *Neofusicoccum parvum, Neofusicoccum mangiferae, Botryosphaeria dothidea,* and *Lasiodiplodia theobromae.* These pathogens may become established in mango plants without expressing symptoms, but stress or ripening trigger disease development, expressed as SER, cankers, and mango decline. These newly reported pathogens of mango likely occupy a similar niche associated with mango in which the pathogens switch from quiescent to pathogenic in the plant tissue, and may affect a range of plant parts of their hosts. For this reason, these pathogens are considered to follow the pathway with mango fruit in trade. All of these details and corresponding references are included in the PRA. Therefore, we stand by our determination that the conditions we proposed to mitigate those pathogens are necessary.

One commenter requested that we add two mitigation options for the mango seed weevil (*Sternochetus mangiferae*) for mangoes from specific areas of Australia. The commenter suggests that we accept area freedom from the mango seed weevil for Western Australia and pest free places of production for the mango seed weevil for the Katherine production area of the Northern Territory.

With regard to the proposal for area freedom from the mango seed weevil from Western Australia, we appreciate the information that those areas are historically free of the mango seed weevil and that the States maintain controls on the import of mango fruit from areas of Australia that are not free of this pest. We will request additional information from the commenter, specifically references from scientific literature, information from Australian scientists, and/or State records, to establish that the States are historically free of the mango seed weevil. This additional information would allow us to determine whether to recognize Western Australia as free of the mango seed weevil through the process for recognition of pest-free areas described in § 319.56–5.

With regard to the commenter's request to allow mangoes from pest-free places of production from the Katherine production area of the Northern Territory to be imported into the continental United States, we will evaluate Australia's program for establishing pest-free places of production. If we determine that the program is effective, we will publish our evaluation in the **Federal Register** and request public comment.

One commenter presented evidence that visual inspection to detect scales on the smooth surface of mangoes is sufficient in detecting *Ceroplastes rubens.*

The PRA published with the proposal gave *C. rubens* a High risk rating, which means that mitigation measures beyond visual inspection are strongly recommended. However, we have recently changed the rating criteria in our PRA guidelines for Climate-Host Interaction. Specifically, we no longer count *C. rubens'* survival in USDA Plant Hardiness Zone 11 towards the Climate-Host Interaction risk element rating because that zone comprises approximately 0.1 percent of the United States. Making this change in the PRA for Australian mangoes lowered the overall risk rating for *C. rubens* by one point, from High (27 points) to Medium (26 points). A Medium risk rating indicates that specific phytosanitary measures may be necessary for the pest unless inspection can serve as an effective mitigation.

The soft scale *C. rubens* is a surface pest which is readily visible upon inspection, so no measures other than culling practices in Australia and inspection are necessary to remove this pest from the pathway. Therefore, we will not require irradiation treatment to mitigate *C. rubens.*

We proposed to require mangoes to be treated by irradiation for plant pests of the class Insecta, except pupae and adults of the order Lepidoptera, in accordance with 7 CFR part 305. The prescribed 400-gray approved dose for this class of pests was necessary to neutralize *C. rubens.* Because we no

longer consider irradiation for *C. rubens* to be necessary, however, we are instead requiring mangoes to be treated by irradiation for the mango seed weevil and for fruit flies of the family Tephritidae in accordance with 7 CFR part 305. The approved dose for the mango seed weevil, as indicated in the Plant Protection and Quarantine (PPQ) Treatment Manual,[2] is 300 gray. However, if we recognize pest-free areas or pest-free places of production for the mango seed weevil, we would reduce the required dose to 150 gray, which is the approved dose indicated in the PPQ Treatment Manual for fruit flies of the family Tephritidae.

One commenter supported the irradiation of mangoes for inspected pests; however, the commenter requested that irradiation of these commodities be conducted prior to importation into the United States to eliminate the possible risk of pest escape prior to treatment.

As described in the proposed rule, we are requiring mangoes from Australia to be treated with irradiation to neutralize all plant pests of the class Insecta, except pupae and adults of the order Lepidoptera. In part 305, § 305.9 specifies the requirements for the irradiation of imported commodities. These requirements provide effective safeguards for articles irradiated either prior to or after arrival in the United States.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Note: In our October 2011 proposed rule, we proposed to add the conditions governing the importation of mangoes from Australia as § 319.56–54. In this final rule, those conditions are added as § 319.56–60.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

The United States produces approximately 3,000 metric tons per year, about one-hundredth of 1 percent of world production. U.S. mango production is concentrated in the States of Florida, Hawaii, California, and Texas and produced primarily for local markets. While U.S. mango production is limited, the United States is the world's leading importer of fresh mangoes, receiving 33 percent of imports worldwide.

Mango imports from Australia are expected to total about 1,200 metric tons per year. This represents approximately 0.5 percent of total U.S. mango imports. The imports from Australia will likely help meet growing demand in all States. While most if not all U.S. mango farms and mango importers are small entities, it is unlikely that additional mango imports of 1,200 metric tons will cause a noteworthy decrease in mango prices or otherwise substantially affect the market, especially given the expanding U.S. demand for this fruit. Moreover, the Australian mango season, mid-September to mid-April, is the opposite of that in the United States; the fresh mangoes imported from Australia will not compete directly with those produced domestically.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule allows mangoes to be imported into the continental United States from Australia. State and local laws and regulations regarding mangoes imported under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

The information collection burden associated with the proposed rule was preapproved by the Office of Management and Budget (OMB) under OMB control number 0579–0391. As required by the Paperwork Reduction Act of 1995, APHIS will submit (or has submitted) an Information Collection Request for extension of this approval. Any new information collection requirements are not effective until approval by OMB.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. A new § 319.56–60 is added to read as follows:

§ 319.56–60 Mangoes from Australia.

Mangoes (*Mangifera indica*) may be imported into the continental United States from Australia only under the following conditions:

(a) The mangoes may be imported in commercial consignments only.

(b) The mangoes must be treated by irradiation for the mango seed weevil (*Sternochetus mangiferae*) and fruit flies of the family Tephritidae in accordance with part 305 of this chapter.

(c) The risks presented by *Cytosphaera mangiferae* must be addressed in one of the following ways:

(1) The mangoes are treated with a broad-spectrum post-harvest fungicidal dip;

(2) The mangoes originate from an orchard that was inspected prior to the beginning of harvest during the growing season and the orchard was found free of *C. mangiferae;* or

(3) The mangoes originate from an orchard that was treated with a broad-spectrum fungicide during the growing season and was inspected prior to

[2] The PPQ Treatment Manual may be viewed at *http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/treatment.pdf.*

harvest and the mangoes are found free of *C. mangiferae.*

(d) Prior to export from Australia, the mangoes must be inspected by the national plant protection organization (NPPO) of Australia and found free of *Cytosphaera mangiferae, Lasiodiplodia pseudotheobromae, Neofusicoccum mangiferae, Neoscytalidium novaehollandiae, Pseudofusicoccum adansoniae, Phomopsis mangiferae,* and *Xanthomomas campestris* pv. *mangiferaeindicae.*

(e)(1) Each consignment of fruit must be accompanied by a phytosanitary certificate issued by the NPPO of Australia with additional declarations that:

(i) The mangoes were subjected to one of the pre- or post-harvest mitigation options described in paragraph (c) of this section, and

(ii) The mangoes were inspected prior to export from Australia and found free of *C. mangiferae, L. pseudotheobromae, N. mangiferae, N. novaehollandiae, P. adansoniae, P. mangiferae,* and *X. campestris* pv. *mangiferaeindicae.*

(2) If the fruit is treated with irradiation outside the United States, each consignment of fruit must be inspected jointly by APHIS and the NPPO of Australia, and be accompanied by the phytosanitary certificate certifying that the fruit was treated with irradiation in accordance with part 305 of this chapter.

(Approved by the Office of Management and Budget under control number 0579–0391)

Done in Washington, DC, this 13th day of September 2013.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–22786 Filed 9–18–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. FAA–2013–0650; Notice No. 23–13–01–SC]

Special Conditions: Eclipse, EA500, Certification of Autothrottle Functions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Eclipse EA500 airplane. This airplane as modified by Innovative Solutions and Support (IS&S) will have a novel or unusual design feature(s) associated with the autothrottle system (ATS). 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: The effective date of these special conditions is September 11, 2013.

FOR FURTHER INFORMATION CONTACT: Mark S. Orr, FAA, Programs and Procedures Branch, ACE–114, Small Airplane Directorate, Aircraft Certification Service, 901 Locust; Kansas City, Missouri 64106; telephone (816) 329–4151; facsimile (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Background

On April 15, 2011, Innovative Solutions and Support (IS&S) applied for a supplemental type certificate for an update to the aircraft software to activate the previously installed autothrottle provisions in the EA500. The EA500 is a pressurized monoplane with provisions for up to six persons (standard seating five people) and may be operated as a single or two pilot aircraft (reference Minimum Flight Crew Limitation, AFM 06–122204 Rev 4 section 2–4). The airplane is operated under 14 CFR part 91 with standard systems installed and under 14 CFR part 135 with additional equipment installed. The Eclipse Model EA500 was certificated under part 23 by the FAA on September 30, 2006 (Type Certificate A00002AC) with autothrottle provisions (i.e., motors and controls) installed yet rendered inactive through ''collaring'' of the ATS motor Electronic Circuit Breaker (ECB). Under the original Type Certification program, no certification credit was received nor the regulatory basis established for the autothrottle functions of the Eclipse Model EA500 aircraft.

Current part 23 airworthiness regulations do not contain appropriate safety standards for autothrottle system (ATS) installations, so special conditions are required to establish an acceptable level of safety. Part 25 regulations contain appropriate safety standards for these systems, so the intent for this project is to apply the language in § 25.1329 for the autothrottle, substituting § 23.1309 and § 23.143 in place of the similar part 25 regulations referenced in § 25.1329.

Type Certification Basis

Under the provisions of § 21.101, IS&S must show that the EA500, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in A00002AC or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in A00002AC are as follows:

14 CFR Part 23 through Amendment 55 (except 14 CFR 23.1303 Amendment 23–62), Part 34 through Amendment 34–3, and Part 36 through Amendment 36–26.

Special Conditions:

23–128–SC for Engine Fire Extinguishing System

23–121–SC for Electronic Engine Control System

23–112A–SC for High Intensity Radiated Fields (HIRF) Protection

Equivalent Levels of Safety Findings:

ACE–02–19: 14 CFR 23.777(d) and 23.781 Fuel Cutoff Control

ACE–05–32: 14 CFR 23.1545(a) and 23.1581(d) for Indicated Airspeeds

ACE–05–34: 14 CFR 23.181(b), Dynamic Stability

ACE–05–35: 14 CFR 23.1353(h), Storage Battery Design and Installation

ACE–05–36: 14 CFR 23.1323(c), Airspeed Indicating System

ACE–06–01: 14 CFR 23.1545(b)(4), Airspeed Indicator

ACE–06–05: 14 CFR part 23, Appendix H, § H23.5, Installation of an Automatic Power Reserve System

ACE–07–04: 14 CFR 23.1545(b)(4), Airspeed Indicator

ACE–08–12, 14 CFR 23.201(b)(2) Wings Level Stall, and 23.203(a), Turning Flight and Accelerated Turning Stalls for flight into known icing (FIKI)

If the Administrator finds that the applicable airworthiness regulations (i.e., part 23) do not contain adequate or appropriate safety standards for the EA500 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 applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the EA500 must comply with the fuel vent and exhaust emission requirements of part 34 and the noise certification requirements of part 36.

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

Novel or Unusual Design Features

The EA500 will incorporate the following novel or unusual design features: Innovative Solutions and Support (IS&S) has applied for a Supplemental Type Certificate (STC) to update the aircraft software for implementation of an autothrottle function on the EA500 aircraft. Included with the software upgrade is the activation of previously installed autothrottle provisions. Since the current part 23 airworthiness regulations do not contain appropriate safety standards for ATS installations, special conditions are required to establish an acceptable level of safety. Part 25 regulations contain appropriate safety standards for these systems, so the intent for this project is to apply the language in § 25.1329 for the autothrottle, substituting § 23.1309 and § 23.143 in place of the similar part 25 regulations referenced in § 25.1329. In addition, proper function of the ATS must be demonstrated according to § 23.1301 in a manner acceptable to the administrator, as prior evaluations of the system components included in the existing type design did not include demonstration of proper installed function on the ground or in the air.

Discussion

Part 23 at this time does not sufficiently address autothrottle technology and safety concerns. Therefore, special conditions must be developed and applied to this project to ensure an acceptable level of safety has been obtained. For approval to use the ATS during flight, the Eclipse EA500 airplane must demonstrate compliance to the intent of the requirements of § 25.1329, applying the appropriate part 23 references to § 23.1309 (to include performing FHA/SSA to determine the appropriate/applicable Software and Airborne Electronic Hardware assurance levels) and § 23.143 and the following special conditions:

The following special conditions, derived from § 25.1329, are issued for the Eclipse EA500 airplane:

(a) Quick disengagement controls for the autothrust functions must be provided for each pilot. The autothrust quick disengagement controls must be located on the thrust control levers. Quick disengagement controls must be readily accessible to each pilot while operating the thrust control levers.

(b) The effects of a failure of the system to disengage the autothrust functions when manually commanded by the pilot must be assessed in accordance with the requirements of Sec. 23.1309.

(c) Engagement or switching of the flight guidance system, a mode, or a sensor may not cause the autothrust system to effect a transient response that alters the airplane's flight path any greater than a minor transient, as defined in paragraph (l)(1) of this section.

(d) Under normal conditions, the disengagement of any automatic control function of a flight guidance system may not cause a transient response of the airplane's flight path any greater than a minor transient.

(e) Under rare normal and non-normal conditions, disengagement of any automatic control function of a flight guidance system may not result in a transient any greater than a significant transient, as defined in paragraph (l)(2) of this section.

(f) The function and direction of motion of each command reference control, such as heading select or vertical speed, must be plainly indicated on, or adjacent to, each control if necessary to prevent inappropriate use or confusion.

(g) Under any condition of flight appropriate to its use, the flight guidance system may not produce hazardous loads on the airplane, nor create hazardous deviations in the flight path. This applies to both fault-free operation and in the event of a malfunction, and assumes that the pilot begins corrective action within a reasonable period of time.

(h) When the flight guidance system is in use, a means must be provided to avoid excursions beyond an acceptable margin from the speed range of the normal flight envelope. If the airplane experiences an excursion outside this range, a means must be provided to prevent the flight guidance system from providing guidance or control to an unsafe speed.

(i) The flight guidance system functions, controls, indications, and alerts must be designed to minimize flightcrew errors and confusion concerning the behavior and operation of the flight guidance system. Means must be provided to indicate the current mode of operation, including any armed modes, transitions, and reversions. Selector switch position is not an acceptable means of indication. The controls and indications must be grouped and presented in a logical and consistent manner. The indications must be visible to each pilot under all expected lighting conditions.

(j) Following disengagement of the autothrust function, a caution (visual and auditory) must be provided to each pilot.

(k) During autothrust operation, it must be possible for the flightcrew to move the thrust levers without requiring excessive force. The autothrust may not create a potential hazard when the flightcrew applies an override force to the thrust levers.

(l) For purposes of this section, a transient is a disturbance in the control or flight path of the airplane that is not consistent with response to flightcrew inputs or environmental conditions.

(1) A minor transient would not significantly reduce safety margins and would involve flightcrew actions that are well within their capabilities. A minor transient may involve a slight increase in flightcrew workload or some physical discomfort to passengers or cabin crew.

(2) A significant transient may lead to a significant reduction in safety margins, an increase in flightcrew workload, discomfort to the flightcrew, or physical distress to the passengers or cabin crew, possibly including non-fatal injuries. Significant transients do not require, in order to remain within or recover to the normal flight envelope, any of the following:

(i) Exceptional piloting skill, alertness, or strength.

(ii) Forces applied by the pilot which are greater than those specified in Sec. 23.143(c).

(iii) Accelerations or attitudes in the airplane that might result in further hazard to secured or non-secured occupants.

The applicant must also functionally demonstrate independence between the left and right ATS installation to prove they cannot have a single point failure that is not extremely improbable that inadvertently leads to a loss of thrust, or to substantial uncommanded thrust changes and transients, in both engines simultaneously.

Discussion of Comments

Notice of proposed special conditions No. 23–13–01–SC for the Eclipse EA500 airplane was published in the **Federal Register** on July 31, 2013, (78 FR 46295). No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the EA500. Should IS&S apply at a later date for a supplemental type certificate to modify any other model included on A00002AC to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model EA500 of airplanes. It is not a rule of general applicability and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

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

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 Eclipse EA500 airplanes modified by IS&S.

1. Certification of Autothrottle Functions under Part 23.

The following special conditions, derived from § 25.1329, are issued for the Eclipse EA500 airplane:

(a) Quick disengagement controls for the autothrust functions must be provided for each pilot. The autothrust quick disengagement controls must be located on the thrust control levers. Quick disengagement controls must be readily accessible to each pilot while operating the thrust control levers.

(b) The effects of a failure of the system to disengage the autothrust functions when manually commanded by the pilot must be assessed in accordance with the requirements of Sec. 23.1309.

(c) Engagement or switching of the flight guidance system, a mode, or a sensor may not cause the autothrust system to effect a transient response that alters the airplane's flight path any greater than a minor transient, as defined in paragraph (l)(1) of this section.

(d) Under normal conditions, the disengagement of any automatic control function of a flight guidance system may not cause a transient response of the airplane's flight path any greater than a minor transient.

(e) Under rare normal and non-normal conditions, disengagement of any automatic control function of a flight guidance system may not result in a transient any greater than a significant transient, as defined in paragraph (l)(2) of this section.

(f) The function and direction of motion of each command reference control, such as heading select or vertical speed, must be plainly indicated on, or adjacent to, each control if necessary to prevent inappropriate use or confusion.

(g) Under any condition of flight appropriate to its use, the flight guidance system may not produce hazardous loads on the airplane, nor create hazardous deviations in the flight path. This applies to both fault-free operation and in the event of a malfunction, and assumes that the pilot begins corrective action within a reasonable period of time.

(h) When the flight guidance system is in use, a means must be provided to avoid excursions beyond an acceptable margin from the speed range of the normal flight envelope. If the airplane experiences an excursion outside this range, a means must be provided to prevent the flight guidance system from providing guidance or control to an unsafe speed.

(i) The flight guidance system functions, controls, indications, and alerts must be designed to minimize flightcrew errors and confusion concerning the behavior and operation of the flight guidance system. Means must be provided to indicate the current mode of operation, including any armed modes, transitions, and reversions. Selector switch position is not an acceptable means of indication. The controls and indications must be grouped and presented in a logical and consistent manner. The indications must be visible to each pilot under all expected lighting conditions.

(j) Following disengagement of the autothrust function, a caution (visual and auditory) must be provided to each pilot.

(k) During autothrust operation, it must be possible for the flightcrew to move the thrust levers without requiring excessive force. The autothrust may not create a potential hazard when the flightcrew applies an override force to the thrust levers.

(l) For purposes of this section, a transient is a disturbance in the control or flight path of the airplane that is not consistent with response to flightcrew inputs or environmental conditions.

(1) A minor transient would not significantly reduce safety margins and would involve flightcrew actions that are well within their capabilities. A minor transient may involve a slight increase in flightcrew workload or some physical discomfort to passengers or cabin crew.

(2) A significant transient may lead to a significant reduction in safety margins, an increase in flightcrew workload, discomfort to the flightcrew, or physical distress to the passengers or cabin crew, possibly including non-fatal injuries. Significant transients do not require, in order to remain within or recover to the normal flight envelope, any of the following:

(i) Exceptional piloting skill, alertness, or strength.

(ii) Forces applied by the pilot which are greater than those specified in Sec. 23.143(c).

(iii) Accelerations or attitudes in the airplane that might result in further hazard to secured or non-secured occupants.

The applicant must also functionally demonstrate independence between the left and right ATS installation to prove they cannot have a single point failure that is not extremely improbable that inadvertently leads to a loss of thrust, or to substantial uncommanded thrust changes and transients, in both engines simultaneously.

Issued in Kansas City, Missouri, on September 11, 2013.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–22848 Filed 9–18–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30922; Amdt. No. 3557]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

DATES: *Effective Date:* 0901 UTC, October 17, 2013.

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

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC, on September 17, 2013.

John Duncan,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, October 17, 2013.

■ 1. The authority citation for part 95 continues to read as follows:

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

■ 2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINT

[Amendment 509 effective date October 17, 2013]

From	To	MEA	MAA
§ 95.3000 Low Altitude RNAV Routes			
§ 95.3212 RNAV Route T212 Is Amended by Adding			
RASHE, PA FIX	SELINSGROVE, PA VORTAC	4000	17500
SELINSGROVE, PA VORTAC	DIANO, PA FIX	3700	17500
DIANO, PA FIX	WILKES-BARRE, PA VORTAC	5000	17500
WILKES-BARRE, PA VORTAC	LAAYK, PA FIX	4000	17500
LAAYK, PA FIX	WEETS, NY FIX	4700	17500
Is Amended To Read in Part			
WEETS, NY FIX	NELIE, CT FIX	3500	17500
NELIE, CT FIX	PUTNAM, CT VOR/DME	3000	17500
§ 95.3216 RNAV Route T216 Is Added To Read			
PHILIPSBURG, PA VORTAC	WILLIAMSPORT, PA VOR/DME	4200	17500
WILLIAMSPORT, PA VOR/DME	ELEXY, PA WP	4500	17500
ELEXY, PA WP	LAAYK, PA FIX	4100	17500
LAAYK, PA FIX	HELON, NY FIX	4000	17500
HELON, NY FIX	KINGSTON, NY VOR/DME	4000	17500
KINGSTON, NY VOR/DME	MOONI, CT FIX	3200	17500
MOONI, CT FIX	HARTFORD, CT VOR/DME	3200	17500
HARTFORD, CT VOR/DME	GROTON, CT VOR/DME	2600	17500
GROTON, CT VOR/DME	SANDY POINT, RI VOR/DME	*2000	17500
*1500—MOCA			
SANDY POINT, RI VOR/DME	NANTUCKET, MA VOR/DME	2000	17500
§ 95.3218 RNAV Route T218 Is Added To Read			
STONYFORK, PA VOR/DME	LAAYK, PA FIX	4200	17500
LAAYK, PA FIX	SPARTA, NJ VORTAC	4000	17500
§ 95.3221 RNAV Route T221 Is Added To Read			
MAZIE, PA FIX	ALLENTOWN, PA VORTAC	*3000	17500
*2200—MOCA			
ALLENTOWN, PA VORTAC	BINGHAMTON, NY VORTAC	4000	17500
§ 95.3287 RNAV Route T287 Is Added To Read			
DENNN, VA WP	CAARY, VA WP	*5200	10000
*3400—MOCA			
CAARY, VA WP	WILMY, VA WP	*6900	10000
*6100—MOCA			
WILMY, VA WP	KAIJE, VA WP	*5400	10000
*4900—MOCA			
KAIJE, VA WP	BAMMY, WV WP	5500	10000
BAMMY, WV WP	REEES, PA WP	*5000	10000
*4300—MOCA			
REEES, PA WP	TOMYD, MD WP	*5000	10000
*3800—MOCA			

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINT—Continued

[Amendment 509 effective date October 17, 2013]

From	To	MEA	MAA
§ 95.3291 RNAV Route T291 Is Amended by Adding			
HARRISBURG, PA VORTAC	SELINSGROVE, PA VORTAC	3300	17500
SELINSGROVE, PA VORTAC	MILTON, PA VORTAC	3200	17500
MILTON, PA VORTAC	MEGSS, PA FIX	3500	17500
MEGSS, PA FIX	LAAYK, PA FIX	4000	17500
LAAYK, PA FIX	DELANCEY, NY VOR/DME	4400	17500
DELANCEY, NY VOR/DME	ALBANY, NY VORTAC	5600	17500
§ 95.3295 RNAV Route T295 Is Amended by Adding			
LANCASTER, PA VORTAC	WILKES–BARRE, PA VORTAC	4000	17500
WILKES–BARRE, PA VORTAC	LAAYK, PA FIX	4000	17500
LAAYK, PA FIX	SAGES, NY FIX	6400	17500
SAGES, NY FIX	SASHA, MA FIX	6100	17500
SASHA, MA FIX	KEENE, NH VORTAC	3600	17500
KEENE, NH VORTAC	CONCORD, NH VORTAC	5000	17500
CONCORD, NH VORTAC	KENNEBUNK, ME VOR/DME	3000	17500
KENNEBUNK, ME VOR/DME	BRNNS, ME FIX	3000	17500
BRNNS, ME FIX	BANGOR, ME VORTAC	3000	17500
BANGOR, ME VORTAC	PRINCETON, ME VOR/DME	3100	17500
§ 95.3299 RNAV Route T299 Is Added To Read			
UCREK, VA WP	KAIJE, VA WP	5000	10000
KAIJE, VA WP	BAMMY, WV WP	5500	10000
BAMMY, WV WP	REEES, PA WP	*5000	10000
*4300—MOCA			
REEES, PA WP	SCAPE, PA FIX	*5000	10000
*3800—MOCA			
§ 95.4000 High Altitude RNAV Routes			
§ 95.4080 RNAV ROUTE Q80 Is Amended To Read in Part			
FAREV, KY WP	JEDER, KY WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
§ 95.4436 RNAV Route Q436 Is Added To Read			
EMMMA, MI FIX	DIXSN, MI WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
DIXSN, MI WP	BOOTT, MI WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
BOOTT, MI WP	RRONS, MI WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
RRONS, MI WP	YARRK, CA WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
YARRK, CA WP	CHAAP, CA WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
CHAAP, CA WP	RAAKK, NY WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
RAAKK, NY WP	HERBA, NY WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
HERBA, NY WP	REXXY, NY WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
REXXY, NY WP	REBBL, PA WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
REBBL, PA WP	MTCAF, PA WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
MTCAF, PA WP	DGRAF, PA WP	*18000	45000

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINT—Continued

[Amendment 509 effective date October 17, 2013]

From	To	MEA	MAA
*18000—GNSS MEA *DME/DME/IRU MEA			
DGRAF, PA WP	YYOST, PA WP	*18000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
YYOST, PA WP	LAAYK, PA FIX	*18000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
LAAYK, PA FIX	COATE, NJ FIX	*18000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
§ 95.4438 RNAV Route Q438 Is Added To Read			
RUBYY, MI WP	FLINT, MI VORTAC	*18000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
FLINT, MI VORTAC	BERYS, MI WP	*18000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
BERYS, MI WP	TWIGS, MI WP	*18000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
TWIGS, MI WP	JAAJA, CA WP	*18000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
JAAJA, CA WP	ICHOL, CA WP	*18000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
ICHOL, CA WP	FARGN, CA WP	*18000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
FARGN, CA WP	RAAKK, NY WP	*18000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
§ 95.4440 RNAV Route Q440 Is Added To Read			
SLLAP, MI WP	FLINT, MI VORTAC	*18000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
FLINT, MI VORTAC	BERYS, MI WP	*18000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
BERYS, MI WP	TWIGS, MI WP	*18000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
TWIGS, MI WP	JAAJA, CA WP	*18000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
JAAJA, CA WP	ICHOL, CA WP	*18000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
ICHOL, CA WP	FARGN, CA WP	*18000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
FARGN, CA WP	RAAKK, NY WP	*18000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			

From	To	MEA
§ 95.6001 VICTOR ROUTES-U.S § 95.6002 VOR Federal Airway V2 Is Amended To Read in Part		
BADGER, WI VORTAC	SUDDS, WI FIX	2900
SUDDS, WI FIX	LYSTR, MI FIX	*4000
*2500—MOCA		
LYSTR, MI FIX	MUSKEGON, MI VORTAC	#
#UNUSEABLE		

From	To	MEA
§ 95.6058 VOR Federal Airway V58 Is Amended To Read in Part		
HELON, NY FIX	KINGSTON, NY VOR/DME	4000
Is Amended To Delete		
WILLIAMSPORT, PA VOR/DME	LOPEZ, PA FIX	4500
LOPEZ, PA FIX	LAKE HENRY, PA VORTAC	4000
LAKE HENRY, PA VORTAC	KINGSTON, NY VOR/DME	4000
§ 95.6066 VOR Federal Airway V66 Is Amended To Read in Part		
RALEIGH/DURHAM, NC VORTAC	FRANKLIN, VA VORTAC	2600
§ 95.6093 VOR Federal Airway V93 Is Amended To Read in Part		
WILKES-BARRE, PA VORTAC	LAAYK, PA FIX.	
NE BND		*5000
SW BND		*4000
*4000—MOCA		
HELON, NY FIX	KINGSTON, NY VOR/DME	4000
Is Amended To Delete		
WILKES–BARRE, PA VORTAC	LAKE HENRY, PA VORTAC	4000
LAKE HENRY, PA VORTAC	HELON, NY FIX	4000
§ 95.6106 VOR Federal Airway V106 Is Amended To Read in Part		
WILKES–BARRE, PA VORTAC	LAAYK, PA FIX.	
NE BND		*5000
SW BND		*4000
*4000—MOCA		
Is Amended To Delete		
WILKES–BARRE, PA VORTAC	LAKE HENRY, PA VORTAC	4000
LAKE HENRY, PA VORTAC	WEARD, NY FIX	4000
WEARD, NY FIX	WEETS, NY FIX	6000
		MAA—14500
WEETS, NY FIX	PAWLING, NY VOR/DME.	
W BND		6000
E BND		4000
PAWLING, NY VOR/DME	COBOL, MA FIX	*4000
*3500—MOCA		
COBOL, MA FIX	BARNES, MA VORTAC	3500
§ 95.6126 VOR Federal Airway V126 Is Amended To Delete		
STONYFORK, PA VOR/DME	LAKE HENRY, PA VORTAC	4000
LAKE HENRY, PA VORTAC	SPARTA, NJ VORTAC	4000
§ 95.6129 VOR Federal Airway V129 Is Amended To Read in Part		
SPINNER, IL VORTAC	PEORIA, IL VORTAC	2500
§ 95.6140 VOR Federal Airway V140 Is Amended To Read in Part		
PANHANDLE, TX VORTAC	ZESUS, TX FIX	*5800
*4900—MOCA		
ZESUS, TX FIX	SAYRE, OK VORTAC.	
E BND		*5000
W BND		*5800
*4500—MOCA		
§ 95.6149 VOR Federal Airway V149 Is Amended To Delete		
MAZIE, PA FIX	ALLENTOWN, PA VORTAC	#*6000
*3000—GNSS MEA		
#ALLENTOWN R–157 UNUSABLE		
ALLENTOWN, PA VORTAC	LAKE HENRY, PA VORTAC	4000
LAKE HENRY, PA VORTAC	BINGHAMTON, NY VORTAC	4000

From	To	MEA
Is Amended To Read in Part		
ALLENTOWN, PA VORTAC *4000—MOCA	BINGHAMTON, NY VORTAC	*5000
§ 95.6153 VOR Federal Airway V153 Is Amended To Delete		
LAKE HENRY, PA VORTAC	GROWS, NY FIX	4500
GROWS, NY FIX *3800—MOCA *4000—GNSS MEA	GEORGETOWN, NY VORTAC	*4500
GEORGETOWN, NY VORTAC	SYRACUSE, NY VORTAC	4000
§ 95.6194 VOR Federal Airway V194 Is Amended To Read in Part		
COLLEGE STATION, TX VORTAC *2000—MOCA *2000—GNSS MEA	PRARI, TX FIX	*7000
PRARI, TX FIX *7000—MCA SEALY, TX FIX, NW BND **3500—MOCA **3500—GNSS MEA	*SEALY, TX FIX	**7000
§ 95.6212 VOR Federal Airway V212 Is Amended To Read in Part		
JOHON, LA FIX *2000—MOCA	SETTA, MS FIX	*4000
SETTA, MS FIX *2000—MOCA	MC COMB, MS VORTAC	*3000
§ 95.6216 VOR Federal Airway V216 Is Amended To Read in Part		
JANESVILLE, WI VOR/DME #UNUSEABLE	WIPED, WI FIX	#
WIPED, WI FIX #UNUSEABLE	PETTY, WI FIX	#
PETTY, WI FIX #UNUSEABLE	SQUIB, MI FIX	#
SQUIB, MI FIX #UNUSEABLE	MUSKEGON, MI VORTAC	#
§ 95.6245 VOR Federal Airway V245 Is Amended To Read in Part		
NATCHEZ, MS VOR/DME	MAGNOLIA, MS VORTAC	3500
§ 95.6270 VOR Federal Airway V270 Is Amended To Read in Part		
BINGHAMTON, NY VORTAC	DELANCEY, NY VOR/DME	4500
§ 95.6345 VOR Federal Airway V345 Is Amended To Delete		
HAYWARD, WI VOR/DME *6000—MRA *10000—MCA GRASS, WI FIX, SW BND **3000—MOCA **4000—GNSS MEA #HAYWARD UNUSABLE BELOW 10000	*GRASS, WI FIX	#**10000
*GRASS, WI FIX *6000—MRA **2900—MOCA **3000—GNSS MEA	ASHLAND, WI VOR/DME	**4000
§ 95.6408 VOR Federal Airway V408 Is Amended To Delete		
ALLENTOWN, PA VORTAC	LAKE HENRY, PA VORTAC	4000
LAKE HENRY, PA VORTAC	PRNCE, NY FIX	6000 MAA— 15000
PRNCE, NY FIX	SAGES, NY FIX	6400 MAA— 15000
§ 95.6449 VOR Federal Airway V449 Is Amended To Delete		
MILTON, PA VORTAC	MEGSS, PA FIX	#3500

From	To	MEA
#GNSS MEA		
MEGSS, PA FIX	LAKE HENRY, PA VORTAC	#4000
#GNSS MEA		
LAKE HENRY, PA VORTAC	DELANCEY, NY VOR/DME	4300
DELANCEY, NY VOR/DME	ALBANY, NY VORTAC	5000
§ 95.6494 VOR Federal Airway V494 Is Amended To Read in Part		
SANTA ROSA, CA VOR/DME	POPES, CA FIX	5000
POPES, CA FIX	*RAGGS, CA FIX	5100
*8500—MRA		
*RAGGS, CA FIX	SACRAMENTO, CA VORTAC	5100
*8500—MRA		
§ 95.6548 VOR Federal Airway V548 Is Amended To Read in Part		
HOBBY, TX VOR/DME	*SEALY, TX FIX	2000
*7000—MCA SEALY, TX FIX, NW BND		
SEALY, TX FIX	PRARI, TX FIX	*7000
*3500—MOCA		
*3500—GNSS MEA		
PRARI, TX FIX	COLLEGE STATION, TX VORTAC	*7000
*2000—MOCA		
*2000—GNSS MEA		
§ 95.6566 VOR Federal Airway V566 Is Amended To Read in Part		
MUSHE, LA FIX	FISTY, LA FIX	*4000
*1700—MOCA		
FISTY, LA FIX	*WRACK, LA FIX	#
*4000—MRA		
#ALEXANDRIA R–106 UNUSABLE BEYOND 48 NM		
#UNUSABLE		
§ 95.6569 VOR Federal Airway V569 Is Amended To Read in Part		
FRANKSTON, TX VOR/DME	CEDAR CREEK, TX VORTAC	2500
§ 95.6615 VOR Federal Airway V615 Is Amended To Read in Part		
RALEIGH/DURHAM, NC VORTAC	DUFFI, NC FIX	2600
§ 95.6436 ALASKA VOR Federal Airway V436 Is Amended To Read in Part		
CHANDALAR LAKE, AK NDB	*ARTIC, AK FIX	10000
*7000—MCA ARTIC, AK FIX, SE BND		
ARTIC, AK FIX	PIPET, AK FIX.	
	SE BND	*10000
	NW BND	*6000
*4500—MOCA		
*5000—GNSS MEA		
PIPET, AK FIX	BIXER, AK FIX.	
	SE BND	*10000
	NW BND	*5000
*3900—MOCA		
*4000—GNSS MEA		
BIXER, AK FIX	ARCON, AK FIX.	
	SE BND	10000
	NW BND	3000
ARCON, AK FIX	DEADHORSE, AK VOR/DME.	
	SE BND	10000
	NW BND	2000
§ 95.6438 ALASKA VOR Federal Airway V438 Is Amended To Read in Part		
RIGGS, AK FIX	OILEE, AK FIX.	
	SE BND	10000
	NW BND	8000
OILEE, AK FIX	WIMAN, AK FIX.	
	SE BND	10000
	NW BND	5000
WIMAN, AK FIX	UVALL, AK FIX.	
	SE BND	*10000
	NW BND	*4000
*3200—MOCA		

From	To	MEA
UVALL, AK FIX	DEADHORSE, AK VOR/DME.	
	SE BND	10000
	NW BND	2000
DEADHORSE, AK VOR/DME	OOSIK, AK FIX.	
	W BND	*6000
	E BND	*2000
*1300—MOCA		
TUNDA, AK FIX	BARROW, AK VOR/DME.	
	E BND	*6000
	W BND	*3000
*1500—MOCA		

§ 95.6447 ALASKA VOR Federal Airway V447 Is Amended To Read in Part

*DOMEY, AK FIX	TATTA, AK FIX.	
	NW BND	**11000
	SE BND	**7000
*7000—MRA		
**5400—MOCA		

§ 95.6504 ALASKA VOR Federal Airway V504 Is Amended To Read in Part

DERIK, AK FIX	MUKTU, AK FIX.	
	S BND	*10000
	N BND	*7000
*3800—MOCA		
MUKTU, AK FIX	SHELO, AK FIX.	
	S BND	*10000
	N BND	*5000
*3000—MOCA		
SHELO, AK FIX	DEADHORSE, AK VOR/DME.	
	S BND	10000
	N BND	2000

From	To	MEA	MAA
§ 95.7001 Jet Routes			
§ 95.7036 Jet Route J36 Is Amended To Delete			
FLINT, MI VORTAC	U.S. CANADIAN BORDER	18000	45000
U.S. CANADIAN BORDER	DUNKIRK, NY VORTAC	18000	45000
DUNKIRK, NY VORTAC	MTCAF, PA FIX	31000	45000
MTCAF, PA FIX	LAKE HENRY, PA VORTAC	18000	37000
LAKE HENRY, PA VORTAC	SPARTA, NJ VORTAC	18000	45000
§ 95.7068 Jet Route J68 Is Amended To Delete			
FLINT, MI VORTAC	U.S. CANADIAN BORDER	18000	45000
U.S. CANADIAN BORDER	DUNKIRK, NY VORTAC	18000	45000

Airway segment		Changeover points	
From	To	Distance	From
§ 95.8003 VOR Federal Airway Changeover Point V2 Is Amended To Modify Changeover Point			
BADGER, WI VORTAC	MUSKEGON, MI VORTAC	56	BADGER.
V216 Is Amended To Delete Changeover Point			
JANESVILLE, WI VOR/DME	MUSKEGON, MI VORTAC	92	JANESVILLE.
V245 Is Amended To Add Changeover Point			
NATCHEZ, MS VOR/DME	MAGNOLIA, MS VORTAC	25	NATCHEZ.

[FR Doc. 2013–22863 Filed 9–18–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2013–0663]

RIN 1625–AA00

Safety Zone; 2013 Annual Islamorada Swim for Alligator Lighthouse, Atlantic Ocean; Islamorada, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of the Atlantic Ocean in Islamorada, Florida, during the 2013 Annual Islamorada Swim for Alligator Lighthouse on September 21, 2013. The safety zone is necessary to provide for the safety of life on navigable waters during the event. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Key West or a designated representative.

DATES: This rule will be enforced from 8 a.m. until 2 p.m. on September 21, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2013–0663]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call or email Marine Science Technician First Class Ian G. Bowes, Sector Key West Prevention Department, Coast Guard; telephone (305) 292–8809 ext. 5, email *Ian.G.Bowes@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive necessary information about the event with sufficient time to publish an NPRM and to receive public comments prior to the event. Any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to minimize potential danger to the race participants, participant vessels, spectators, and the general public.

For the same reason discussed above, under *5 U.S.C. 553(d)(3)* the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The purpose of the rule is to protect race participants, participant vessels, spectators, and the general public from the hazards associated with the event.

C. Discussion of the Final Rule

On September 21, 2013, Friends of the Pool, Inc. is hosting the 1st Annual Islamorada Swim for Alligator Lighthouse. The event will be held on the waters of the Atlantic Ocean located in Islamorada, Florida. Approximately 300 swimmers will be participating in the race. It is anticipated that at least 10 spectator vessels will be present during the races.

The safety zone encompasses certain waters of the Atlantic Ocean located in Islamorada, Florida. The safety zone will be enforced from 8 a.m. until 2 p.m. on September 21, 2013. All persons and vessels, except those persons and vessels participating in the event, are prohibited from entering, transiting, anchoring, or remaining within the safety zone. Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the safety zone by contacting the Captain of the Port Key West by telephone at 305–292–8727, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the race area is granted by the Captain of the Port Key West or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Key West or a designated representative. The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

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

The economic impact of this rule is not significant for the following reasons: (1) The safety zone will only be enforced for six hours; (2) vessel traffic in the area is expected to be minimal during the enforcement period; (3) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the safety zone without authorization from the Captain of the Port Key West or a designated representative, they may operate in the surrounding area during the enforcement period; (4) persons and vessels may still enter, transit through, anchor in, or remain within the safety zone if authorized by the Captain of the Port Key West or a designated representative; and (5) the Coast Guard will provide advance notification of the safety zone to the local maritime

community by Local Notice to Mariners and Broadcast Notice to Mariners.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of the Atlantic Ocean encompassed within the safety zone from 8 a.m. until 2 p.m. on September 21, 2013. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under Figure 2–1, paragraph (34)(g), of the Commandant Instruction. This rule involves establishing a temporary safety zone that will be enforced for a total of six hours. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add a temporary § 165.T07–0956 to read as follows:

§ 165.T07–0956 Safety Zone; Annual Islamorada Swim for Alligator Lighthouse, Atlantic Ocean, Islamorada, FL.

(a) *Regulated Area.* The following regulated area is a moving safety zone: all waters extending 100 yards to either side of the race participants and safety vessels; extending 50 yards in front of the lead safety vessel preceding the first race participants; and extending 50 yards behind the safety vessel trailing the last race participants. The swimmers will begin at the beach at The Moorings Village Resort in approximate position 24°54′49″ N, 80°38′02″ W, and will move South approximately four miles to and around Alligator Reef Lighthouse in approximate position 24°51′05″ N, 80°37′07″ W, and back to origin. All coordinates are North American Datum 1983.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Key West in the enforcement of the regulated area.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Key West or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Key West by telephone at (305) 292–8727, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Key West or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Key West or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Effective Date.* This rule will be enforced from 8 a.m. until 2 p.m. on September 21, 2013.

Dated: September 5, 2013.

J.W. Reed,

Commander, U.S. Coast Guard, Alternate Captain of the Port Key West.

[FR Doc. 2013–22759 Filed 9–18–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0800]

Safety Zone; Fireworks Event in Captain of the Port New York Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone in the Captain of the Port New York Zone on the specified date and time. This action is necessary to ensure the safety of vessels and spectators from hazards associated with fireworks displays. During the enforcement period, no person or vessel may enter the safety zone without permission from the Captain of the Port (COTP).

DATES: The regulation for the safety zone described in 33 CFR 165.160 will be enforced on the date and time listed in the table below.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Lieutenant Junior Grade Kimberly Beisner, Coast Guard; telephone 718–354–4163, email *Kimberly.A.Beisner@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone listed in 33 CFR 165.160 on the specified date and time as indicated in Table 1 below. This regulation was published in the **Federal Register** on November 9, 2011 (76 FR 69614).

TABLE 1

1. Association of Indians in America Fireworks, Seaport, East River Safety Zone 33 CFR 165.160(4.4)	• Launch site: All waters of the East River south of the Brooklyn Bridge and north of a line drawn from the southwest corner of Pier 3, Brooklyn, to the southeast corner of Pier 6, Manhattan. • Date: October 6, 2013. • Rain Date: October 7, 2013. • Time: 6:45 p.m.–8:10 p.m.

Under the provisions of 33 CFR 165.160, a vessel may not enter the regulated area unless given express permission from the COTP or the designated representative. Spectator vessels may transit outside the regulated area but may not anchor, block, loiter in, or impede the transit of other vessels. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 165.160(a) and 5 U.S.C. 552 (a). In addition to this notice in the **Federal Register**, the Coast Guard will provide mariners with advanced notification of enforcement periods via the Local Notice to Mariners and marine information broadcasts. If the COTP determines that the regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: September 4, 2013.

G. Loebl,

Captain, U.S. Coast Guard, Captain of the Port New York.

[FR Doc. 2013–22757 Filed 9–18–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0741]

RIN 1625–AA00

Safety Zone; America's Cup Aerobatic Box, San Francisco Bay, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing safety zones in the

navigable waters of the San Francisco Bay near Pier 27 in San Francisco, CA in support of 2013 America's Cup air shows. These safety zones are established to provide a clear area on the water for pilots to initiate maneuvers and also provide for the safety of pilots, spectators, and other vessels transiting the area in the unlikely event that an aircraft crashes during the air show. All persons or vessels are prohibited from entering the safety zones and all persons or vessels are prohibited from anchoring or otherwise loitering in the area during the scheduled events without the permission of the Captain of the Port or their designated representative.

DATES: This rule is effective as to persons with actual notice starting September 6, 2013. This rule is effective September 19, 2013, for purposes of 5 U.S.C. 552 enforcement. This rule will be in effect until September 23, 2013. This rule will be enforced on September 6, 2013 from 6 p.m. until 7 p.m., September 7, 2013 from 11:30 a.m. until 12:30 p.m., and any other time an air show event is scheduled to take place within the effective period as announced by America's Cup Race Management.

ADDRESSES: Documents mentioned in this preamble are part of Docket Number USCG–2013–0741. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Open Docket Folder'' on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Junior Grade Joshua Dykman, U.S. Coast Guard Sector San Francisco; telephone (415) 399–3585 or email at *D11-PF-MarineEvents@uscg.mil.* If you have questions on viewing or submitting material to the docket, call the Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

ACRM America's Cup Race Management
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking

A. Regulatory History and Information

On January 30, 2012, the Coast Guard published a notice of proposed rulemaking (NPRM) proposing to regulate the on-water activities associated with the ''America's Cup World Series'' regattas in 2012 and the ''Louis Vuitton Cup,'' ''Red Bull Youth America's Cup,'' and ''America's Cup Finals Match'' scheduled to occur in July, August, and September, 2013 (77 FR 04501). After reviewing all comments received in response to the NPRM, the Coast Guard published a temporary final rule on July 17, 2012, that created a special local regulation (SLR) and safety zone, establishing regulated areas on the water to enhance safety and maximize access to the affected waterways during the America's Cup sailing events (77 FR 41902).

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(d)(3), for the same reasons noted earlier, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The U.S. Coast Guard was notified on August 02, 2013 that America's Cup Race Management (ACRM) was planning on conducting air shows in the navigable waters of the San Francisco Bay near Pier 27 on several days throughout the month of September, 2013. The America's Cup air show activities would occur before the rulemaking process would be completed, and delaying the effective date of this rule to allow for a comment period would be both impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect spectators and vessels from the hazards associated aircraft performing aerobatic maneuvers in the navigable waters of the San Francisco Bay near Pier 27. The safety zones are necessary to provide a clear area on the water for pilots to initiate maneuvers and also provide for the safety of pilots, spectators, and other vessels transiting the area in the unlikely event that an aircraft crashes during the air show. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

B. Basis and Purpose

The legal basis for the proposed rule is 33 U.S.C. 1231; 46 U.S.C Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish safety zones.

The Coast Guard has decided to establish safety zones in the navigable waters of the San Francisco Bay near Pier 27 in San Francisco, CA in support of America's Cup air shows to mitigate the dangers posed by aircraft executing aerobatic maneuvers in the navigable waters of the San Francisco Bay near Pier 27.

C. Discussion of the Final Rule

The Coast Guard is establishing safety zones in the navigable waters of the San Francisco Bay near Pier 27 in San Francisco, CA during the America's Cup air shows in September of 2013 to ensure the safety of pilots participating in the air shows and spectators viewing the air show from the water. The safety zones will be effective from September 6, 2013 to September 23, 2013.

The Coast Guard will enforce the safety zones on September 6, 2013 from 6 p.m. until 7 p.m., September 7, 2013 from 11:30 a.m. until 12:30 p.m., and any other time an air show event is scheduled to place within the effective period as announced by America's Cup Race Management. The safety zones will encompass the navigable waters of the San Francisco Bay within a shape bounded by the following coordinates: 37°49′12″ N, 122°24′10″ W; 37°48′50″ N, 122°24′35″ W; 37°48′04″ N, 122°23′30″ W; 37°48′26″ N, 122°23′05″ W; thence back to the point of origin (NAD 83). At the conclusion of the scheduled events the safety zones shall terminate.

The effect of the safety zones will be to provide a clear area on the water for pilots to initiate maneuvers and also provide for the safety of pilots, spectators, and other vessels transiting the area in the unlikely event that an aircraft crashes during the air show. At the conclusion of the scheduled air shows, the safety zones shall terminate. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in safety zones.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

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

We expect the economic impact of this rule does not rise to the level of necessitating a full Regulatory Evaluation. The safety zone and no loitering area are limited in duration, and are limited to a narrowly tailored geographic area. In addition, although this rule restricts access to a small section of the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will have access to the no loitering area during the event. The entities most likely to be affected are waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities.

2. Impact on Small Entities

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

This rule may affect owners and operators of waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities and sightseeing. The safety zones would not have a significant economic impact on a substantial number of small entities for the following reasons. The safety zones would be activated, and thus subject to enforcement, for a limited duration. When the safety zones are activated, vessel traffic could pass safely around the safety zone. The maritime public will be advised in advance of these safety zones via Broadcast Notice to Mariners.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone of limited size and duration. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant

Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add temporary § 165–T11–594 to read as follows:

§ 165–T11–594 Safety zone; America's Cup Aerobatic Box, San Francisco Bay, San Francisco, CA

(a) *Location.* These temporary safety zones are established for the navigable waters of the San Francisco Bay near Pier 27 in San Francisco, CA as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18650. The safety zone will encompass the navigable waters of the San Francisco Bay within a shape bounded by the following coordinates: 37°49′12″ N, 122°24′10″ W; 37°48′50″ N, 122°24′35″ W; 37°48′04″ N, 122°23′30″ W; 37°48′26″ N, 122°23′05″ W; thence back to the point of origin (NAD 83).

(b) *Enforcement periods.* This section will be enforced on September 6, 2013 from 6 p.m. until 7 p.m., September 7, 2013 from 11:30 a.m. until 12:30 p.m., and any other time an air show event is scheduled to take place within the effective period as announced by America's Cup Race Management. This section will be in effect until September 23, 2013. The Captain of the Port San Francisco (COTP) will notify the maritime community of periods during which this zone will be enforced via Broadcast Notice to Mariners in accordance with 33 CFR 165.7 or via actual notice on-scene.

(c) *Regulations.* (1) The safety zone is closed to all persons and vessels.

(2) The public can contact Sector San Francisco Bay at (415) 399–3530 to obtain information concerning enforcement of this rule.

(d) *Enforcement.* All persons and vessels must comply with the instructions of the COTP or the designated on-scene patrol personnel. Patrol personnel comprise commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels. The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by local law enforcement as necessary. Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel must proceed as directed.

Dated: September 5, 2013.

Gregory G. Stump,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2013–22760 Filed 9–18–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0087]

Security Zone; Protection of Military Cargo, Captain of the Port Zone Puget Sound

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Sitcum Waterway Security Zone in Commencement Bay, Tacoma, Washington from 6 a.m. on September 12, 2013 through 11:59 p.m. on September 20, 2013 unless cancelled sooner by the Captain of the Port. This action is necessary for the security of Department of Defense assets and military cargo in the navigable waters of Puget Sound and adjacent waters. Entry into this zone is prohibited unless otherwise exempted or excluded under 33 CFR 165.1321 or unless authorized by the Captain of the Port or his Designated Representative.

DATES: The regulations in 33 CFR 165.1321 will be enforced from 6 a.m. on September 12, 2013 through 11:59 p.m. on September 20, 2013, unless cancelled sooner by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email LTJG Johnny Zeng, Sector Puget Sound Waterways Management Division, Coast Guard; telephone 206–217–6051, email *SectorPugetSound WWM@uscg.mil*.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Sitcum Waterway Security Zone set forth in paragraph (c)(2) of 33 CFR 165.1321 on September 12, 2013 at 6:00 a.m. through 11:59 p.m. on September 20, 2013 unless cancelled sooner by the Captain of the Port or Designated Representative. Under the provisions of 33 CFR 165.1321, the Coast Guard published a final rule for the security of Department of Defense assets and military cargo in the navigable waters of Puget Sound and adjacent waters. The security zone will provide for the regulation of vessel traffic in the vicinity of military cargo loading facilities in the navigable waters of the United States. The security zones also exclude persons and vessels from the immediate vicinity of these facilities during military cargo loading and unloading operations. In addition, the regulation establishes requirements for all vessels to obtain permission of the COTP or Designated Representative, including the Vessel Traffic Service (VTS), to enter, move within, or exit these security zones when they are enforced. Entry into this zone is prohibited unless otherwise exempted or excluded under 33 CFR 165.1321 or unless authorized by the Captain of the Port or Designated Representative.

This notice is issued under authority of 33 CFR 165.1321 and 5 U.S.C. 552 (a). In addition to this notice in the **Federal Register,** the Coast Guard will provide the maritime community with notification of this enforcement period via marine information broadcasts and on-scene assets.

If the COTP determines that the regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: September 5, 2013.

M.W. Raymond,

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

[FR Doc. 2013–22755 Filed 9–18–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AO31

Eligibility of Disabled Veterans and Members of the Armed Forces With Severe Burn Injuries for Financial Assistance in the Purchase of an Automobile or Other Conveyance and Adaptive Equipment

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) adopts as a final rule its proposal to amend its adjudication regulation concerning a certificate of eligibility for financial assistance in the purchase of an automobile or other conveyance and adaptive equipment, which was published in the **Federal Register** on November 5, 2012, and republished for minor technical corrections on November 26, 2012. The amendment is necessary to incorporate statutory changes made by the Veterans' Benefits Act of 2010.

DATES: *Effective Date:* This rule is effective October 21, 2013.

Applicability Date: This final rule shall apply to claims for benefits under 38 U.S.C. 3901 and 3902 received by VA on or after October 1, 2011, and to any such claims pending before VA on that date.

FOR FURTHER INFORMATION CONTACT: Nancy Copeland, Consultant, Regulations Staff (211D), Compensation Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–9695. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 803 of Public Law 111–275, the Veterans' Benefits Act of 2010, amended subsection 3901(1)(A) of Title 38, United States Code (U.S.C.), by reformatting the statute and adding ''severe burn injury (as determined pursuant to regulations prescribed by the Secretary)'' as one of the disabilities that VA will consider when making a determination of eligibility for financial assistance in the purchase of an automobile or other conveyance and adaptive equipment. That statutory change took effect on October 1, 2011, and applies to determinations of eligibility for such financial assistance on or after that date.

The purpose of 38 U.S.C. 3901 and 3902 is to provide an automobile allowance and adaptive equipment to veterans having certain severe disabilities that may impair their ability to operate a standard motor vehicle. Prior to the enactment of the Veterans' Benefits Act of 2010, the automobile allowance was authorized only for the loss or permanent loss of use of one or both hands or feet or for permanent impairment of vision of both eyes. In discussing the extension of this benefit to veterans with severe burn injuries, the Chairman of the Senate Committee on Veterans' Affairs explained that, ''[d]ue to the severe damage done to their skin, individuals with these disabilities experience difficulty operating a standard automobile not equipped to accommodate their disabilities'' and that the legislation ''would help them obtain vehicles with special adaptations for assistance in and out of the vehicle, seat comfort, and climate control.'' 156 Cong. Rec. S7656 (daily ed. Sept. 28, 2010) (statement of Chairman Akaka).

In the proposed rule, VA proposed a definition of the term ''severe burn injury'' and proposed to add that term, as so defined, to VA's regulation identifying the conditions that determine entitlement for a certificate of eligibility for financial assistance in the purchase of an automobile or other conveyance and adaptive equipment. In addition, VA proposed to amend the regulation title and authority citation to add clarity and mirror the statutory provisions of 38 U.S.C. 3901 and 3902. On November 26, 2012, at 77 FR 70389, VA published a minor technical correction that did not substantively change the proposed rule.

We provided a 60-day comment period. Interested persons were invited to submit comments on or before January 4, 2013. We received two comments, both of which supported the proposed rule. VA appreciates these positive comments and makes no changes based on them.

The notice of proposed rulemaking stated that VA will apply this rule to all claims for benefits received on or after October 1, 2011. VA has determined that it would be appropriate to apply this rule also to claims that were filed prior to October 1, 2011, but have not yet been finally decided. The applicability date summary in this notice, therefore, includes reference to such pending claims and refers specifically to claims for benefits under 38 U.S.C. 3901 and 3902 to indicate the type of claim to which the rule applies.

Therefore, based on the rationale set forth in the proposed rule, published in the **Federal Register** at 77 FR 66419 on November 5, 2012, and amended for minor technical corrections at 77 FR 70389 on November 26, 2012, we are adopting the proposed rule as a final rule with no changes.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule will not affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action'' requiring review by the Office of Management and Budget (OMB), unless OMB waives such review, as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this final rule have been

examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at *http://www1.va.gov/orpm/,* by following the link for ''VA Regulations Published.''

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are 64.013, Veterans Prosthetic Appliances; 64.100, Automobiles and Adaptive Equipment for Certain Disabled Veterans and Members of the Armed Forces; and 64.109, Veterans Compensation for Service-Connected Disability.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Interim Chief of Staff, Department of Veterans Affairs, approved this document on July 23, 2013, for publication.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Dated: September 16, 2013.

Robert C. McFetridge,

Director, Office of Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons set out in the preamble, VA amends 38 CFR part 3 as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Amend § 3.808 as follows:
■ a. Revise the section heading.
■ b. Redesignate paragraph (b)(4) as (b)(5).
■ c. Add a new paragraph (b)(4).
■ d. Revise the authority citation at the end of paragraph (b).

The addition and revisions read as follows:

§ 3.808 Automobiles or other conveyances and adaptive equipment; certification.

* * * * *

(b) * * *

(4) Severe burn injury: Deep partial thickness or full thickness burns resulting in scar formation that cause contractures and limit motion of one or more extremities or the trunk and preclude effective operation of an automobile.

* * * * *

(Authority: 38 U.S.C. 3901, 3902)

* * * * *

[FR Doc. 2013–22764 Filed 9–18–13; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2012–0025; A–1–FRL–9732–4]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Regional Haze

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a revision to the Massachusetts State Implementation Plan (SIP) that addresses regional haze for the first planning period from 2008 through 2018. The revision was submitted by the Massachusetts Department of Environmental Protection (MassDEP) on December 30, 2011, with supplemental final submittals on August 9, 2012 and August 28, 2012. These submittals address the requirements of the Clean Air Act (CAA) and EPA's rules that require States to prevent any future, and remedy any existing, manmade impairment of visibility in mandatory Class I Areas caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the ''regional haze program''). States are required to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas.

DATES: This rule is effective on October 21, 2013.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2012–0025. 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, 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 through *www.regulations.gov* or in hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Copies of the documents relevant to this action are also available for public inspection during normal business hours, by appointment at the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Anne McWilliams, Air Quality Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square—Suite 100, (Mail Code OEP05–02), Boston, MA 02109–3912, telephone number (617) 918–1697, fax number (617) 918–0697, email *mcwilliams.anne@epa.gov.*

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

The following outline is provided to aid in locating information in this preamble.

I. Background and Purpose
II. Response to Comments
III. Final Action
IV. Statutory and Executive Order Reviews

I. Background and Purpose

On May 24, 2012, EPA published a Notice of Proposed Rulemaking (NPR) for the State of Massachusetts. See 77 FR 30932. The NPR proposed approval of the Massachusetts State Implementation Plan (SIP) that addresses regional haze for the first planning period from 2008 through 2018. In that rulemaking, EPA proposed to approve the MassDEP Regional Haze State Implementation Plan dated December 30, 2011, and also proposed to approve under parallel processing, proposed revisions to the Massachusetts Haze SIP dated February 17, 2012.[1] Specifically, EPA proposed to approve the following adopted elements of Massachusetts' Haze Plan: (1) 310 Code of Massachusetts Regulations (CMR) 7.29 ''Emission Standards for Power Plants;'' (2) 310 CMR 7.26(50)–(54) ''Outdoor Hydronic Heaters;'' (3) Amended Emission Control Plan for Mt. Tom Station dated May 15, 2009; (4) Facility Shutdown of Somerset Power, LLC dated June 22, 2011; (5) Modified Emission Control Plan for General Electric Aviation—Lynn dated March 24, 2011; and (6) Modified Emission Control Plan for Wheelabrator Saugus, Inc. dated March 14, 2012. Furthermore, pursuant to MassDEP's May 2, 2012 request for parallel processing, EPA proposed approval of the following SIP elements that were still in the proposed stage: (1) Massachusetts' proposed revisions to 310 CMR 7.00 ''Definitions;'' (2) Massachusetts' proposed revisions to 310 CMR 7.05 ''Fuels All Districts;'' (3) proposed Amended Emission Control Plan Approval for Salem Harbor Station dated February 17, 2012; and (4) proposed Amended Emission Control Plan Approval for Brayton Point Station dated February 16, 2012.

On August 9, 2012 and August 28, 2012, MassDEP submitted additional elements and a revised SIP narrative as a supplement to the Massachusetts Regional Haze SIP. EPA has reviewed the August 9, 2012 and August 28, 2012 submittals and has determined that the State's formal SIP submittal does not contain significant changes which occurred after EPA's May 24, 2012 notice of proposed rulemaking.

A detailed explanation of the requirements for regional haze SIPs, as well as EPA's analysis of Massachusetts' Regional Haze SIP submittal, was provided in the NPR and is not restated here.

[1] MassDEP submitted ''Proposed Revisions to Massachusetts Regional Haze State Implementation Plan (SIP)'' dated February 17, 2012, for parallel processing on May 2, 2012.

II. Response to Comments

EPA received comments from Dominion Energy New England, Inc. (Dominion) and a joint letter from the Sierra Club and Conservation Law Foundation. The Dominion comments were generally supportive of the Massachusetts Alternative to Best Available Retrofit Technology (BART) demonstration and long term strategy and therefore require no response. The following discussion summarizes and responds to the relevant adverse comments submitted by the Sierra Club and Conservation Law Foundation (for brevity, ''Sierra Club'') on EPA's proposed approval of Massachusetts' Regional Haze SIP.

Comment A: The Sierra Club contends that Section 169A of the CAA does not allow EPA to exempt BART-eligible sources[2] from BART, and that EPA's regulation at 40 CFR 51.308(e)(2), which allows states to develop alternative programs in lieu of BART, is contrary to the CAA. The Sierra Club acknowledges that its position has been rejected by two federal court decisions.

Response A: As the Sierra Club notes, EPA's interpretation of the CAA was upheld in *Utility Air Regulatory Group* v. *EPA,* 471 F.3d 1333 (D.C. Cir. 2006). See 77 FR 33642, 33645–46 (June 7, 2012) for a more detailed explanation.

Comment B.1: The Sierra Club contends that Massachusetts' proposed Alternative to BART analysis is flawed due to the lack of source-by-source BART determinations. The commenter cited recent source-by-source BART determinations which were more stringent than the benchmark BART limits used in the Massachusetts alternative to BART analysis. The commenter suggested that MassDEP must undertake the five step source-by-source BART determination for each of the subject BART sources to demonstrate that the alternative to BART provides greater reasonable progress than the source-by-source BART. The commenter contends that comparing emissions, based on the category-wide benchmark limits that Massachusetts used, to the emissions from the alternative to BART measures underestimates the reductions achievable through a five factor determination and therefore does not conclusively show that the Massachusetts alternative to BART measures provide greater reasonable progress than source-by-source BART determinations.

Response B.1: The primary requirement, as specified in CAA section 169A, is for major stationary sources to procure, install, and operate BART. In some cases this requirement is met with an analysis of potential controls considering five factors given in EPA's Regional Haze Rule (RHR). See 40 CFR 51.308(e)(1). EPA has interpreted this requirement to be met if an alternative set of emission limits are established which mandate greater reasonable progress toward visibility improvement than direct application of BART on a source-by-source basis. In promulgating the RHR, EPA stated that to demonstrate that emission reductions of an alternative program would result in greater emission reductions, ''the State must estimate the emission reductions that would result from the use of BART-level controls. To do this, the State could undertake a source-specific review of the sources in the State subject to BART, or it could use a modified approach that simplifies the analysis.'' 64 FR 35742 (July 1, 1999).

In final rulemaking published October 13, 2006, EPA offered further clarification for States for assessing alternative strategies, in particular regarding the benchmark definition of BART to use in judging whether the alternative is better. See 71 FR 60612, 60615–20. In this rulemaking, EPA stated in the preamble that the presumptive BART levels given in the BART guidelines would be a suitable baseline against which to compare alternative strategies where the alternative has been designed to meet a requirement other than BART. See 71 FR at 60618; see also 40 CFR 51.308(e)(2)(i)(C). MassDEP's analysis is fully consistent with EPA's conclusions in this rulemaking.

While EPA recognizes that a case-by-case BART analysis may result in emission limits more stringent than the presumptive limits, the presumptive limits are reasonable and appropriate for use in assessing an alternative emissions reductions scenario such as the Massachusetts plan when comparing it to the BART scenario. See 71 FR 60619 (stating ''the presumptions represent a reasonable estimate of a stringent case BART . . . because . . . they would be applied across the board to a wide variety of units with varying impacts on visibility, at power plants of varying size and distance from Class I areas''). In other words, while in some instances case-by-case BART could result in limits *more* stringent than the presumptive limits, in other instances consideration of all five statutory BART factors could

[2] 40 CFR 51.301 defines a BART-eligible source as an existing facility which was not in operation prior to August 7, 1962, and was in existence on August 7, 1977, has the potential to emit 250 tons per year or more of any air pollutant, and meets one of the 26 listed stationary source categories.

result in limits *less* stringent than the presumptive limits, and EPA's considered conclusion is that the presumptive BART is, overall, ''a reasonable estimate of a stringent case BART.'' [3] Furthermore, Massachusetts went beyond EPA's presumptive level of control and used the more stringent Mid-Atlantic/Northeast Visibility Union (MANE–VU) recommended level of control to develop its benchmark.[4]

The components of Massachusetts' plan were developed to reduce mercury emissions, bring Massachusetts into attainment with the National Ambient Air Quality Standards (NAAQS) for ozone by CAA deadlines, and to meet long term strategy requirements. The Massachusetts plan imposes limitations on sulfur dioxide (SO_2), oxides of nitrogen (NO_X), and mercury emissions from coal-fired electrical generating units (EGUs), sulfur in fuel oil limits and NO_X limits for oil fired EGUs, and enforceable EGU shutdowns. Massachusetts is also now using these controls as an alternative to BART for its EGU BART-eligible sources as permitted pursuant to EPA's RHR (40 CFR 51.308(e)(2)). Therefore, the use of the benchmark limits for the alternative to BART analysis is appropriate. EPA agrees with Massachusetts' analysis that emission reductions from the units subject to MassDEP's alternative plan will result in emission reductions that will provide greater reasonable progress than would BART alone as described more fully in the NPR.

Comment B.2.a: The Sierra Club contends that, even based on the framework Massachusetts used, its BART alternative results in fewer emission reductions for SO_2 and NO_X than would BART. The Sierra Club argues that Massachusetts' analysis compares emission reductions at the full set of sources subject to its BART alternative to the much smaller set of subject-to-BART sources, and this is impermissible under the regulations.

Response B.2.a: EPA does not agree with the commenter's interpretation of the regional haze rule. If a State opts to implement or require participation in an emission trading program or other alternative measure rather than to require sources subject to BART to install, operate, and maintain BART, the State must ''demonstrat[e] that the emissions trading program or other alternative measure will achieve greater reasonable progress than would have resulted from the installation and operation of BART at all sources subject to BART in the State and covered by the alternative program.'' 40 CFR 51.308(e)(2)(i). This demonstration must include a list of all BART-eligible sources and all BART source categories covered by the alternative program and an analysis of the best system of continuous emission control technology available. ''This analysis must be conducted by making a determination of BART for each source within the State subject to BART and covered by the alternative program as provided for in paragraph (e)(1) of this section, unless the emission trading program or other alternative measure has been designed to meet a requirement other than BART (such as the core requirement to have a long term strategy to achieve the reasonable progress goals established by the States). In this case, the State may determine the best system of continuous emission control technology and associated emission reductions for similar types of sources within a source category based on both source-specific and category wide information as appropriate.'' 40 CFR 51.308(e)(2)(i)(C). This language indicates that BART determinations are to be made for each source that is both subject to BART and included in the alternative measure as provided for in paragraph (e)(1). Paragraph (e)(1) calls for a BART determination for BART-eligible sources. EPA does not agree that the language implies that source-by-source BART determinations are required for units which do not meet the definition of BART-eligible.[5] Non-BART sources which are included as members of the alternative measure need not be subject to a BART analysis. Put simply, EPA's regulations allow a state to develop an alternative that encompasses (and obtains emissions reductions from) non-BART sources, and to compare that alternative to a BART benchmark consisting only of subject-to-BART sources. Therefore, Massachusetts was correct in only including benchmark emissions from the BART sources in the baseline for comparison to the alternative program.

Comment B.2.b: The Sierra Club argues that Brayton Point Station's baseline SO_2 emissions are lower than Massachusetts assumed.

Response B.2.b: Massachusetts conducted its analysis under 40 CFR 51.308(e)(2) by developing two tables for SO_2. The first table, Table 16 of MassDEP's August 9, 2012 submittal, subtracted each BART-eligible facility's projected SO_2 emissions if the MANE–VU SO_2 BART emissions rate were achieved from that facility's baseline SO_2 emissions in 2002. The sum of those differences constitutes the expected reductions from installation of benchmark BART. The second table, Table 17 of MassDEP's August 9, 2012 submittal, subtracted each facility's alternative BART expected SO_2 emissions from its emissions for the same baseline year (2002). The sum of those differences constitutes the expected reductions from installation of Massachusetts' BART alternative. The comment essentially argues that Brayton Point's baseline SO_2 emissions are overstated because, as of 2010, Brayton Point achieved greater control than in 2002. However, Massachusetts' use of the 2002 emissions inventory as a baseline is consistent with MANE–VU's regional approach and EPA's national approach. See 40 CFR 51.308(d)(3)(iii); see also 64 FR 35742 (explaining that the ''baseline date of the SIP'' in this context means ''the date of the emissions inventories on which the SIP relies''), 70 FR 39104, 39143 (''The baseline date for regional haze SIPs is 2002. . . .'') & *id.* n.84. Furthermore, EPA notes that Massachusetts used the same baseline SO_2 emissions for Tables 16 and 17, so even if the baseline emissions were overstated, they would be overstated by the same amount in both cases, and the overstatement would neither benefit nor prejudice the BART alternative for comparison.

Comment B.2.c: The Sierra Club contends that Brayton Point Station's SO_2 and NO_X emissions under BART would be lower than Massachusetts assumed.

Response B.2.c: As noted above in Response B.1, while in some instances case-by-case BART could result in limits *more* stringent than the presumptive limits, in other instances consideration of all five statutory BART factors could result in limits *less* stringent than the presumptive limits, and EPA's considered conclusion is that the presumptive BART is, overall, a reasonable estimate of a stringent case BART. EPA has concluded that ''there is no need to develop a precise estimate of the emissions reductions that could be achieved by BART in order simply to compare two programs'' and that ''the State may establish a BART benchmark based on an analysis that includes simplifying assumptions about BART control levels for sources within a source category.'' See 70 FR 60618. Massachusetts used the MANE–VU recommended level of control to develop its benchmark.

[3] For this reason, the fact that facilities in other states (with different facts for each of the BART factors) have received BART determinations more stringent than the presumptive BART is not directly relevant here.

[4] The MANE–VU recommended level of BART control can be found in Appendix R of the Massachusetts December 30, 2011 submittal.

[5] See definition stated in footnote #2.

Comment B.2.d: The Sierra Club commented that Massachusetts improperly takes credit in its BART alternative for the Salem Harbor Station shutdown by (1) assuming for purposes of the BART benchmark that Salem Harbor Unit 4 would continue to operate past 2014 when in fact it will not (due to a consent decree), and then (2) crediting the emission reductions from the pending shutdown of Units 1 through 4 to Massachusetts's BART alternative, when these reductions will happen regardless of what Massachusetts does, due to the same consent decree.

Response B.2.d: The consent decree requires that Salem Harbor ''remove from service'' Units 1 and 2 by December 31, 2011, and Units 3 and 4 by June 1, 2014.[6] However, the consent decree defines ''remove from service'' as ceasing to generate electricity to supply the power grid. The consent decree does not prohibit these units from operating for purposes other than generating electricity to supply the power grid. Consequently, the consent decree is not a federally enforceable limit on emissions from these units. The facility requested, and MassDEP granted, a modified emission control plan under Massachusetts regulation 310 CMR 7.29 which caps NO_X and SO_2 emissions from the various units. This emission control plan, along with the Massachusetts regulation 310 CMR 7.29, will become federally enforceable with this action. MassDEP's permit restrictions apply regardless of the use to which the station owner might wish to put the units.

Furthermore, the consent decree is, by its terms, enforceable by the parties thereto (Conservation Law Foundation, HealthLink, Dominion Energy New England, Inc., and Dominion Energy Salem Harbor, LLC), whereas a state permit restriction incorporated into a federally enforceable SIP is enforceable by Massachusetts, EPA, and citizens, under state law and under the federal Clean Air Act.

The Sierra Club suggests that the absence of specific public plans for an alternative use of Salem Harbor's units (i.e., a use that would be allowed under the consent decree but prohibited under Massachusetts' SIP revision) means that it is unlikely that Salem Harbor will operate regardless of what Massachusetts does in its SIP and therefore the reductions that Massachusetts attributes by its permit restrictions are only hypothetical.

EPA believes Massachusetts' approach was reasonable, for several reasons. First, in Tables 16 and 18, Massachusetts used a reasonable (and consistent) method to derive the BART benchmark emissions, namely, multiplying each BART-eligible unit's 2002 heat input[7] by the MANE–VU recommended BART emission rates. See also Response B.2.b. This streamlined calculation was conducted at all BART-eligible facilities without examining whether the facilities' more recent operating scenarios involve a higher or lower heat input. Thus, it was reasonable and consistent for Massachusetts to include Salem Harbor Unit 4 in Tables 16 and 18 as operating at 2002 heat input levels. The comment essentially argues that, even if Massachusetts had not imposed any permit restrictions, Salem Harbor's likely future actual emissions would be much lower than its full potential to emit, and therefore the BART benchmark calculation should use Salem Harbor Unit 4's likely future actual emissions under anticipated business scenarios (i.e., zero), rather than simply apply the benchmark BART emission rate to its 2002 heat input rate. However, the Sierra Club points to no provision of the Regional Haze Rule requiring states to project likely future actual emissions under anticipated business scenarios, rather than use the approach that Massachusetts used.[8]

Second, in Massachusetts' analysis of its alternative program in Tables 17 and 19, the Commonwealth conservatively assumed that all units covered by the alternative program would operate at their 2002 heat input rate, and took credit only for legally enforceable restrictions on potential to emit. The Sierra Club focuses on the reductions at Salem Harbor Units 1–4 in Tables 17 and 19, arguing that Massachusetts is taking credit for reductions that would have happened anyway and therefore that Tables 17 and 19 overstate the additional reductions achieved through the alternative program. However, Massachusetts' underlying assumption that any facility without an operational restriction would operate at 2002 levels is in fact conservative and likely substantially overstates emissions (i.e., understates reductions) for several facilities in Tables 17 and 19. Many of the still active units listed in Tables 17 and 19 are in fact now operating well below 2002 heat input levels. For example, according to 2011 data,[9] the annual heat input was 18,244,945 MMBtu for Brayton Point Unit 3 and 500,264 MMBtu for Canal Station Unit 1. The 2002 benchmark annual heat inputs for these units were 36,339,809 MMBtu and 27,295,648 MMBtu, respectively.[10] In other words, the logic under which Massachusetts *did* count Salem Harbor's reductions in Tables 17 and 19 (because Massachusetts attributes the reductions to a legally enforceable emission control plan) is the same logic under which Massachusetts did *not* count likely actual reductions at other facilities in those tables. This methodology is reasonable and internally consistent.

Finally, the Sierra Club argues that, if the facility owner planned to use the Salem Harbor units for a purpose not prohibited by the consent decree, it would be required to apply for new permits ''because the permits issued to the units to operate as electric generating units would no longer be valid.'' While there are certainly scenarios in which re-use of the units (as coal generating units but not for supplying electricity to the grid) could require new permit applications, the comment identifies no provisions of the pre-existing permits (or of Massachusetts or federal law) indicating that this would be necessary in all cases. Therefore, it was reasonable for Massachusetts to assume that its permit restriction would achieve reductions that would not be legally required to occur otherwise.

Comment B.3: The Sierra Club commented that Massachusetts has not demonstrated that the SO_2 and NO_X emissions reductions relied on it its BART alternative are properly surplus for purposes of BART. The Sierra Club stated that in order to claim credit under the BART requirements of the Regional Haze Rule for emission reductions attributable to a BART alternative, Massachusetts must demonstrate that ''the emission reductions resulting from the . . . alternative measures will be surplus to those reductions resulting from measures adopted to meet requirements of the [Clean Air Act] as of the baseline date of the SIP.'' The Sierra Club claims that Massachusetts

[6] The consent decree is available at *http://www.clf.org/wp-content/uploads/2012/02/Signed-Consent-Decree-12_11.pdf.*

[7] The heat input is a proxy for the quantity of fuel used.

[8] If anything, the Regional Haze Rule focuses on facilities' potential to emit. See, e.g., 40 CFR 51.301 (definition of ''existing stationary facility''); accord 40 CFR part 51 Appendix Y, § II.A Step 3 (explaining that potential to emit is developed ''considering all federally enforceable and State enforceable permit limits''). Using potential to emit, rather than 2002 heat input rate, would result in higher BART benchmark emissions in Tables 16 and 18.

[9] For 2011 EGU emission data, see EPA's Air Markets Program Web page at *http://ampd.epa.gov/ampd/.*

[10] See Tables 16 and 18 of the Massachusetts Regional Haze State Implementation Plan dated August 9, 2012.

has not identified what portion, if any, of the emission reductions exceeded those necessary to comply with the purposes for which the regulations were designed.

Response B.3: As part of the alternative to BART demonstration, 40 CFR 51.308(e)(2)(iv) requires a ''demonstration that the emission reductions resulting from the emission trading program or other alternative measures will be surplus to those reductions resulting from measures adopted to meet requirements of the CAA as of the baseline date of the SIP.'' In promulgating the RHR in 1999, EPA explained that the ''baseline date of the SIP'' in this context means ''the date of the emissions inventories on which the SIP relies.'' 64 FR 35742; see also 70 FR 39104, 39143 (''The baseline date for regional haze SIPs is 2002. . . .'') & *id.* n.84.

Any measure, including a measure to meet a requirement of the CAA, adopted after 2002 is accordingly ''surplus'' under 40 CFR 51.308(e)(2)(iv). Massachusetts is using regulation 310 CMR 7.29 in conjunction with the sulfur in fuel oil standard and emission control plans as an alternative to BART for its EGU BART-eligible sources as permitted by the RHR and as discussed in the NPR. EPA agrees with Massachusetts' analysis that emission reductions from the alternative program will result in emission reductions that are surplus to the baseline date of the SIP. As discussed in the NPR, Massachusetts' use of the 310 CMR 7.29 (with a compliance year of 2008) as an alternative to BART for EGUs, in addition to the newly adopted revised sulfur in fuel oil requirements and revised emission control plans, are in accordance with and satisfies the requirements in 40 CFR 51.308(e)(2) for BART alternatives, including the requirement that the emission reductions be surplus to the baseline date of the SIP. The NPR also discusses how Massachusetts estimated the emission reductions required by the alternative plan. EPA is not restating that analysis here. Finally, the Sierra Club has not identified any specific elements of Massachusetts' alternative program that it believes are *not* surplus to reductions from measures adopted to meet CAA requirements.

Comment B.4: The Sierra Club commented that Massachusetts has not demonstrated that the distribution of the emissions under its BART alternative is substantially similar to that under BART or conducted dispersion modeling to show the BART alternative results in greater reasonable progress toward achieving natural baseline visibility conditions in affected Class I areas. Under EPA's RHR, it is insufficient to simply compare the total emissions reductions from source-specific BART and a State's BART alternative; the State must take into consideration the location of these emission reductions. Where the distribution of emissions under BART and the alternative are substantially different, the State proposing to rely on a BART-alternative must conduct dispersion modeling to show the difference in visibility under each program for each impacted Class I area on the worst and best 20 percent days. The Sierra Club commented that the mere fact that all the subject-to-BART units are a subset of the alternative BART units, does not demonstrate that similar geographic distribution. The Sierra Club contends that to assess the emission distribution, ''the State would have to compare the magnitude of emission reductions at units common to both schemes and evaluate whether the additional units covered by the BART alternative are proximate to subject to BART sources.'' The Sierra Club further states that Massachusetts would also need to consider, for example, whether differences in stack heights among the sources would result in different geographic distribution. The Sierra Club states that neither Massachusetts nor EPA has presented any further analysis, and therefore neither has demonstrated that the BART alternative produces a similar distribution of emission reductions to BART.

Response B.4: The RHR states that ''[i]f the distribution of emissions is not substantially different than under BART, and the alternative measure results in greater emission reductions, then the alternative measure may be deemed to achieve greater reasonable progress.'' 40 CFR 51.308(e)(3). EPA discussed in the NPR how Massachusetts' alternative to BART was acceptable and met the requirements for a BART alternative program in 40 CFR 51.308(e)(2). EPA finds that the distribution of emission reductions in Massachusetts sources included in the alternative program are comparable to, and not substantially different from, emission reductions under BART at subject units. See 77 FR 30943. The emission reductions from the alternative to BART are discussed in detail in the NPR. Massachusetts' alternative program covers all of the BART-subject EGU sources and also includes additional EGUs which are too old to be BART-subject sources.

All of the emission reductions, with the exception of Mount Tom, are from EGUs located in eastern Massachusetts and, in many cases, at the same physical location as the BART-eligible EGUs. For example, as compared to the BART benchmark, the BART alternative achieves fewer reductions from Brayton Point Station, but greater reductions from Somerset Power, which is located in the same municipality as Brayton Point. Similarly, as compared to the BART benchmark, the BART alternative achieves fewer reductions from Canal Station (on the south shore of Massachusetts, about 60 miles south of Boston) and Mystic Station (just a few miles north of Boston), but much greater reductions from Salem Harbor (on the north shore of Massachusetts, about 20 miles north of Boston). As for Mount Tom Unit 1, it is located in Holyoke, Massachusetts, approximately 80 miles west of Boston. The contribution of the Mount Tom emission reductions to the Massachusetts alternative to BART is 6% of the SO_2 reduction and 9% of the NO_X reduction. While this does create a minor variation in the geographic distribution of emission reductions, this does not lead to a substantial difference in geographic distribution of the emission reduction, particularly since the distances between the units involved are generally much less than the distances from any of the units to the relevant Class I areas.

Moreover, to the extent that there are any differences in geographic distribution, they may be beneficial for regional haze purposes. As noted above, the principal difference in distribution is that the BART benchmark relies more heavily on reductions at Brayton Point and Canal Station (both in Massachusetts's southeast corner), whereas the alternative to BART relies more heavily on reductions at Salem Harbor (slightly closer to Maine and New Hampshire, with their five Class I areas) and Mount Tom (slightly closer to the Lye Brook Wilderness in Vermont and the Brigantine Wilderness Area in New Jersey). While neither Massachusetts nor EPA has modeled the impact of these slight geographic differences, the fact that the reductions occur slightly closer to the Class I areas makes it unlikely that the alternative would result in less visibility benefits to those areas.

Therefore, EPA finds that Massachusetts was reasonable in the determination that the geographic distribution of the emission reductions from the alternative plan is not substantially different from the emission reduction distribution projected under BART.

Comment C: The Sierra Club commented that Massachusetts has not demonstrated that the State will achieve

the reasonable progress goals established by MANE–VU for 2018. Specifically, the Sierra Club noted that Massachusetts is not projected to achieve the 90% SO_2 reduction target by 2018 at major EGUs and instead projects emission reductions of between 67 and 87% from the affected units. The Sierra Club contends that even though Brayton Point Units 1 and 2 are achieving 90% control, Massachusetts must require as an enforceable operating condition the continuous operation of the spray dry absorbers. In addition, Massachusetts should require at least 96% control for the dry scrubber to be installed on Brayton Point Unit 3. Finally, Sierra Club states that Massachusetts should require Mount Tom to continuously operate its installed dry scrubber.

Response C: Through the consultation process, Massachusetts agreed to pursue the MANE–VU ''Ask'' (Ask) as part of the long term strategy to ensure reasonable progress toward the goal of natural visibility conditions in Class I areas impacted by emissions from Massachusetts. The Ask consists of the implementation of BART, the adoption of the low sulfur in fuel oil strategy, and a 90% percent reduction in SO_2 emissions from the greatest impacting EGUs or comparable SO_2 reductions. Emission reductions resulting from these strategies were incorporated into the projected 2018 emissions inventory. The 2018 emission inventory was used to model the expected visibility improvement at the end of the first planning period. Based on the inventories developed for the MANE–VU states and the resulting modeling, the MANE–VU Class I States determined that the control strategies for the first planning period were sufficient to meet the reasonable progress goals for the Class I areas. As stated in the NPR, the 2018 modeling inventory for Massachusetts EGUs, based on the implementation of the Ask, is 45,941 tons SO_2. Massachusetts targeted EGUs' 2011 SO_2 emissions were only 22,165 tons SO_2 in 2011, and under the most conservative (worst case) long term strategy projected emission inventory, Massachusetts EGUs are limited to 26,811 tons SO_2 in 2018 (and more likely 10,505 tons, which is below the level that would be achieved by the 90% target). The long term strategy limit is 19,130 tons SO_2 less than the inventory used to model visibility improvement in 2018. Since the long term strategy program is outcome-based, rather than technology-based, Massachusetts may develop a program that will achieve emissions reductions that are adequate for Class I states' reasonable progress goals even if it does not rely on the particular reductions that were used to develop the assumptions upon which those reasonable progress goals were based. It is worth noting that the MANE–VU Ask does not itself establish federal regulatory requirements. States' obligations are defined by the Regional Haze Rule, not the Ask.

Finally, since future emission projections are somewhat uncertain, the RHR requires States to submit a 5-year progress report. At the time of this progress report, MassDEP will determine if the controls approved into the Regional Haze SIP are sufficient to achieve reasonable progress at the impacted Class I areas for the first planning period.

III. Final Action

EPA is approving the Massachusetts Regional Haze State Implementation Plan, submitted on December 30, 2011 with supplemental submittals on August 9, 2012 and August 28, 2012, as meeting the applicable implementing regulations found in 40 CFR 51.308. Included as part of the Regional Haze Plan are the following Appendices, which EPA is approving and incorporating by reference into the SIP: (1) Appendix BB. Modified Emission Control Plan for General Electric Aviation—Lynn dated March 24, 2011; (2) Appendix CC. Massachusetts 310 CMR 7.26(50)-(54) ''Outdoor Hydronic Heaters;'' (3) Appendix DD. Massachusetts 310 CMR 7.29 ''Emission Standards for Power Plants,'' the sections relating to NO_X and SO_2; (4) Appendix EE. Amended Emission Control Plan for Mt. Tom Station dated May 15, 2009; (5) Appendix FF. Amended Emission Control Plan Approval for Salem Harbor Station dated March 27, 2012; (6) Appendix GG. Amended Emission Control Plan Approval for Brayton Point Station dated April 12, 2012; (7) Appendix HH. Facility Shutdown of Somerset Power, LLC dated June 22, 2011; (8) Appendix II. Massachusetts 310 CMR 7.00 ''Definitions;'' and 310 CMR 7.05 ''Fuels All Districts;''and (9) Appendix JJ. Modified Emission Control Plan for Wheelabrator Saugus, Inc. dated March 14, 2012.

IV. 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 November 18, 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, Volatile organic compounds.

Dated: September 12, 2012.

H. Curtis Spalding,

Regional Administrator, EPA Region 1.

Editorial Note: This document was received at the Office of the Federal Register September 13, 2013.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart W—Massachusetts

■ 2. Section 52.1120 is amended by adding paragraph (c)(139) to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(139) Revisions to the State Implementation Plan regarding Regional Haze submitted by the Massachusetts Department of Environmental Protection on December 30, 2011, August 9, 2012, and August 28, 2012.

(i) Incorporation by reference.

(A) Massachusetts Regulation 310 CMR 7.00, ''Definitions,'' amended definition of SULFUR IN FUEL, effective August 3, 2012.

(B) Massachusetts Regulation 310 CMR 7.05, ''U Fuels All Districts,'' effective August 3, 2012, with the following exceptions which are not applicable to the Massachusetts Alternative to BART:

(*1*) 310 CMR 7.05(1)(a)(3);

(*2*) 310 CMR 7.05(2) through (4); and

(*3*) 310 CMR 7.05(7) through (9).

(C) Massachusetts Regulation 310 CMR 7.29, ''Emissions Standards for Power Plants,'' effective on January 25, 2008 (which includes previous sections effective on June 29, 2007), with the following exceptions which are not applicable to the Massachusetts Alternative to BART:

(1) In 310 CMR 7.29(1), the reference to mercury (Hg), carbon monoxide (CO), carbon dioxide (CO_2), and fine particulate matter ($PM_{2.5}$) in the first sentence and the phrase ''. . . and CO_2 and establishing a cap on CO_2 and Hg emissions from affected facilities. CO_2 emissions standards set forth in 310 CMR 7.29(5)(a)5.a. and b. shall not apply to emissions that occur after December 31, 2008'' in the second sentence;

(2) In 310 CMR 7.29(2), the definitions of Alternate Hg Designated Representative, Automated Acquisition and Handling System or DAHS, Mercury (Hg) Designated Representative, Mercury Continuous Emission Monitoring System or Mercury CEMS, Mercury Monitoring System, Sorbent Trap Monitoring System, and Total Mercury;

(3) 310 CMR 7.29(5)(a)(3) through (5)(a)(6);

(4) In 310 CMR 7.29(5)(b)(1), reference to compliance with the mercury emissions standard in the second sentence;

(5) 310 CMR 7.29(6)(a)(3) through (6)(a)(4);

(6) 310 CMR 7.29(6)(b)(10);

(7) 310 CMR 7.29(6)(h)(2);

(8) The third and fourth sentences in 310 CMR 7.29(7)(a);

(9) In 310 CMR 7.29(7)(b)(1), the reference to CO_2 and mercury;

(10) In 310 CMR 7.29(7)(b)(1)(a), the reference to CO_2 and mercury;

(11) 310 CMR 7.29(7)(b)(1)(b) through 7.29(7)(b)(1)(d);

(12) In 310 CMR 7.29(7)(b)(3), the reference to CO_2 and mercury;

(13) In 310 CMR 7.29(7)(b)(4)(b), the reference to CO_2 and mercury; and

(14) 310 CMR 7.29(7)(e) through 7.29(7)(i).

(D) Massachusetts Regulation 310 CMR 7.26, ''Industry Performance Standards, Outdoor Hydronic Heaters'' paragraphs (50) through (54) and related footnotes effective December 26, 2008.

(1) 310 CMR 7.26(50) Outdoor Hydronic Heaters—Applicability;

(2) 310 CMR 7.26(51) Definitions;

(3) 310 CMR 7.26(52) Requirements for Operators;

(4) 310 CMR 7.26(53) Requirements for Sellers; and

(5) 310 CMR 7.26(54) Requirements for Manufacturers.

(E) The sulfur dioxide (SO_2), oxides of nitrogen (NO_X), and $PM_{2.5}$ provisions of the Massachusetts Department of Environmental Protection Emission Control Plan ''Saugus—Metropolitan, Boston/Northeast Region, 310 CMR 7.08(2)—Municipal Waste Combustors, Application No. MBR–98–ECP–006, Transmittal No. W003302, Emission Control Plan Modified Final Approval'' dated March 14, 2012 to Mr. Jairaj Gosine, Wheelabrator Saugus, Inc. and signed by Cosmo Buttaro and James E. Belsky, with the following exceptions which are not applicable to the Massachusetts Alternative to BART.

(*1*) In Table 2, the EU1 and EU2 Unit Load Restriction/Operating Practices;

(*2*) In Table 2, the EU1 and EU2 Emission Limit/Standard for Opacity, HCl, Dioxin/Furon, Cd, Pb, CO, Hg, NH3, and associated footnotes;

(*3*) In Table 2, EU3 Fugitive Ash requirement and associated footnote.

(4) In Table 2, Footnote 1 which is a State Only Requirement.

(F) The Massachusetts Department of Environmental Protection Emission Control Plan ''Lynn—Metropolitan, Boston/Northeast Region, 310 CMR 7.19, Application No. MBR–94–COM–008, Transmittal No. X235617, Modified Emission Control Plan Final Approval'' dated March 24, 2011 to Ms. Jolanta Wojas, General Electric Aviation and signed by Marc Altobelli and James E. Belsky. Note, this document contains two section V; V. RECORD KEEPING AND REPORTING REQUIREMENTS and V. GENERAL REQUIREMENTS/PROVISIONS.

(G) The Massachusetts Department of Environmental Protection Emission Control Plan, ''Holyoke Western Region 310 CMR 7.29 Power Plant Emission Standards, Application No. 1–E–01–072, Transmittal No. W025214, Amended Emission Control Plan'' dated May 15, 2009 to Mr. John S. Murry, Mt. Tom Generating Company, LLC and signed by Marc Simpson, with the following exceptions which are not

applicable to the Massachusetts Alternative to BART:

(1) In Table 2, the EU 1 Emission Limit/Standard for Hg, CO, CO_2, and $PM_{2.5}$ and related footnotes;

(2) In Table 3, the EU1 Monitoring/Testing Requirements for CO_2, CO, $PM_{2.5}$, and Hg;

(3) In Table 4, the EU 1 Record Keeping Requirements for CO_2, CO, $PM_{2.5}$, and Hg;

(4) In Table 5, the EU1 Reporting Requirements for Hg;

(5) In Table 5, the Facility Reporting requirements

(6) In Table 6, the Compliance Paths for Hg and CO_2 and related footnote;

(7) In Section 4, Special Conditions for ECP, Item 4, applicable to CO_2;

(8) Section 6, Modification to the ECP;

(9) Section 7, Massachusetts Environmental Policy Act; and

(10) Section 8, Appeal of Approval.

(H) The Massachusetts Department of Environmental Protection Emission Control Plan ''Salem—Metropolitan Boston/Northeast Region, 310 CMR 7.29 Power Plant Emission Standards, Application No. NE–12–003, Transmittal No. X241756, Final Amended Emission Control Plan Approval'' dated March 27, 2012 to Mr. Lamont W. Beaudette, Dominion Energy Salem Harbor, LLC and signed by Edward J. Braczyk, Cosmo Buttaro, and James E. Belsky with the following exceptions which are not applicable to the Massachusetts Alternative to BART:

(1) In Table 2, the EU 1, EU 2, and EU 3 Emission Limit/Standard for Hg and related footnotes;

(2) In Table 2, the EU 1, EU 2, EU 3, and EU 4 Emission Limit/Standard for CO, CO_2, $PM_{2.5}$ and related footnotes;

(3) In Table 3, the EU 1, EU 2, EU 3, and EU 4 Monitoring/Testing Requirements for CO_2, CO, and $PM_{2.5}$;

(4) In Table 3, the EU 1, EU 2, and EU 3 Monitoring/Testing Requirements for Hg;

(5) In Table 4, the EU 1, EU 2, EU 3, and EU 4 Record Keeping Requirements for CO_2, CO, and $PM_{2.5}$;

(6) In Table 4, the EU 1, EU 2, and EU 3 Record Keeping Requirements for Hg;

(7) In Table 5, the EU 1, EU 2, EU 3, and EU 4 Reporting Requirements for CO_2;

(8) In Table 5, the EU 1, EU 2, and EU 3 Reporting Requirements for Hg;

(9) In Section 3, Compliance Schedule, the 3rd paragraph text which reads ''In order to meet the regulatory Hg limits which are effective on October 1, 2012, the facility owner/operator has proposed using a combination strategy involving fuel mix optimization (for SO_2 compliance but this action will benefit Hg compliance as well) and installation of a Calcium Bromide injection system. In order to meet the 310 CMR 7.29 CO_2 emission targets, the Dominion Energy Salem Harbor, LLC facility owner/operator procured offset credits from both its Dominion Energy Brayton Point facility and third party contacts and paid into the Greenhouse Gas Expendable Trust;''

(*10*) Section 6, Modification to the ECP;

(*11*) Section 7, Massachusetts Environmental Policy Act; and

(*12*) Section 8, Appeal of Approval.

(I) Massachusetts Department of Environmental Protection Emission Control Plan ''Amended Emission Control Plan Final Approval Application for: BWP AQ 25, 310 CMR 7.29 Power Plant Emission Standards, Transmittal Number X241755, Application Number SE–12–003, Source Number: 1200061'' dated April 12, 2012 to Peter Balkus, Dominion Energy Brayton Point, LLC and signed by John K. Winkler, with the following exceptions which are not applicable to the Massachusetts Alternative to BART:

(1) In Table 2, the EU 1, EU 2, and EU 3 Emission Limit/Standard for Hg;

(2) In Table 2, the EU 1, EU 2, EU 3, EU 4 Emission Limit/Standard for CO, CO_2, $PM_{2.5}$ and related footnotes;

(3) In Table 3, the EU 1, EU 2, EU 3, and EU 4 Monitoring/Testing Requirements for CO_2, Hg, CO, and $PM_{2.5}$;

(4) In Table 3, the EU 1, EU 2, and EU 3 Monitoring/Testing Requirements for Hg;

(5) In Table 4, the EU 1, EU 2, EU 3, and EU 4 Record Keeping Requirements for CO_2, Hg, CO, and $PM_{2.5}$;

(6) In Table 4, the EU 1, EU 2, and EU 3 Record Keeping Requirements for Hg;

(7) In Table 5, the EU 1, EU 2, and EU 3 Reporting Requirements for Hg and CEMS monitoring and certification;

(8) In Table 5, the Facility Reporting Requirements;

(9) In Table 6, the Compliance Path for CO_2, and Hg;

(10) In Section 4, Special Conditions for ECP, the CO_2 requirement in Item 2;

(11) Section 6, Modification to the ECP;

(12) Section 7, Massachusetts Environmental Policy Act; and

(13) Section 8, Appeal of Approval.

(J) Massachusetts Department of Environmental Protection letter ''Facility Shutdown, FMF Facility No. 316744'' dated June 22, 2011 to Jeff Araujo, Somerset Power LLC and signed by John K. Winkler.

(ii) Additional materials.

(A) ''Massachusetts Regional Haze State Implementation Plan'' dated August 9, 2012.

■ 3. In § 52.1167, Table 52.1167 is amended by adding new entries to existing state citations for 310 CMR 7.00, 310 CMR 7.05, 310 CMR 7.08, and 310 CMR 7.19 in order of ''Date approved by EPA''; and by adding new state citations for 310 CMR 7.26 and 310 CMR 7.29 in order of ''State citation'' to read as follows:

§ 52.1167 EPA-approved Massachusetts State regulations.

* * * * *

TABLE 52.1167—EPA-APPROVED RULES AND REGULATIONS

[See notes at end of table]

State citation	Title/Subject	Date submitted by State	Date approved by EPA	**Federal Register** citation	52.1120(c)	Comments/unapproved sections
*	*	*		*	*	* *
310 CMR 7.00 ..	Definitions	8/9/12	9/19/13	[Insert **Federal Register** page number where the document begins].	137	Approving the definition of ''Sulfur in Fuel.''
*	*	*		*	*	* *
310 CMR 7.05 ..	U Fuels All Districts.	8/9/12	9/19/13	[Insert **Federal Register** page number where the document begins].	137	Approves the sulfur content of fuel oil. The following sections were not submitted as part of the SIP: (1)(a)(3), (2), (3), (4), (7), (8), (9).
*	*	*		*	*	* *
310 CMR 7.08(2).	MWC NO_X requirements.	8/9/12	9/19/13	[Insert **Federal Register** page number where the document begins].	137	Facility specific MWC Emission Control Plan for Wheelabrator Saugus revises the NO_X limits to 185 ppm by volume at 7% O_2 dry basis (30-day rolling average).
*	*	*		*	*	* *
310 CMR 7.19 ..	NO_X RACT	12/30/11	9/19/13	[Insert **Federal Register** page number where the document begins].	137	Facility specific NO_X RACT for General Electric Aviation Boiler No. 3 to cap annual SO_2 and NO_X emissions at 249.0 tons each.
*	*	*		*	*	* *
310 CMR 7.26 ..	Industry Performance Standards.	12/30/11	9/19/13	[Insert **Federal Register** page number where the document begins].	137	Only approving the Outdoor Hydronic Heaters (50)–(54).
*	*	*		*	*	* *
310 CMR 7.29 ..	Emissions Standards for Power Plants.	8/9/2012	9/19/13	[Insert **Federal Register** page number where the document begins].	137	Only approving the SO_2 and NO_X requirements.
310 CMR 7.29 ..	Emission Standards for Power Plants.	8/9/2012	9/19/13	[Insert **Federal Register** page number where the document begins].	137	Facility specific Emission Control Plan requirement for Brayton Point Station Unit 1, 2, 3, and 4 which disallows the use of 310 CMR 7.29 SO_2 Early Reduction Credits or Federal Acid Rain allowances for compliance with 310 CMR 7.29 after June 1, 2014.
310 CMR 7.29 ..	Emission Standards for Power Plants.	8/9/2012	9/19/13	[Insert **Federal Register** page number where the document begins].	137	Facility specific Emission Control Plan requirement for Mt. Tom Station which disallows the use of 310 CMR 7.29 SO_2 Early Reduction Credits or Federal Acid Rain allowances for compliance with 310 CMR 7.29 after October 1, 2009.

TABLE 52.1167—EPA-APPROVED RULES AND REGULATIONS—Continued

[See notes at end of table]

State citation	Title/Subject	Date submitted by State	Date approved by EPA	**Federal Register** citation	52.1120(c)	Comments/unapproved sections
310 CMR 7.29 ..	Emission Standards for Power Plants.	8/9/2012	9/19/13	[Insert **Federal Register** page number where the document begins].	137	Facility specific Emission Control Plan for Salem Harbor Station Units 1, 2, 3, and 4 which limits NO_X emissions from Unit 1 to 276 tons per rolling 12 month period starting 1/1/2012, limits NO_X emissions for Unit 2 to 50 tons per rolling 12 month period starting 1/1/2012, limits SO_2 emissions form Unit 2 to 300 tons per rolling 12 month period starting 1/1/2012, shuts down units 3 and 4 effective 6/1/2014.
*	*	*	*	*	*	*

Notes:

1. This table lists regulations adopted as of 1972. It does not depict regulatory requirements which may have been part of the Federal SIP before this date.
2. The regulations are effective statewide unless otherwise stated in comments or title section.

[FR Doc. 2013–22692 Filed 9–18–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2012–0475; FRL–9901–06–Region 8]

Approval and Promulgation of Air Quality Implementation Plans; State of Colorado Second Ten-Year PM_{10} Maintenance Plan for Aspen

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking final action approving State Implementation Plan (SIP) revisions submitted by the State of Colorado. On May 25, 2011, the Governor of Colorado's designee submitted to EPA a revised maintenance plan for the Aspen area for the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to 10 microns (PM_{10}), which was adopted by the State on December 16, 2010. As required by Clean Air Act (CAA) section 175A(b), this revised maintenance plan addresses maintenance of the PM_{10} standard for a second 10-year period beyond the area's original redesignation to attainment for the PM_{10} NAAQS. In addition, EPA is approving the revised maintenance plan's 2023 transportation conformity motor vehicle emissions budget for PM_{10}. This action is being taken under sections 110 and 175A of the CAA.

DATES: This rule is effective on November 18, 2013 without further notice, unless EPA receives adverse comment by October 21, 2013. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2012–0475, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: ostigaard.crystal@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Carl Daly, Director, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Carl Daly, Director, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2012–0475. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://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 *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://*

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 *http://www.regulations.gov* or in hard copy at the Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **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: Crystal Ostigaard, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6602, *ostigaard.crystal@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 initials *APCD* mean or refer to the Colorado Air Pollution Control Division.

(iii) The initials *AQCC* mean or refer to the Colorado Air Quality Control Commission.

(iv) The initials *AQS* mean or refer to the EPA Air Quality System database.

(v) The words *Colorado* and *State* mean or refer to the State of Colorado.

(vi) The initials *CDPHE* mean or refer to the Colorado Department of Public Health and Environment.

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

(viii) The initials *MVEB* mean or refer to motor vehicle emissions budget.

(ix) The initials *NAAQS* mean or refer to National Ambient Air Quality Standard.

(x) The initials PM_{10} mean or refer to particulate matter with an aerodynamic diameter of less than or equal to 10 micrometers (coarse particulate matter).

(xi) The initials *RTP* mean or refer to the Regional Transportation Plan.

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

(xiii) The initials *TIP* mean or refer to the Transportation Improvement Program.

(xiv) The initials *TSD* mean or refer to technical support document.

Table of Contents

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II. Background
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I. General Information

1. *Submitting CBI.* Do not submit CBI to EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. 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.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

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

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

II. Background

The Aspen area was designated nonattainment for PM_{10} and classified as moderate by operation of law upon enactment of the CAA Amendments of 1990. See 56 FR 56694, 56705, 56736 (November 6, 1991). EPA fully approved Colorado's nonattainment area SIP for the Aspen area on September 14, 1994 (59 FR 47088).

On November 9, 2001, the Governor of Colorado submitted a request to EPA to redesignate the Aspen moderate PM_{10} nonattainment area to attainment for the 1987 PM_{10} NAAQS. Along with this request, the State submitted a maintenance plan, which demonstrated that the area would continue to attain the PM_{10} NAAQS through 2015. EPA approved the Aspen maintenance plan and redesignation to attainment on May 15, 2003 (68 FR 26212).

Eight years after an area is redesignated to attainment, CAA section 175A(b) requires the state to submit a subsequent maintenance plan to EPA, covering a second 10-year period.[1] This second 10-year maintenance plan must demonstrate continued maintenance of the applicable NAAQS during this second 10-year period. To fulfill this requirement of the Act, the Governor of Colorado's designee submitted the second 10-year update of the PM_{10} maintenance plan to EPA on May 25, 2011 (hereafter; ''revised Aspen PM_{10} Maintenance Plan'').

As described in 40 CFR 50.6, the level of the national primary and secondary 24-hour ambient air quality standards for PM_{10} is 150 micrograms per cubic meter (μg/m³). An area attains the 24-hour PM_{10} standard when the expected number of days per calendar year with a 24-hour concentration in excess of the standard (referred to herein as ''exceedance''), as determined in accordance with 40 CFR part 50, appendix K, is equal to or less than one, averaged over a three-year period.[2] See

[1] In this case, the initial maintenance period described in CAA section 175A(a) was required to extend for at least 10 years after the redesignation to attainment, which was effective on July 14, 2003. See 68 FR 26212. So the first maintenance plan was required to show maintenance at least through 2013. CAA section 175A(b) requires that the second 10-year maintenance plan maintain the NAAQS for ''10 years after the expiration of the 10-year period referred to in [section 175A(a)].'' Thus, for the Aspen area, the second 10-year period ends 2023.

[2] An exceedance is defined as a daily value that is above the level of the 24-hour standard, 150 μg/m³, after rounding to the nearest 10 μg/m³ (i.e., values ending in five or greater are to be rounded up). Thus, a recorded value of 154 μg/m³ would not be an exceedance since it would be rounded to 150 μg/m³; whereas, a recorded value of 155 μg/m³ would be an exceedance since it would be rounded to 160 μg/m³. See 40 CFR part 50, appendix K, section 1.0.

40 CFR 50.6 and 40 CFR part 50, appendix K.

Table 1 below shows the maximum monitored 24-hour PM_{10} values for the Aspen PM_{10} maintenance area for 2004 through 2012. The table reflects that the values for the Aspen area are well below the PM_{10} NAAQS standard of 150 μg/m³.

TABLE 1—ASPEN PM_{10} MAXIMUM 24-HOUR VALUES BASED ON DATA FROM 120 MILL STREET, AQS IDENTIFICATION NUMBER 08–097–0006

Year	Maximum value (μg/m³)
2004	65
2005	51
2006	57
2007	79
2008	65
2009	47
2010	70
2011	51
2012	87

Table 2 below shows the estimated number of exceedances for the Aspen PM_{10} maintenance area for the three-year periods of 2004 through 2006, 2005 through 2007, 2006 through 2008, 2007 through 2009, 2008 through 2010, 2009 through 2011, and 2010 through 2012. The table reflects continuous attainment of the PM_{10} NAAQS.

TABLE 2—ASPEN PM_{10} ESTIMATED EXCEEDANCES BASED ON DATA FROM 120 MILL STREET, AQS IDENTIFICATION NUMBER 08–097–0006

Design value period	3-Year estimated number of exceedances
2004–2006	0
2005–2007	0
2006–2008	0
2007–2009	0
2008–2010	0
2009–2011	0
2010–2012	0

III. 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 EPA.

The Colorado Air Quality Control Commission (AQCC) held a public hearing for the revised Aspen PM_{10} Maintenance Plan on December 16, 2010. The AQCC approved and adopted the revised Aspen PM_{10} Maintenance Plan directly after the hearing. The Governor's designee submitted the revised plan to EPA on May 25, 2011.

We have evaluated the revised maintenance plan and have determined that the State met the requirements for reasonable public notice and public hearing under section 110(a)(2) of the CAA. On November 25, 2011, by operation of law under CAA section 110(k)(1)(B), the revised maintenance plan was deemed to have met the minimum ''completeness'' criteria found in 40 CFR part 51, appendix V.

IV. EPA's Evaluation of the Revised Aspen PM_{10} Maintenance Plan

The following are the key elements of a Maintenance Plan for PM_{10}: Emission Inventory, Maintenance Demonstration, Monitoring Network/Verification of Continued Attainment, Contingency Plan, and Motor Vehicle Emission Budget for PM_{10}. Below, we describe our evaluation of these elements as they pertain to the revised Aspen PM_{10} Maintenance Plan.

A. Emission Inventory

The revised Aspen PM_{10} Maintenance Plan includes three inventories of daily PM_{10} emissions for the Aspen area; they are for 2008, 2015 and 2023. The Air Pollution Control Division (APCD) developed these emission inventories using EPA-approved emissions modeling methods and updated transportation and demographics data. Each emission inventory is a list, by source category, of the air contaminants directly emitted into the Aspen PM_{10} maintenance area. A more detailed description of the 2008, 2015 and 2023 inventories and information on model assumptions and parameters for each source category are contained in the State's PM_{10} Maintenance Plan Technical Support Document (TSD). Included in all the inventories are highway vehicle exhaust, road dust, commercial cooking, construction, fuel combustion, non-road sources, structure fires, and woodburning. We find that Colorado has prepared adequate emission inventories for the area.

B. Maintenance Demonstration

The revised Aspen PM_{10} Maintenance Plan uses emission roll-forward modeling to demonstrate maintenance of the 24-hour PM_{10} NAAQS through 2023. Using the 2008 and 2023 emissions inventories, the State first determined the projected growth in PM_{10} emissions from the 2008 base year to the 2023 maintenance year. The State estimated that emissions would increase from 1,231.2 pounds per day in 2008 to 1,593.0 pounds per day in 2023. This represents an increase of 29.4 percent.

The State then applied this percentage increase to the design day concentration of 79 μg/m³, which was the highest 24-hour maximum PM_{10} value recorded in Aspen from 2006–2008. This resulted in an estimated maximum 24-hour PM_{10} concentration in 2023 of 102.2 μg/m³. This is well below the 24-hour PM_{10} NAAQS of 150 μg/m³.

C. Monitoring Network/Verification of Continued Attainment

In the revised Aspen PM_{10} Maintenance Plan, the State commits to continue to operate an air quality monitoring network in accordance with 40 CFR part 58 to verify continued attainment of the PM_{10} NAAQS. This includes the continued operation of a PM_{10} monitor in the Aspen area, which the State will rely on to track PM_{10} emissions in the maintenance area.

Based on the above, we are approving these commitments as satisfying the relevant requirements. These commitments are similar to those we approved in the original maintenance plan.

D. Contingency Plan

Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions to promptly correct any violation of the NAAQS that occurs after redesignation of an area. To meet this requirement the State has identified appropriate contingency measures along with a schedule for the development and implementation of such measures.

As stated in the revised Aspen PM_{10} Maintenance Plan, exceedances trigger one level of response and violations trigger another. If there is an exceedance, APCD and local government staff will develop appropriate contingency measures intended to prevent or correct a violation of the PM_{10} standard. The APCD and local government staff will consider relevant information about historical exceedances, meteorological data, the most recent estimates of growth and emissions, and whether the exceedance might be attributed to an exceptional event. The maintenance plan indicates that the State will generally notify EPA and local governments in the Aspen area within 30 days of the exceedance, but in no event later than 45 days. The process for exceedances will be completed within six months of the exceedance notification.

If a violation of the PM_{10} NAAQS has occurred, a public hearing process at the State and local level will begin. If the AQCC agrees that the implementation of local measures will prevent further exceedances or violations, the AQCC may endorse or approve the local

measures without adopting State requirements. If, however, the AQCC finds locally adopted contingency measures to be inadequate, the AQCC will adopt State enforceable measures as deemed necessary to prevent additional exceedances or violations. The State commits to adopt and implement any necessary contingency measures within one year after a violation occurs.

The State indentifies the following as potential contingency measures in the revised Aspen PM_{10} Maintenance Plan: (1) Increased street sweeping requirements; (2) more stringent street sand specifications; (3) reduce the use of street sanding materials only to key areas selected by the City of Aspen for safety reasons; (4) re-implementing the following measures that were removed from the federally-approved plan prior to the approval of the first maintenance plan (but only if they are not being implemented at the time the contingency measures are triggered): Expansion of the bus fleet by 14 buses, establishment of 400 Park 'n Ride lot spaces and a 250-space intercept parking lot, and establishment of intercept lot and cross-town shuttle services; (5) transportation control measures designed to reduce vehicle miles traveled; and (7) other emission control measures appropriate for the area based on consideration of cost effectiveness, PM_{10} emission reduction potential, economic and social considerations, or other factors.

We find that the contingency measures provided in the revised Aspen PM_{10} Maintenance Plan are sufficient and meet the requirements of section 175A(d) of the CAA.

E. Transportation Conformity Requirements: Motor Vehicle Emission Budget for PM_{10}

Transportation conformity is required by section 176(c) of the CAA. EPA's conformity rule at 40 CFR 93 requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they conform. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. To effectuate its purpose, the conformity rule requires a demonstration that emissions from the Regional Transportation Plan (RTP) and the Transportation Improvement Program (TIP) are consistent with the motor vehicle emissions budget(s) (MVEB(s)) contained in a control strategy SIP revision or maintenance plan (40 CFR 93.101, 93.118, and 93.124). A MVEB is defined as the level of mobile source emissions of a pollutant relied upon in the attainment or maintenance demonstration to attain or maintain compliance with the NAAQS in the nonattainment or maintenance area. Further information concerning EPA's interpretations regarding MVEBs can be found in the preamble to EPA's November 24, 1993, transportation conformity rule (see 58 FR 62193–62196).

The revised Aspen PM_{10} Maintenance Plan contains a single MVEB of 1,146 lbs/day of PM_{10} for the year 2023, the maintenance year. Once the State submitted the revised plan with the 2023 MVEB to EPA for approval, 40 CFR 93.118 required that EPA determine whether the MVEB was adequate.

Our criteria for determining whether a SIP's MVEB is adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4), which was promulgated August 15, 1997 (see 62 FR 43780). Our process for determining adequacy is described in our July 1, 2004 Transportation Conformity Rule Amendments (see 69 FR 40004) and in relevant guidance.[3] We used these resources in making our adequacy determination described below.

On June 20, 2011, EPA announced the availability of the revised Aspen PM_{10} Maintenance Plan, and the PM_{10} MVEB, on EPA's transportation conformity adequacy Web site. EPA solicited public comment on the MVEB, and the public comment period closed on July 20, 2011. We did not receive any comments. This information is available at EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm#aspen.*

By letter to the Colorado Department of Public Health and Environment (CDPHE) dated August 11, 2011, EPA found that the revised Aspen PM_{10} Maintenance Plan and the 2023 PM_{10} MVEB were adequate for transportation conformity purposes.[4] However, we noted in our letter that the revised Aspen PM_{10} Maintenance Plan did not discuss the PM_{10} MVEB for 2015 of 16,244 lbs/day from the original PM_{10} maintenance plan that EPA approved in 2003 (see 68 FR 26212, May 15, 2003).

According to 40 CFR 93.118(e)(1), the EPA-approved 2015 PM_{10} MVEB must continue to be used for analysis years 2015 through 2022 (as long as such years are within the timeframe of the transportation plan), unless the State elects to submit a SIP revision to revise the 2015 PM_{10} MVEB and EPA approves the SIP revision. This is because the revised Aspen PM_{10} Maintenance Plan did not revise the previously approved 2015 PM_{10} MVEB nor establish a new MVEB for 2015. Accordingly, the MVEB ''. . . for the most recent prior year . . .'' (i.e., 2015) from the original maintenance plan must continue to be used (see 40 CFR 93.118(b)(1)(ii) and (b)(2)(iv)).

We note that there is a considerable difference between the 2023 and 2015 budgets—1,146 lbs/day versus 16, 244 lbs/day. This is largely an artifact of changes in the methods, models, and emission factors used to estimate mobile source emissions. The 2023 MVEB is consistent with the State's 2023 emissions inventory for vehicle exhaust and road dust, and, thus, is consistent with the State's maintenance demonstration for 2023.

The discrepancy between the 2015 and 2023 MVEBs is not a significant issue for several reasons. As a practical matter, the 2023 MVEB of 1,146 lbs/day of PM_{10} would be controlling for any conformity determination involving the relevant years because conformity would have to be shown to both the 2015 MVEB and the 2023 MVEB. Also, for any maintenance plan, like the revised Aspen PM_{10} Maintenance Plan, that only establishes a MVEB for the last year of the maintenance plan, 40 CFR 93.118(b)(2)(i) requires that the demonstration of consistency with the budget be accompanied by a qualitative finding that there are no factors that would cause or contribute to a new violation or exacerbate an existing violation in the years before the last year of the maintenance plan. Therefore, when a conformity determination is prepared which assesses conformity for the years before 2023, the 2023 MVEB and the underlying assumptions supporting it would have to be considered. Finally, 40 CFR 93.110 requires the use of the latest planning assumptions in conformity determinations. Thus, the most current motor vehicle and road dust emission factors would need to be used, and we expect the analysis would show greatly reduced PM_{10} motor vehicle and road dust emissions from those calculated in the first maintenance plan. In view of the above, EPA is approving the 2023 PM_{10} MVEB of 1,146 lbs/day.

[3] ''Companion Guidance for the July 1, 2004 Final Transportation Conformity Rule, Conformity Implementation in Multi-Jurisdictional Nonattainment and Maintenance Areas for Existing and New Air Quality Standards'' (EPA420–B–04–012 July, 2004).

[4] In a **Federal Register** notice dated May 25, 2012, we notified the public of our finding (see 77 FR 31351). This adequacy determination became effective on June 11, 2012.

V. Final Action

We are approving the revised Aspen PM_{10} Maintenance Plan that was submitted to us on May 25, 2011. We are approving the revised maintenance plan because it demonstrates maintenance through 2023 as required by CAA section 175A(b), retains the control measures from the initial PM_{10} maintenance plan that EPA approved in May of 2003, and meets other CAA requirements for a section 175A maintenance plan. Our approval includes approval of the revised maintenance plan's 2023 transportation conformity MVEB for PM_{10} of 1,146 lbs/day.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule as meeting Federal requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children From Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission; to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

The Congressional Review Act, 5 U.S.C. section 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. section 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 November 18, 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, PM_{10}, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: August 28, 2013.

Shaun L. McGrath,

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 G—Colorado

■ 2. Section 52.332 is amended by adding paragraph (r) to read as follows:

§ 52.332 Control strategy: Particulate Matter.

* * * * *

(r) Revisions to the Colorado State Implementation Plan, PM_{10} Revised Maintenance Plan for Aspen, as adopted by the Colorado Air Quality Control Commission on December 16, 2010, State effective on March 1, 2011, and submitted by the Governor's designee on May 25, 2011. The revised maintenance plan satisfies all applicable requirements of the Clean Air Act.

[FR Doc. 2013–22733 Filed 9–18–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2012–0465; FRL–9827–9]

Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; Amendments to Vehicle Inspection and Maintenance Program for Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a state implementation plan (SIP) revision submitted by the Wisconsin Department of Natural Resources on June 7, 2012, concerning the state's vehicle inspection and maintenance (I/M) program in southeast Wisconsin. The revision amends I/M program requirements in the active control measures portion of the ozone SIP to reflect changes that have been implemented at the state level since EPA fully approved the I/M program on August 16, 2001. The submittal also includes a demonstration under section 110(l) of the Clean Air Act (CAA) addressing lost emission reductions associated with the program changes.

DATES: This final rule is effective on October 21, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2012–0465. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Francisco J. Acevedo, Mobile Source Program Manager, at (312) 886–6061, before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Francisco J. Acevedo, Mobile Source Program Manager, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6061, *acevedo.francisco@epa.gov*.

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

I. What is being addressed by this document?
II. What comments did we receive on the proposed rule?
III. What action is EPA taking?
IV. Statutory and Executive Order Reviews

I. What is being addressed by this document?

On April 25, 2013, at 78 FR 24373, EPA proposed to approve into the state's Federally-approved SIP several regulatory changes to the previously approved I/M program operating in southeast Wisconsin. The most significant changes to the Wisconsin I/M program took effect beginning on July 2008 and include:

- The elimination of I/M program testing requirements for vehicles not equipped with computerized second generation on-board diagnostic systems. This change impacted model year (MY) 1968 through 1995 vehicles. These vehicles were previously subject to tailpipe testing.
- The elimination of I/M program testing requirements for gasoline vehicles with gross vehicle weight rating (GVWR) between 8,500 to 10,000 pounds (lbs). This change impacted MY 1996 through 2006 vehicles. Previously, all vehicles up to 10,000 lbs were subject to testing.
- The addition of I/M program testing requirements for gasoline vehicles with a GVWR of 10,000 to 14,000 lbs. This change impacted MY 2007 and later vehicles.
- The addition of I/M program testing requirements for diesel vehicles with a GVWR up to 14,000 lbs. This change impacted MY 2007 and later vehicles.

In addition to the changes discussed above, EPA is approving a number of minor revisions to the program that do not have a significant impact on overall program operations or the emissions reductions associated with it. A full list of the changes submitted by Wisconsin for EPA approval include:

- Revisions to Section 100.20, Wisconsin Statutes (2001 Wisconsin Act 16, published August 31, 2001; 2003 Wisconsin Act 220, published April 22, 2003; 2005 Wisconsin Act 49, published October 27, 2005; 2007 Wisconsin Act 20, published October 26, 2007; 2009 Wisconsin Act 228, published May 19, 2010);
- revisions to Section 285.30, Wisconsin Statutes (2003 Wisconsin Act 192, published April 21, 2004; 2007 Wisconsin Act 20, published October 26, 2007; 2007 Wisconsin Act 33, published December 3, 2007; 2009 Wisconsin Act 157, published March 24, 2010; 2009 Wisconsin Act 311, published May 26, 2010);
- revisions to Wisconsin Administrative Code, Chapter NR 485 (Clearinghouse Rule CR 05–072 effective April 1, 2006; Clearinghouse Rule CR 10–049 effective December 1, 2010);
- revisions to Wisconsin Administrative Code, Chapter Trans 131 (Clearinghouse Rule CR 01–121 effective April 1, 2002; Clearinghouse Rule CR 07–114 effective July 1, 2008; Clearinghouse Rule CR 10–088 effective January 1, 2011).

II. What comments did we receive on the proposed rule?

EPA provided a 30-day review and comment period. The comment period closed on May 28, 2013. EPA received no adverse comments.

III. What action is EPA taking?

EPA is approving the revisions to the Wisconsin ozone SIP submitted on June 7, 2012, concerning the I/M program in southeast Wisconsin. EPA finds that the revisions meet all applicable requirements and will not interfere with reasonable further progress or attainment of any of the national ambient air quality standards.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 18, 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, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.

Dated: June 12, 2013.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. Section 52.2570 is amended by adding paragraph (c)(128) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(128) On June 7, 2012, the Wisconsin Department of Natural Resources submitted a request to revise Wisconsin's vehicle inspection and maintenance (I/M) program to reflect changes that have been made to the program since EPA fully approved the I/M program on August 16, 2001.

(i) Incorporation by reference.

(A) Wisconsin Administrative Code, NR 485.01 Applicability; purpose, as published in the Wisconsin Administrative Register May 1992, No. 437, effective June 1, 1992.

(B) Wisconsin Administrative Code, NR 485.02 Definitions, NR 485.04 Motor vehicle emission limitations; exemptions, and NR 485.045 Repair cost limit for vehicle inspection program, as published in the Wisconsin Administrative Register November 2010, No. 659, effective December 1, 2010.

(C) Wisconsin Administrative Code, NR 485.06 Tampering with air pollution control equipment, as published in the Wisconsin Administrative Register March 2006, No. 603, effective April 1, 2006.

(D) Wisconsin Administrative Code, NR 485.07 Inspection requirement for motor vehicle tampering, as published in the Wisconsin Administrative Register January 1997, No. 493, effective February 1, 1997.

(E) Wisconsin Administrative Code, Trans 131.01 Purpose and scope, Trans 131.02 Definitions, Trans 131.03 Emission inspection and reinspection, Trans 131.04 Waiver of compliance, Trans 131.05 Waiver emission equipment inspection, Trans 131.06 Inspection compliance, Trans 131.07 Voluntary inspections, Trans 131.11 Audits of inspection facilities, Trans 131.12 Equipment specifications and quality control, Trans 131.13 Licensing of inspectors, Trans 131.14 Remote sensing, Trans 131.15 Performance monitoring of repair facilities, as published in the Wisconsin Administrative Register December 2010, No. 660, effective January 01, 2011.

(F) Wisconsin Administrative Code, Trans 131.08 Letter of temporary exemption from emission inspection requirements, and Trans 131.10 Reciprocity, as published in the Wisconsin Administrative Register March 2002, No. 555, effective April 01, 2002.

(G) Wisconsin Administrative Code, Trans 131.09 Temporary operating permits, and Trans 131.16 Automotive emission repair technician training, as published in the Wisconsin Administrative Register June 2008, No. 630, effective July 01, 2008.

(H) Wisconsin Administrative Code, Trans 131.17 Notification of inspection requirements, as published in the Wisconsin Administrative Register April 1996, No. 484, effective May 01, 1996.

(I) Wisconsin Statutes, section 110.20 Motor vehicle emission inspection and maintenance program, as revised by 2009 Wisconsin Act 228, enacted on May 5, 2010. (A copy of 2009 Wisconsin Act 228 is attached to section 110.20 to verify the enactment date.)

(J) Wisconsin Statutes, section 285.30 Motor vehicle emissions limitations; inspections, as revised by 2009 Wisconsin Act 311, enacted on May 12, 2010. (A copy of 2009 Wisconsin Act 311 is attached to section 285.30 to verify the enactment date.)

[FR Doc. 2013–22744 Filed 9–18–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2012–0760: FRL–9901–02–Region 10]

Revision to the Washington State Implementation Plan; Approval of Motor Vehicle Emission Budgets and Determination of Attainment for the 2006 24-Hour Fine Particulate Standard; Tacoma-Pierce County Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving a request submitted by the Washington Department of Ecology (Ecology) dated November 28, 2012, to establish motor vehicle emission budgets for the Tacoma-Pierce County fine particulate matter ($PM_{2.5}$) nonattainment area to meet transportation conformity requirements. Under the Clean Air Act (CAA), new transportation plans, programs, and projects, such as the construction of new highways, must ''conform'' to (i.e., be consistent with) the State Implementation Plan (SIP). The CAA requires federal actions in nonattainment and maintenance areas to ''conform to'' the goals of the SIP. This means that such actions will not cause or contribute to violations of the National Ambient Air Quality Standards (NAAQS), worsen the severity of an existing violation, or delay timely attainment of any NAAQS or any interim milestone.

Under the Transportation Conformity Rule, the EPA can approve motor vehicle emission budgets based on the most recent year of clean data if the EPA approves the request in the rulemaking that determines that the area has attained the NAAQS for which the area is designated nonattainment. In September 2012, the EPA finalized an attainment finding for the Tacoma-Pierce County $PM_{2.5}$ nonattainment area (hereafter referred to as ''Tacoma-Pierce County Area'' or ''the area''). This finding, also called a clean data determination, was based upon quality-assured, quality-controlled, and certified ambient air monitoring data showing that the area had monitored attainment of the 2006 $PM_{2.5}$ NAAQS based on the 2009–2011 data available in the EPA's Air Quality System. This action updates the previous finding of attainment with more recent 2010–2012 data and approves motor vehicle emission budgets under the Transportation Conformity Rule.

DATES: This final rule is effective on October 21, 2013.

ADDRESSES: The EPA has established a docket for this action under Docket Identification No. EPA–R10–OAR–2012–0760. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at EPA Region 10, Office of Air, Waste, and Toxics, AWT–107, 1200 Sixth Avenue, Seattle, Washington 98101. The EPA requests that 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 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt at (206) 553–0256, *hunt.jeff@epa.gov,* or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we,'' ''us,'' or ''our'' are used, it is intended to refer to the EPA.

Table of Contents

I. Background
II. Final Action
III. Statutory and Executive Order Reviews

I. Background

On November 28, 2012, Ecology submitted a request for the EPA to approve motor vehicle emission budgets for the Tacoma-Pierce County area to meet transportation conformity requirements. As described in 40 CFR 93.109(c)(5) of the Transportation Conformity Rule, the EPA can approve motor vehicle emission budgets if the EPA approves the request in a rulemaking that determines that the area has attained the NAAQS for which the area is designated nonattainment. An explanation of the CAA requirements and implementing regulations that are met by this action, a detailed explanation of the revision, and the EPA's reasons for approving it were provided in the notice of proposed rulemaking on July 18, 2013, and will not be restated here. See 78 FR 42905. The public comment period for this proposed rule ended on August 19, 2013. The EPA did not receive any comments on the proposal.

II. Final Action

The EPA has determined, based on the most recent three years of complete, quality-assured data meeting the requirements of 40 CFR part 50, appendix N, that the Tacoma-Pierce County area is currently attaining the 2006 24-hour $PM_{2.5}$ NAAQS. As explained in the proposal for this action, the EPA has determined that the following attainment-related planning requirements are not applicable for so long as the area continues to attain the $PM_{2.5}$ standard: The part D, subpart 4 obligations to provide an attainment demonstration pursuant to CAA section 189(a)(1)(B), the reasonably available control measures (RACM) provisions of CAA section 189(a)(1)(C), the reasonable further progress (RFP) provisions of CAA section 189(c), and related attainment demonstration, RACM, RFP and contingency measure provisions requirements of subpart 1 of CAA section 172. This action does not constitute a redesignation to attainment under CAA section 107(d)(3). In conjunction with this finding of attainment, the EPA is approving the motor vehicle emission budgets shown below in Table 1 below. The EPA is approving the motor vehicle emission budgets pursuant to 40 CFR 93.109(c)(5)(iii), as described in the Transportation Conformity Rule and the preamble of the Transportation Conformity Restructuring Amendments (77 FR 14982, March 14, 2012).

TABLE 1—2011 MOTOR VEHICLE EMISSION BUDGETS FOR THE TACOMA-PIERCE COUNTY 2006 FINE PARTICULATE MATTER NONATTAINMENT AREA

Pollutant	Emissions (pounds per winter day)
$PM_{2.5}$	3,002
NO_X	71,598

III. 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, the 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 the 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 it will not impose substantial direct costs on tribal governments or preempt tribal law. The SIP is not approved to apply in Indian country located in the State, except for non-trust land within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the Puyallup Tribe of Indians Settlement Act of 1989, 25 U.S.C. 1773, Congress explicitly provided state and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area and the EPA is therefore approving this SIP on such lands. Consistent with EPA policy, the EPA nonetheless provided a consultation opportunity to the Puyallup Tribe in a letter dated December 11, 2012. The EPA did not receive a request for consultation.

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 November 18, 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, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 3, 2013.

Dennis J. McLerran,

Regional Administrator, Region 10.

40 CFR part 52 is amended 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 WW—Washington

■ 2. Section 52.2470 is amended:

■ a. In the table in paragraph (e) by adding two new entries ''Particulate Matter ($PM_{2.5}$) 2008 Baseline Emissions Inventory and SIP Strengthening Rules'' and ''Approval of Motor Vehicle Emission Budgets and Determination of Attainment for the 2006 24-Hour Fine Particulate Standard'' at the end of the section with the heading ''Attainment and Maintenance Planning—Particulate Matter''

■ b. In the table in paragraph (e) by removing entry ''Particulate Matter ($PM_{2.5}$) 2008 Baseline Emissions Inventory and SIP Strengthening Rules'' and the heading ''Recently Approved Plans''

§ 52.2470 Identification of plan.

* * * * *

(e) * * *

STATE OF WASHINGTON NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
*	*	*	*	*
Attainment and Maintenance Planning—Particulate Matter				
*	*	*	*	*
Particulate Matter ($PM_{2.5}$) 2008 Baseline Emissions Inventory and SIP Strengthening Rules.	Tacoma, Pierce County	11/28/12	5/29/13, 78 FR 32131.	

STATE OF WASHINGTON NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES—Continued

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
Approval of Motor Vehicle Emission Budgets and Determination of Attainment for the 2006 24-Hour Fine Particulate Standard.	Tacoma, Pierce County	11/28/12	9/19/13, [Insert page number where the document begins].	
* * * * * * *				

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[FR Doc. 2013–22738 Filed 9–18–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 88

[Docket No. CDC–2013–0012; NIOSH–267]

RIN 0920–AA54

World Trade Center Health Program; Addition of Prostate Cancer to the List of WTC-Related Health Conditions

AGENCY: Centers for Disease Control and Prevention, HHS.

ACTION: Final rule.

SUMMARY: On May 2, 2013, the Administrator of the World Trade Center (WTC) Health Program received a petition (Petition 002) requesting the addition of prostate cancer to the List of WTC-Related Health Conditions (List) covered in the WTC Health Program. In this final rule, the Administrator adds malignant neoplasm of the prostate (prostate cancer) to the List in the WTC Health Program regulations.

DATES: This final rule is effective October 21, 2013.

FOR FURTHER INFORMATION CONTACT: Paul Middendorf, Senior Health Scientist, 1600 Clifton Rd. NE., MS: E–20, Atlanta, GA 30329; telephone (404) 498–2500 (this is not a toll-free number); email *pmiddendorf@cdc.gov.*

SUPPLEMENTARY INFORMATION: This preamble is organized as follows:

I. Executive Summary
- A. Purpose of Regulatory Action
- B. Summary of Major Provisions
- C. Costs and Benefits

II. Public Participation

III. Background
- A. WTC Health Program Statutory Authority
- B. Methods Used by the Administrator To Determine Whether To Add Cancer or Types of Cancer to the List of WTC-Related Health Conditions
- C. Consideration of Evidence for Adding Prostate Cancer to the List

IV. Administrator's Determination on Petition 002 Requesting the Addition of Prostate Cancer to the List

V. Early Detection of Prostate Cancer

VI. Effects of Rulemaking on Federal Agencies

VII. Summary of Final Rule and Response to Public Comments

VIII. Regulatory Assessment Requirements
- A. Executive Order 12866 and Executive Order 13563
- B. Regulatory Flexibility Act
- C. Paperwork Reduction Act
- D. Small Business Regulatory Enforcement Fairness Act
- E. Unfunded Mandates Reform Act of 1995
- F. Executive Order 12988 (Civil Justice)
- G. Executive Order 13132 (Federalism)
- H. Executive Order 13045 (Protection of Children From Environmental Health Risks and Safety Risks)
- I. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)
- J. Plain Writing Act of 2010

I. Executive Summary

A. Purpose of Regulatory Action

This rulemaking is being conducted in response to a petition to the Administrator of the WTC Health Program by the Patrolmen's Benevolent Association, a union representing New York City police officers (Petition 002). The petition asks that the Administrator add prostate cancer to the List of WTC-Related Health Conditions citing a study of over 25,000 WTC responders enrolled in the WTC Health Program as scientific evidence.

B. Summary of Major Provisions

The rule adds prostate cancer to the cancers identified in 42 CFR 88.1, Table 1 as covered by the WTC Health Program for treatment and monitoring.

C. Costs and Benefits

The addition of prostate cancer by this rulemaking is estimated to cost the WTC Health Program between $3,462,675 and $6,995,817 per annum. All of the costs to the WTC Health Program will be transfers after the implementation of provisions of the Patient Protection and Affordable Care Act (Pub. L. 111–148) on January 1, 2014.

II. Public Participation

On July 2, 2013, the Administrator of the WTC Health Program published a notice of proposed rulemaking (78 FR 39670) proposing to add prostate cancer (malignant neoplasm of the prostate) to the List of WTC-Related Health Conditions. The Administrator invited interested persons or organizations to participate in this rulemaking by submitting written views, opinions, recommendations, and/or data. Comments were invited on any topic related to the proposed rule.

The Administrator received 11 substantive submissions to the docket for this rulemaking. Commenters included the following: relatives of Fire Department of New York (FDNY) members who responded at Ground Zero; a FDNY responder; a New York Police Department responder; a survivor of the attacks in New York; two labor unions that represent WTC responders; the WTC Health Program Survivor Steering Committee; and three elected officials. A summary of those comments and the Administrator's responses are found in Section VII (Summary of the Final Rule and Response to Public Comments) of this document.

III. Background

A. WTC Health Program Statutory Authority

Title I of the James Zadroga 9/11 Health and Compensation Act of 2010 (Pub. L. 111–347), amended the Public Health Service Act (PHS Act) to add Title XXXIII [1] establishing the WTC Health Program within the Department of Health and Human Services (HHS). The WTC Health Program provides medical monitoring and treatment benefits to eligible firefighters and related personnel, law enforcement officers, and rescue, recovery, and

[1] Title XXXIII of the PHS Act is codified at 42 U.S.C. 300mm to 300mm–61. Those portions of the Zadroga Act found in Titles II and III of Public Law 111–347 do not pertain to the WTC Health Program and are codified elsewhere.

cleanup workers (responders) who responded to the September 11, 2001, terrorist attacks in New York City, at the Pentagon, and in Shanksville, Pennsylvania, and to eligible persons (survivors) who were present in the dust or dust cloud on September 11, 2001 or who worked, resided, or attended school, childcare, or adult daycare in the New York City disaster area.

All references to the Administrator of the WTC Health Program (Administrator) in this notice mean the Director of the National Institute for Occupational Safety and Health (NIOSH) or his or her designee. Section 3312(a)(6) of the PHS Act requires the Administrator to conduct rulemaking to propose the addition of a health condition to the List of WTC-Related Health Conditions (List) codified in 42 CFR 88.1.

B. Methods Used by the Administrator To Determine Whether To Add Cancer or Types of Cancer to the List of WTC-Related Health Conditions

In the preamble to a final rule published on September 12, 2012, the Administrator established a four-part hierarchical methodology to apply in evaluating whether to propose adding certain types of cancer to the List of WTC-Related Health Conditions included in 42 CFR 88.1.[2] Method 1 is the preferred method for adding types of cancer to the List. When the analysis of epidemiologic studies in Method 1 does not support a causal association between 9/11 exposures and a type of cancer, the Administrator applies the criteria of Method 2.[3] If no causal association between a currently listed condition and the type of cancer is identified using Method 2, the Administrator applies the criteria of Method 3. If Method 3 does not indicate that a recognized 9/11 exposure is categorized by the National Toxicology Program (NTP) as a known or reasonably anticipated human carcinogen[4] or the International Agency for Research on Cancer (IARC) has not determined there is sufficient or limited evidence in humans that a 9/11 exposure is causally associated with a type of cancer,[5] then the criteria of Method 4 are applied. Under Method 4, the Administrator determines whether the WTC Health Program Scientific/Technical Advisory Committee (STAC), if consulted, has provided a reasonable basis for adding the type of cancer, aside from Methods 1, 2, or 3 mentioned above. Only where the Administrator is satisfied that one of the four methods provides a reasonable basis to add the cancer will he propose that a type of cancer be added to the List.

C. Consideration of Evidence for Adding Prostate Cancer to the List

On May 2, 2013, the Administrator received Petition 002 from the Patrolmen's Benevolent Association, a union representing New York City police officers. Petition 002 referenced, and relied upon, a study of over 25,000 WTC responders enrolled in the WTC Health Program, authored by Solan *et al.* and published in the scientific journal *Environmental Health Perspectives*.[6] Petition 002 asserted that the Solan study:

> affirms what was reported in prior published studies, that those exposed to the Ground Zero toxins are at higher risk of developing cancer than the general population. Notably, the Study found a statistically significant incidence rate for prostate cancer, including a 17% greater than expected rate of prostate cancer among responders. According to the Study, these findings were ''concordant'' with the findings of the New York City Fire Department [FDNY] and the New York City Department of Health and Mental Hygiene World Trade Center Health City Registry.[7]

The ''prior published studies'' referenced in Petition 002 were authored by Zeig-Owens *et al.,* published in *The Lancet* in September 2011,[8] and by Li *et al.,* published in the *Journal of the American Medical Association* (*JAMA*) in December 2012.[9] The Zeig-Owens, Li, and Solan studies were reviewed and analyzed by the Administrator in the notice of proposed rulemaking published July 2, 2013.[10] The Administrator's review focused on the information that the three epidemiologic studies, taken as a whole, provided on the question of the risk of prostate cancer in association with 9/11 exposures and the role of surveillance bias in explaining any observed excess risk. A summary of the Administrator's findings regarding the three studies is offered below, followed by the Administrator's final determination on the addition of prostate cancer to the List.

IV. Administrator's Determination on Petition 002 Requesting the Addition of Prostate Cancer to the List

In response to Petition 002, the Administrator has reviewed the available evidence pertinent to the four-part hierarchical methodology described above.[11] The Administrator's determination to not add prostate cancer in the 2012 rulemaking is superseded by his new evaluation, discussed in the notice of proposed rulemaking. The 2012 evaluation relied on the only epidemiologic study available at that time, Zeig-Owens, and the STAC's assessment of that study and vote to not include prostate cancer in its recommendation. The subsequently published Li and Solan studies present new epidemiologic findings from larger, more heterogeneous populations and present evidence that surveillance bias may not be occurring in the studied populations. Review of the two new studies leads the Administrator to determine that surveillance bias may not fully explain the increased incidence of prostate cancer and, accordingly, the Administrator can no longer attribute increased incidence of prostate cancer to surveillance bias with adequate certainty.

After comprehensive review of all three epidemiology studies of 9/11-exposed populations, the Administrator has determined that the epidemiologic evidence evaluated under Method 1 is inconclusive. Because no relationship

[2] 77 FR 56138, 56142.

[3] The results of epidemiologic studies are the primary and best evidence for making a determination of a causal association between an exposure and a health outcome, such as cancer. An analysis of the results of any epidemiologic study has three possible outcomes: (1) The analysis supports an association between exposures and a health outcome (yes); (2) the analysis supports that there is no association between exposures and a health outcome (no); or (3) the analysis is inconclusive about whether an association exists between exposures and a health outcome (inconclusive).

[4] National Toxicology Program (NTP), U.S. Department of Health and Human Services. Report on Carcinogens (RoC). *http://ntp.niehs.nih.gov/?objectid=72016262-BDB7-CEBA-FA60E922B18C2540.* Accessed August 12, 2013.

[5] World Health Organization International Agency for Research on Cancer (IARC). *http://monographs.iarc.fr/.* Accessed August 12, 2013.

[6] Solan S, Wallenstein S, Shapiro M, Teitelbaum SL, Stevenson L, Kochman A, Kaplan J, Dellenbaugh C, Kahn A, Biro FN, Crane M, Crowley L, Gabrilove J, Gonsalves L, Harrison D, Herbert R, Luft B, Markowitz SB, Moline J, Niu X, Sacks H, Shukla G, Udasin I, Lucchini RG, Boffetta P, Landrigan PJ [2013]. Cancer incidence in World Trade Center Rescue and Recovery Workers, 2001–2008. Environmental Health Perspectives 121(6):699–704.

[7] The Petitioner incorrectly states that the Solan study reported a 17 percent increase in prostate cancer. Solan *et al.* report a 21 percent increase in prostate cancer when the timeframe for diagnosis is unrestricted, and 23 percent when the timeframe for diagnosis is restricted.

[8] Zeig-Owens R, Webber MP, Hall CB, Schwartz T, Jaber N, Weakley J, Rohan TE, Cohen HW, Derman O, Aldrich TK, Kelly K, Prezant DJ [2011]. Early Assessment of Cancer Outcomes in New York City Firefighters after the 9/11 Attacks: An Observational Cohort Study. The Lancet 378(9794):898–905.

[9] Li J, Cone JE, Kahn AR, Brackbill RM, Farfel MR, Greene CM, Hadler JL, Stayner LT, Stellman SD [2012]. Association between World Trade Center Exposure and Excess Cancer Risk. JAMA 308(23):2479–2488.

[10] 78 FR 39670, 39674–39675.

[11] *See* pages 39674–39675 of the notice of proposed rulemaking (78 FR 39670, July 2, 2013).

has been identified between prostate cancer and a condition on the List of WTC-Related Health Conditions (Method 2), the review turned to evaluating the evidence of carcinogenicity provided by NTP and IARC under Method 3. The Administrator has determined that, based on the evidence provided in Method 3, prostate cancer will be added to the List of WTC-Related Health Conditions on the effective date for this final rule.

V. Early Detection of Prostate Cancer

Early detection of cancer in 9/11-exposed populations—either as part of medical monitoring of enrolled WTC responders and survivors or part of ongoing research—is an important adjunct to the WTC Health Program. The WTC Health Program adheres to the recommendations of the U.S. Preventive Services Task Force (USPSTF) with regard to coverage for preventive measures, including screening tests, counseling, immunizations, and preventive medications. The USPSTF recommends against PSA-based screening for prostate cancer.[12] Therefore, PSA-based screening for prostate cancer will not be covered by the WTC Health Program.

VI. Effects of Rulemaking on Federal Agencies

Title II of the James Zadroga 9/11 Health and Compensation Act of 2010 (Pub. L. 111–347) reactivated the September 11, 2001 Victim Compensation Fund (VCF). Administered by the U.S. Department of Justice (DOJ), the VCF provides compensation to any individual or representative of a deceased individual who was physically injured or killed as a result of the September 11, 2001, terrorist attacks or during the debris removal. Eligibility criteria for compensation by the VCF include a list of presumptively covered health conditions, which are physical injuries determined to be WTC-related health conditions by the WTC Health Program. Pursuant to DOJ regulations, the VCF Special Master is required to update the list of presumptively covered conditions when the List of WTC-Related Health Conditions in 42 CFR 88.1 is updated.

VII. Summary of Final Rule and Response to Public Comments

The Administrator received 11 public comments on the notice of proposed rulemaking. Ten comments support inclusion of prostate cancer on the List of WTC-Related Health Conditions.

One commenter does not support the proposal to add prostate cancer to the List. The commenter finds that, because the epidemiologic studies published to date are inconclusive with regard to the relationship between 9/11 exposures and prostate cancer, adding prostate cancer is inappropriate at this time. Further, the commenter states that the proposal to add prostate cancer using Method 3 ''threatens the integrity of the decision-making process in the future by utilizing unclear science.'' According to the commenter, the Administrator did not ''rigorously analyze[ ] the presence and concentration of arsenic and cadmium at the attack sites.'' In addition, the commenter asserts that the review of evidence by IARC does not conclusively support the idea that arsenic and cadmium are carcinogenic for prostate cancer. Finally, the commenter believes that the addition of prostate cancer will create a strain on the financial resources available to both the WTC Health Program and the VCF administered by the Department of Justice.

The Administrator concurs that Method 1 of the Administrator's methodology, which evaluates the available epidemiologic evidence, is the preferred method for deciding whether to add a cancer to the List of WTC-Related Health Conditions. However, epidemiologic studies are substantially limited in their ability to provide timely guidance on which types of cancer should be added to the List to allow the WTC Health Program to provide services to the responders and survivors currently suffering from cancers related to 9/11 exposures. Due to the traditionally long latency period between exposure and cancer diagnosis, many epidemiologic studies of cancer and findings on health effects associated with particular exposures are produced years after a given exposure event. Waiting for definitive, scientifically-unassailable epidemiologic results before adding types of cancer to the List would be less than ideal given the immediate need for treatment of many WTC Health Program members and prospective members. In addition, other factors make it difficult to establish positive associations using traditional epidemiologic methods within a short time frame. The number of potentially exposed individuals is small, so the statistical power of any study will be substantially limited. Detecting traditional statistically significant increases will be difficult and may only be definitively established through a retrospective cohort mortality study conducted decades from now.

While Method 1 is the preferred method, section 3312(a)(6) of the PHS Act does not limit the Administrator's methodology to the use of traditional epidemiologic methods to add conditions to the List (Method 1). Upon thorough review of all available information, including peer-reviewed and unpublished studies, expert opinion, the STAC recommendation solicited by the Administrator for the 2012 rulemaking, and comments from the public, the Administrator determined in the September 2012 final rule that it is reasonable to acknowledge the limitations of traditional epidemiologic methods. As the Administrator concluded, ''[r]equiring evidence of positive associations from epidemiologic studies of 9/11-exposed populations exclusively does not serve the best interests of WTC Health Program members.'' [13] Accordingly, the three additional hierarchical methods were established to incorporate additional scientific sources of information in the evaluation process.

Method 3 of the Administrator's methodology incorporates qualitative exposure information and established relationships between exposure agents and types of cancer. The quantitative exposures of individuals at the WTC, particularly during the collapse of the towers and for several days afterward, will likely never be fully known. Reliance on the concentrations found in settled dust samples or observations several days or weeks after the attacks does not provide a complete understanding of the exposures. While the concentrations of arsenic and cadmium in settled dust samples collected from around the WTC site were relatively low, the qualitative exposure conditions of thick dust clouds, the likely ingestion of dust by individuals at or near the site, and the large deposits of dust in homes are likely to result in large, short-term exposures.

Analysis under Method 3 also includes identifying those agents categorized (1) by NTP as *known* or *reasonably anticipated* to be human carcinogens, and (2) by IARC as *known, probable,* or *possible* human carcinogens and having *sufficient* or *limited* evidence for causing specific types of cancer in humans. NTP and IARC findings have undergone substantial peer review and/or scientific scrutiny in their development. These authoritative bodies have categorized arsenic and inorganic arsenic

[12] U.S. Preventive Services Task Force. Recommendation: Screening for Prostate Cancer (2012). *http://www.uspreventiveservicestaskforce.org/prostatecancerscreening.htm.* Accessed August 12, 2013.

[13] 77 FR 56138, 56156 (September 12, 2012).

compounds as well as cadmium and cadmium compounds as known human carcinogens, and IARC has determined there is *limited* evidence that arsenic and inorganic arsenic compounds as well as cadmium and cadmium compounds cause cancer of the prostate.[14] Thus, the criteria in Method 3, established to add a type of cancer based on relevant exposure and an established relationship to a specific type of cancer, have been met and prostate cancer is added to the List of WTC-Related Health Conditions.

The Administrator understands the concerns about the lack of certainty in these methods and potential adverse impact on the VCF. However, the Administrator notes that individuals who are not currently enrolled in the WTC Health Program must first be determined to be eligible and qualified to enroll. The Administrator also notes that listing a cancer as a WTC-related health condition does not necessarily mean that a cancer in an individual WTC responder or survivor diagnosed by a Program physician will be determined to be WTC-related. Each WTC responder and survivor enrolled in the Program will go through a physician's determination and Program certification process to assess whether the individual's cancer meets the statutory definition of a WTC-related health condition.[15] The use of individual medical history and exposure assessment as part of the determination and certification process will reduce the uncertainties inherent in the methods used to determine which cancers to add to the List. Guidelines for determination and certification of a WTC-related health condition have been jointly developed by the WTC Health Program and the Clinical Centers of Excellence (CCE) for conditions on the List. With this input from the CCEs, the WTC Health Program will develop additional instructions to assess, for purposes of certification, whether an individual's 9/11 exposure may have contributed to, aggravated, or caused their prostate cancer. Similarly, the VCF employs rigorous standards used to determine individual compensation awards. The Administrator is not in a position to comment on the budget impact that this regulation will have on the VCF as matters concerning VCF administration are outside the scope of this rulemaking.

For the reasons discussed above and in the notice of proposed rulemaking published July 2, 2013, the Administrator amends 42 CFR 88.1, paragraph (4), Table 1, to add malignant neoplasm of the prostate (prostate cancer) and to add the corresponding medical diagnostic codes.[16]

VIII. Regulatory Assessment Requirements

A. Executive Order 12866 and Executive Order 13563

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This final rule has been determined not to be a ''significant regulatory action'' under sec. 3(f) of E.O. 12866, and therefore has not been reviewed by the Office of Management and Budget (OMB). The addition of prostate cancer by this rulemaking is estimated to cost the WTC Health Program between $3,462,675 [17] and $6,995,817 [18] per annum. All of the costs to the WTC Health Program will be transfers after the implementation of provisions of the Patient Protection and Affordable Care Act (Pub. L. 111–148) on January 1, 2014. The rule would not interfere with State, local, and Tribal governments in the exercise of their governmental functions.

Cost Estimates

The WTC Health Program has, to date, enrolled approximately 58,500 WTC responders and approximately 6,500 survivors, or approximately 65,000 individuals in total. Of that total population, approximately 60,000 individuals were participants in previous WTC medical programs and were 'grandfathered' into the WTC Health Program established by Title XXXIII.[19] In addition to those grandfathered WTC responders and survivors already enrolled, the PHS Act sets a numerical limitation on the number of eligible members who can enroll in the WTC Health Program beginning July 1, 2011 at 25,000 new WTC responders and 25,000 new WTC survivors (*i.e.,* the statute restricts new enrollment).[20] Since July 1, 2011, a total of approximately 3,000 new WTC responders and new WTC survivors (over 1,700 responders and 1,200 survivors) have enrolled in the WTC Health Program, resulting in only a minor impact on the statutory enrollment limits for new members. For the purpose of calculating a baseline estimate of cancer prevalence only, the Administrator assumed that this gradual rate of enrollment would continue, and that the currently enrolled population numbers would remain around 58,500 WTC responders and 6,500 WTC survivors. The estimate is further based on the average U.S. cancer prevalence rate and 7 percent discount rate.

As it is not possible to identify an upper bound estimate, HHS has modeled another possible point on the continuum. For the purpose of calculating the impact of an increased rate of cancer on the WTC Health Program, this analysis assumes that the entire statutory cap for new WTC responders (25,000) and WTC survivors (25,000) will be filled. Accordingly, this estimate is based on a population of 80,000 responders (55,000 grandfathered + 25,000 new) and 30,000 survivors (5,000 grandfathered + 25,000 new). The upper cost estimate also assumes an overall increase in population cancer rates (for malignant neoplasm of the prostate [prostate cancer] of 21 percent due to 9/11

[14] Cogliano VJ, Baan R, Straif K, Grosse Y, Lauby-Secretan B, El Ghissassi F, Bouvard B, Benbrahim-Tallaa L, Guha N, Freeman C, Galichet L, Wild CP [2011]. Preventable Exposures Associated with Human Cancers. Journal of the National Cancer Institute 103:1827–1839.

IARC (International Agency for Research on Cancer) [2012]. IARC Monographs on the Evaluation of Carcinogenic Risks to Humans: Vol. 100—A Review of Human Carcinogens. Part C: Arsenic, Metals, Fibres, and Dusts. IARC, Lyon, France. *http://monographs.iarc.fr/ENG/Monographs/vol100C/index.php.* Accessed August 7, 2013.

[15] ''An illness or health condition for which exposure to airborne toxins, any other hazard, or any other adverse condition resulting from the September 11, 2001, terrorist attacks, based on an examination by a medical professional with experience in treating or diagnosing the health conditions included in the applicable list of WTC-related health conditions, is substantially likely to be a significant factor in aggravating, contributing to, or causing the condition.'' PHS Act, sec. 3312(a)(1)(A)(i).

[16] ICD–9 code 185 and ICD–10 code C61. See, respectively, WHO (World Health Organization) [1978]. International Classification of Diseases, Ninth Edition; WHO [1997]. International Classification of Diseases, Tenth Edition.

[17] Based on a population of 60,000 at the U.S. cancer rate and discounted at 7 percent.

[18] Based on a population of 110,000 at 21 percent above the U.S. cancer rate and discounted at 3 percent.

[19] These grandfathered members were enrolled without having to complete a new member application when the WTC Health Program started on July 1, 2011 and are referred to in the WTC Health Program regulations in 42 CFR Part 88 as ''currently identified responders'' and ''currently identified survivors.''

[20] PHS Act, secs. 3311(a)(4)(A) and 3321(a)(3)(A).

exposure),[21] and costs were discounted at 3 percent. The choice of a 21 percent increase in the risk of cancer of the rate found in the un-exposed population is based on findings presented in the first published epidemiologic study of September 11, 2001 exposed populations.[22] Given the challenges associated with interpreting the Zeig-Owens findings,[23] we simply characterize 21 percent as a possible outcome rather than asserting the probability that 21 percent is a ''likely'' outcome.

The Administrator acknowledges that some prostate cancer cases are not likely to have been caused by 9/11 exposures. The certification of individual cancer diagnoses will be conducted on a case-by-case basis. However, for the purpose of this analysis, the Administrator has estimated that all diagnosed cancers added to the List will be certified for treatment by the WTC Health Program. Finally, because there are no existing data on cancer rates related to 9/11 exposures at either the Pentagon or in Shanksville, Pennsylvania, the Administrator has used only data from studies of individuals who were responders or survivors in the New York City disaster area.

Costs of Cancer Treatment

The Administrator estimated the treatment costs associated with covering prostate cancer in this rulemaking using the methods described below. The WTC Health Program obtained data for the cost of providing medical treatment for prostate cancer.[24] The costs of treatment are described in Table A. The costs of treatment are divided into three phases: The costs for the first year following diagnosis, the costs of intervening years or continuing treatment after the first year, and the costs of treatment for the last year of life. The first year costs of cancer treatment are higher due to the initial need for aggressive medical (*e.g.,* radiation, chemotherapy) and surgical care. The costs during last year of life are often dominated by increased hospitalization costs.[25] Therefore, we used three different treatment phase costs to estimate the costs of treatment to be able to best estimate costs in conjunction with expected incidence and long-term survival rates for prostate cancer.

TABLE A—AVERAGE COSTS OF TREATMENT FOR PROSTATE CANCER (2011$)

Initial (12 month)	Continuing (annual)	Last year of life (12 mos.)
$13,696	$2,754	$43,481

These cost figures were based on a study of elderly cancer patients from the Surveillance, Epidemiology, and End Results (SEER) program maintained by the National Cancer Institute using Medicare files.[26] The average costs of treatment described above are given in 2011 prices adjusted using the Medical Consumer Price Index for all urban consumers.[27]

Incident Cases of Cancer

The Administrator estimated the expected number of cases of cancer that would be observed in a cohort of responders and survivors followed for cancer incidence after September 11, 2001 using U.S. population cancer rates for prostate cancer. Demographic characteristics of the cohort were assigned since the actual data are not available for individuals in the responder and survivor populations who have not yet enrolled in the WTC Health Program. Gender and age (at the time of exposure) distributions for responders and survivors were assumed to be the same as current members in the WTC Health Program. According to WTC Health Program data, males comprise 88 percent of the current responder members and 50 percent of survivor members. Because prostate cancer occurs only in males, all calculations only take into account male WTC Health Program members. The age distribution for current members by gender and responder/survivor status is presented in Table B.

TABLE B—PERCENTILES OF CURRENT AGE (ON APRIL 11, 2012) FOR CURRENT MEMBERS IN THE WTC HEALTH PROGRAM BY GENDER AND RESPONDER/SURVIVOR STATUS

Group	Age percentile (years)								
	Min	1	10	30	50	70	90	99	Max
Male responders	28	32	39	44	49	54	62	74	92
Female responders	28	30	38	44	49	54	62	76	92
Male survivors	12	23	35	46	52	58	67	81	99
Female survivors	12	21	38	49	54	60	68	84	95

The Administrator assumed race and ethnic origin distributions for responders and survivors according to distributions in the WTC Health Registry cohort:[28] 57 percent non-

[21] Zeig-Owens R, Webber MP, Hall CB, Schwartz T, Jaber N, Weakley J, Rohan TE, Cohen HW, Derman O, Aldrich TK, Kelly K, Prezant DJ [2011]. Early Assessment of Cancer Outcomes in New York City Firefighters after the 9/11 Attacks: An Observational Cohort Study. The Lancet 378(9794):898–905.

[22] *Id.*

[23] As Zeig-Owens *et al.* point out, the time interval since 9/11 is short for cancer outcomes, the recorded excess of cancers is not limited to specific sites, and the biological plausibility of chronic inflammation as a possible mediator between WTC-exposure and cancer means that the outcomes remain speculative.

[24] Yabroff KR, Lamont EB, Mariotto A, Warren JL, Topor M, Meekins A, Brown ML [2008]. Cost of Care for Elderly Cancer Patients in the United States. Journal of the National Cancer Institute 100(9):630–41.

[25] *Id.*

[26] Surveillance, Epidemiology, and End Results (SEER) Program (*www.seer.cancer.gov*) Research Data (1973–2006), National Cancer Institute, DCCPS, Surveillance Research Program, Surveillance Systems Branch, released April 2009, based on the November 2008 submission.

[27] Bureau of Labor Statistics. Consumer Price Index. Available at *https://research.stlouisfed.org/fred2/series/CPIMEDSL/downloaddata?cid=32419.* Accessed August 12, 2013.

[28] Jordan HT, Brackbill RM, Cone JE, Debchoudhury I, Farfel MR, Greene CM, Hadler JL, Kennedy J, Li J, Liff J, Stayner L, Stellman SD [2011]. Mortality Among Survivors of the Sept 11,

Continued

Hispanic white, 15 percent non-Hispanic black, 21 percent Hispanic, and 8 percent other race/ethnicity for responders and 50 percent non-Hispanic white, 17 percent non-Hispanic black, 15 percent Hispanic, and 18 percent other race/ethnicity for survivors. Follow-up for cancer morbidity for each person began on January 1, 2002 or age 15 years, whichever was later. Age 15 was considered because the cancer incidence rate file did not include rates for persons less than 15 years of age. Follow-up ended on December 31, 2016 or the estimated last year of life, whichever was earlier. The estimated last year of life was used since not all persons would be expected to remain alive at the end of 2016. The estimated last year of life was based on U.S. gender, race, age, and year-specific death rates from CDC Wonder (since rates are currently available through 2008, the rate from 2008 was applied to 2009 and later).[29] A life-table analysis program, LTAS.NET, was used to estimate the expected number of incident cancers for prostate cancer.[30] The Administrator calculated cancer incidence rates using data through 2006 from the Surveillance Epidemiology and End Results (SEER) Program and estimated rates for 2007–2016.[31] The Program applied the resulting gender, race, age, and year-specific cancer incidence rates to the estimated person-years at risk to estimate the expected number of cancer cases for prostate cancer starting from year 2002, the first full year following the September 11, 2001, terrorist attacks, to 2016, the last year for which this Program is currently funded.

Prevalence of Cancer

To determine the potential number of persons in the responder and survivor populations with cancer, the Administrator used the number of incident cases described above for each year starting with 2002 and estimated the prevalence of cancer using survival rate statistics for each incident cancer group through 2016.[32] Using the incident cases and survival rate statistics, HHS has estimated the prevalence (number of persons living with cancer) of cases during the 15 year period (2002–2016) since September 11, 2001. The resulting table provides for each year from 2002 through 2016, the number of new cases occurring in that year (incidence), the number of individuals who died from their cancer in that year, and the number of persons surviving up to 15 years beyond their first diagnosis (prevalence).[33] For example, in 2002 there are 34.22 projected new cases of prostate cancer, which would be listed as incident cases for that year. The survival rate for prostate cancer in the first year of diagnosis is 99.44 percent.[34] Therefore the number of deceased persons in 2002 would be $34.22 \times (1 - 0.9944) = 0.19$. For the prostate cancer prevalence table, in year 2003, the number of incident cases would be 38.55 cases. In addition to 38.55 newly diagnosed cases in 2003, there would be the one-year survivors from 2002 which would be $34.22 - 0.19 = 34.03$ cases. This computation process can be repeated for each year through year 2016. A portion of the prostate cancer prevalence tables are provided in Table C. Prevalence is summarized in Tables E and G. This analysis considers cancers diagnosed in 2002 through 2016.

TABLE C— PREVALENCE TABLE FOR PROSTATE CANCER

[Based on 80,000 responders]

Year	Years since 9/11 exposure			Years covered by WTC Health Program		
New/Surv.	2002	2003	2013	2014	2015	2016
1	34.22	38.55	112.54	123.98	134.46	146.33
2		34.03	100.76	111.92	123.29	133.72
3			88.67	99.55	110.57	121.81
4			79.02	87.58	98.33	109.22
5			71.15	78.61	87.13	97.82
6			63.27	70.41	77.80	86.23
7			55.71	62.74	69.83	77.15
8			48.22	55.06	62.01	69.01
9			42.10	47.91	54.71	61.61
10			39.77	41.51	47.24	53.95
11			35.02	39.38	41.11	46.77
12			30.91	34.83	39.17	40.88
13				30.43	34.29	38.56
14					30.26	34.10
15						30.06
Live cases from previous years	0.00	34.03	654.61	759.95	875.74	1000.89
Prevalence	34.22	72.58	767.15	883.93	1010.20	1147.22
Last year of life	0.19	0.62	7.20	8.19	9.31	10.65

2001, Word Trade Center Disaster: Results from the World Trade Center Health Registry Cohort. The Lancet 378:879–887. Note: percentages may not sum to 100 percent due to rounding.

[29] Centers for Disease Control and Prevention, National Center for Health Statistics. Compressed Mortality File 1999–2008. CDC WONDER Online Database, compiled from Compressed Mortality File 1999–2008 Series 20 No. 2N, 2011. *http://wonder.cdc.gov/cmf-icd10.html.* Accessed August 12, 2013.

[30] Schubauer-Berigan MK, Hein MJ, Raudabaugh WM, Ruder AM, Silver SR, Spaeth S, Steenland K, Petersen MR, and Waters KM [2011]. Update of the NIOSH Life Table Analysis System: A Person-Years Analysis program for the Windows Computing Environment. American Journal of Industrial Medicine 54:915–924.

[31] National Cancer Institute, Surveillance Epidemiology and End Results (SEER). *http://seer.cancer.gov/.* Accessed August 12, 2013.

[32] *Id.*

[33] The 15-year survival limit is imposed based on the analytic time horizon established between the triggering events of September 11, 2001 and the authorization of the WTC Health Program through 2016.

[34] National Cancer Institute, Surveillance Epidemiology and End Results (SEER). *http://seer.cancer.gov/.* Accessed August 12, 2013.

Cost Computation

To compute the costs for prostate cancer, the Administrator assumes that all of the individuals who are diagnosed with prostate cancer will be certified by the WTC Health Program for treatment and monitoring services. The treatment costs for the first year of treatment (Table A, year adjusted) were applied to the predicted newly incident (Year 1) cases for each year. Likewise, the costs of treatment for the last year of life were applied in each year to the number of people predicted to die from their cancer in that year. The costs of continuing treatment from Table A were applied to the number of prevalent cases who had survived their cancers beyond their year of diagnosis, for each year of survival (Year 2–15).

Using this procedure, a cost table was constructed for each year covered by the WTC Health Program and the results are presented in Table D. The row for Year 1 in each table is the cost of incident cases for that year. Rows for years 2–15 show the cost from continuing care for persons surviving n-years beyond the year of diagnosis. Finally, the cost of last year of life treatment is computed by multiplying the cost for last year of life from Table A by the number of persons dying in that year from prostate cancer from Table C.

TABLE D—COST PER 80,000 RESPONDERS FOR PROSTATE CANCER, 2011$

Year	Years covered by the WTC Health Program		
	2014	2015	2016
1	$1,688,586	$1,831,435	$1,993,026
2	308,251	339,563	368,289
3	274,159	304,530	335,464
4	241,216	270,809	300,809
5	216,509	239,972	269,413
6	193,930	214,266	237,486
7	172,786	192,305	212,470
8	151,653	170,779	190,071
9	131,942	150,680	169,685
10	114,331	130,098	148,574
11	108,466	113,209	128,822
12	95,925	107,868	112,586
13	83,816	94,438	106,196
14	.....	83,345	93,906
15	.....	.....	82,779
Prevalent care	3,781,570	4,243,298	4,666,796
Last year of life care	356,227	404,804	463,183
Total	4,137,798	4,648,102	5,129,979

The sum of the annual costs in the table for the years 2014 through 2016 represents the estimated treatment costs to the WTC Health Program for coverage of prostate cancer for 80,000 responders. The same process described above was applied to the survivor cohort. Based on the incidence rate expected from the survivor cohort, prevalence tables were constructed. The estimated treatment costs for responders and survivors were re-computed under the following two assumptions: (1) The rate of cancer in the WTC Health Program is equal to the rate of cancer observed in the general population; and (2) the rate of cancer exceeds the general population rate by 21 percent due to their WTC exposures.[35]

A summary of the estimated prevalence at the U.S. population average for the assumed population of 58,500 responders and 6,500 survivors is provided in Table E. A summary of the estimated treatment costs to the WTC Health Program is provided in Table F. A summary of the estimated prevalence using cancer rates 21 percent over the U.S. population average for the increased rate of 80,000 responders and 30,000 survivors is given in Table G. A summary of the estimated treatment costs to the WTC Health Program is provided in Table H.

TABLE E—ESTIMATED PREVALENCE OF PROSTATE CANCER BY YEAR BASED ON 58,500 AND 6,500 RESPONDER AND SURVIVOR POPULATION, RESPECTIVELY AND ASSUMING CANCER RATES AT U.S. POPULATION AVERAGE

Population	Prevalence (incident + live cases)		
	2014	2015	2016
Based on 58,500 responders	646.37	738.71	838.90
Based on 6,500 survivors	65.95	73.93	82.41

[35] Zeig-Owens R, Webber MP, Hall CB, Schwartz T, Jaber N, Weakley J, Rohan TE, Cohen HW, Derman O, Aldrich TK, Kelly K, Prezant DJ [2011]. Early Assessment of Cancer Outcomes in New York City Firefighters after the 9/11 Attacks: An Observational Cohort Study. The Lancet 378(9794):898–905. Limitations of the Zeig-Owens study include: Limited information on specific exposures experienced by firefighters; short time for follow-up of cancer outcomes; speculation about the biological plausibility of chronic inflammation as a possible mediator between WTC-exposure and cancer outcomes; and potential unmeasured confounders.

TABLE F—ESTIMATED TREATMENT COSTS OF PROSTATE CANCER BY YEAR BASED ON 58,500 AND 6,500 RESPONDER AND SURVIVOR POPULATION, RESPECTIVELY AND ASSUMING CANCER RATES AT U.S. POPULATION AVERAGE (2011$)

Population	2014	2015	2016	2014–2016
Based on 58,500 responders	$3,025,765	$3,398,924	$3,751,298	$10,175,987
Based on 6,500 survivors	296,297	326,642	352,170	975,109

TABLE G—ESTIMATED PREVALENCE OF PROSTATE CANCER BY YEAR BASED ON 80,000 AND 30,000 RESPONDER AND SURVIVOR POPULATION, RESPECTIVELY AND ASSUMING INCIDENCE OF CANCER IS 21% HIGHER THAN THE U.S. POPULATION DUE TO 9/11 EXPOSURE

Population	Prevalence (incident + live cases)		
	2014	2015	2016
Based on 80,000 responders	1069.55	1222.34	1388.13
Based on 30,000 survivors	368.31	412.86	460.19

TABLE H—ESTIMATED TREATMENT COSTS OF PROSTATE CANCER BY YEAR BASED ON 80,000 AND 30,000 RESPONDER AND SURVIVOR POPULATION, RESPECTIVELY AND ASSUMING INCIDENCE OF CANCER IS 21% HIGHER THAN THE U.S. POPULATION DUE TO 9/11 EXPOSURE (2011$)

Population	2014	2015	2016	2014–2016
Based on 80,000 responders	$5,089,491	$5,717,165	$6,309,875	$17,116,531
Based on 30,000 survivors	1,378,925	1,520,138	1,638,947	4,538,010

Summary of Costs

Because HHS lacks data to account for recoupment by workers' compensation insurance or reduction by either health insurance or Medicare/Medicaid payments, the estimates offered here are reflective of estimated WTC Health Program costs only. This analysis offers an assumption about the number of individuals who might enroll in the WTC Health Program and estimates the impact of both a low rate of cancer (U.S. population average rate) and an increased rate (21 percent greater than the U.S. population average) on the number of cases and the resulting estimated treatment costs to the WTC Health Program. This analysis does not include administrative costs associated with certifying additional diagnoses of cancers that are WTC-related health conditions that might result from this action. Those costs were addressed in the interim final rule that established regulations for the WTC Health Program (76 FR 38914, July 1, 2011).

After the implementation of provisions of the Affordable Care Act on January 1, 2014, all of the members and future members can be assumed to have or have access to medical insurance coverage other than through the WTC Health Program. Therefore, all treatment and screening costs to be paid by the WTC Health Program from 2014 through 2016 are considered transfers. Table I describes the allocation of WTC Health Program transfer payments based on 58,500 responders and 6,500 survivors and, alternatively, 80,000 responders and 30,000 survivors.

TABLE I—BREAKDOWN OF ESTIMATED ANNUAL WTC HEALTH PROGRAM TRANSFERS FOR PROSTATE CANCER BASED ON 80,000 AND 58,500 RESPONDERS AND 30,000 AND 6,500 SURVIVORS, 2014–2016, 2011$

	Annualized transfers for 2014–2016, 2011$	
	Discounted at 7 percent	Discounted at 3 percent
	Cancer Rate	
	U.S. average	U.S. average + 21%
58,500 Responders	$3,159,619	.....
6,500 Survivors	$303,056	.....
65,000 Total	$3,462,675	.....
80,000 Responders	.....	$5,529,266
30,000 Survivors	.....	$1,466,551
110,000 Total	.....	$6,995,817

Examination of Benefits (Health Impact)

This section describes qualitatively the potential benefits of the final rule in terms of the expected improvements in the health and health-related quality of life of potential prostate cancer patients treated through the WTC Health Program, compared to no Program. The assessment of the health benefits for prostate cancer patients uses the number of expected cancer cases that was estimated in the cost analysis section.

The Administrator does not have information on the health of the population that may have experienced 9/11 exposures and is not currently enrolled in the WTC Health Program. In addition, the Administrator has only limited information about health insurance and health care services for prostate cancers potentially caused by 9/11 exposures and suffered by any population of responders and survivors, including responders and survivors currently enrolled in the WTC Health Program and responders and survivors not enrolled in the Program. For the purposes of this analysis, the Administrator assumes that broad trends on demographics and access to health insurance reported by the U.S. Census Bureau and health care services for cancer similar to those reported by Ward *et al.*[36] would apply to the population of general responders (those individuals who are not members of the FDNY and who meet the eligibility criteria in 42 CFR Part 88 for WTC responders) and survivors both within and outside the Program. For the purposes of this analysis, the Administrator assumes that access to health insurance and health care services for FDNY responders within and outside the Program would be equivalent because this population is overwhelmingly covered by employer-based health insurance.

Although the Administrator cannot quantify the benefits associated with the WTC Health Program, members with prostate cancer would have improved access to care and thereby the Program should produce better treatment outcomes than in its absence. Under other insurance plans, patients would have deductibles and copays, which impact access to care and particularly its timeliness.[37] WTC Health Program members would have first-dollar coverage and hence are likely to seek care sooner when indicated, resulting in improved treatment outcomes.

Limitations

The analysis presented here was limited by the dearth of verifiable data on the prostate cancer status of responders and survivors who have yet to apply for enrollment in the WTC Health Program. Because of the limited data, the Administrator was not able to estimate benefits in terms of averted healthcare costs. Nor was the Administrator able to estimate administrative costs, or indirect costs, such as averted absenteeism, short and long-term disability, and productivity losses averted due to premature mortality.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* requires each agency to consider the potential impact of its regulations on small entities including small businesses, small governmental units, and small not-for-profit organizations. The Administrator believes that this rule has ''no significant economic impact upon a substantial number of small entities'' within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

C. Paperwork Reduction Act

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* requires an agency to invite public comment on, and to obtain OMB approval of, any regulation that requires 10 or more people to report information to the agency or to keep certain records. Data collection and recordkeeping requirements for the WTC Health Program are approved by OMB under ''World Trade Center Health Program Enrollment, Appeals & Reimbursement'' (OMB Control No. 0920–0891, exp. December 31, 2014). The Administrator has determined that no changes are needed to the information collection request already approved by OMB.

D. Small Business Regulatory Enforcement Fairness Act

As required by Congress under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), HHS will report the promulgation of this rule to Congress prior to its effective date.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*) directs agencies to assess the effects of Federal regulatory actions on State, local, and Tribal governments, and the private sector ''other than to the extent that such regulations incorporate requirements specifically set forth in law.'' For purposes of the Unfunded Mandates Reform Act, this final rule does not include any Federal mandate that may result in increased annual expenditures in excess of $100 million in 1995 dollars by State, local or Tribal governments in the aggregate, or by the private sector. However, the rule may result in an increase in the contribution made by New York City for treatment and monitoring, as required by Title XXXIII, Sec. 3331(d)(2). For 2013, the inflation adjusted threshold is $150 million.

F. Executive Order 12988 (Civil Justice)

This final rule has been drafted and reviewed in accordance with Executive Order 12988, ''Civil Justice Reform,'' and will not unduly burden the Federal court system. This rule has been reviewed carefully to eliminate drafting errors and ambiguities.

G. Executive Order 13132 (Federalism)

The Administrator has reviewed this final rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' The rule does not ''have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

H. Executive Order 13045 (Protection of Children From Environmental Health Risks and Safety Risks)

In accordance with Executive Order 13045, the Administrator has evaluated the environmental health and safety effects of this final rule on children. The Administrator has determined that the rule would have no environmental health and safety effect on children.

I. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

In accordance with Executive Order 13211, the Administrator has evaluated the effects of this final rule on energy supply, distribution or use, and has determined that the rule will not have a significant adverse effect.

[36] Ward E, Halpern M, Schrag N, Cokkinides V, DeSantis C, Bandi P, Siegel R, Stewart A, Jemal A [2008]. Association of Insurance with Cancer Care Utilization and Outcomes. CA Cancer Journal for Clinicians 58:9–31.

[37] Wharam JF, Galbraith AA, Kleinman KP, Soumerai SB, Ross-Degnan D, Landon BE [2008]. Cancer Screening before and after Switching to a High-Deductible Health Plan. Annals of Internal Medicine 148(9):647–655.

J. Plain Writing Act of 2010

Under Public Law 111–274 (October 13, 2010), executive Departments and Agencies are required to use plain language in documents that explain to the public how to comply with a requirement the Federal Government administers or enforces. The Administrator has attempted to use plain language in promulgating the final rule consistent with the Federal Plain Writing Act guidelines.

List of Subjects in 42 CFR Part 88

Aerodigestive disorders, Appeal procedures, Cancer, Health care, Mental health conditions, Musculoskeletal disorders, Respiratory and pulmonary diseases.

Final Rule

For the reasons discussed in the preamble, the Department of Health and Human Services amends 42 CFR Part 88 as follows:

PART 88—WORLD TRADE CENTER HEALTH PROGRAM

■ 1. The authority citation for Part 88 continues to read as follows:

Authority: 42 U.S.C. 300mm-300mm-61, Pub. L. 111–347, 124 Stat. 3623.

§ 88.1 [Amended]

■ 2. In § 88.1, under paragraph (4) of the definition ''List of WTC-Related Health Conditions,'' revise Table 1 to read as follows:

§ 88.1 Definitions.

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List of WTC-related health conditions

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(4)* * *

BILLING CODE 4150–28–P

Table 1 -- List of types of cancer included in the List of WTC-Related Health Conditions

Region	Type of Cancer	ICD-10[1]	ICD-9[2]
Head & Neck	**Malignant neoplasm of lip**	**C00**	**140**
	• External upper lip	• C00.0	• 140.0
	• External lower lip	• C00.1	• 140.1
	• External lip, unspecified	• C00.2	• 140.9
	• Upper lip, inner aspect	• C00.3	• 140.3
	• Lower lip, inner aspect	• C00.4	• 140.4
	• Lip, unspecified, inner aspect	• C00.5	• 140.5
	• Commissure of lip	• C00.6	• 140.6
	• Overlapping lesion of lip	• C00.8	• 140.8
	• Lip, unspecified	• C00.9	• 140.9
	Malignant neoplasm of base of tongue	**C01**	**141.0**
	Malignant neoplasm of other and unspecified parts of tongue	**C02**	**141.1-141.9**
	• Dorsal surface of tongue	• C02.0	• 141.1
	• Border of tongue	• C02.1	• 141.2
	• Ventral surface of tongue	• C02.2	• 141.3
	• Anterior two-thirds of tongue, part unspecified	• C02.3	• 141.4
	• Lingual tonsil	• C02.4	• 141.6
	• Overlapping lesion of tongue	• C02.8	• 141.5, 141.8
	• Tongue, unspecified	• C02.9	• 141.9
	Malignant neoplasm of parotid gland	**C07**	**142.0**
	Malignant neoplasm of other and unspecified major salivary glands	**C08**	**142.1-142.9**
	• Submandibular gland	• C08.0	• 142.1
	• Sublingual gland	• C08.1	• 142.2
	• Overlapping lesion of major salivary glands	• C08.8	• 142.8
	• Major salivary gland, unspecified	• C08.9	• 142.9
	Malignant neoplasm of floor of mouth	**C04**	**144**
	• Anterior floor of mouth	• C04.0	• 144.0
	• Lateral floor of mouth	• C04.1	• 144.1
	• Overlapping lesion of floor of mouth	• C04.8	• 144.8
	• Floor of mouth, unspecified	• C04.9	• 144.9
	Malignant neoplasm of gum	**C03**	**143**
	• Upper gum	• C03.0	• 143.0
	• Lower gum	• C03.1	• 143.1
	• Gum, unspecified	• C03.9	• 143.8-143.9

	Malignant neoplasm of palate	**C05**	**145.2-145.5**
	• Hard palate	• C05.0	• 145.2
	• Soft palate	• C05.1	• 145.3
	• Uvula	• C05.2	• 145.4
	• Overlapping lesion of palate	• C05.8	• 145.5
	• Palate, unspecified	• C05.9	• 145.5
	Malignant neoplasm of other and unspecified parts of mouth	**C06**	**145.0-145.1 145.6, 145.8-145.9**
	• Cheek mucosa	• C06.0	• 145.0
	• Vestibule of mouth	• C06.1	• 145.1
	• Retromolar area	• C06.2	• 145.6
	• Overlapping lesion of other and unspecified parts of mouth	• C06.8	• 145.8
	• Mouth, unspecified	• C06.9	• 145.9
	Malignant neoplasm of tonsil	**C09**	**146.0-146.2**
	• Tonsillar fossa	• C09.0	• 146.1
	• Tonsillar pillar (anterior)(posterior)	• C09.1	• 146.2
	• Overlapping lesion of tonsil	• C09.8	• 146.0
	• Tonsil, unspecified	• C09.9	• 146.0
	Malignant neoplasm of oropharynx	**C10**	**146.3-146.9**
	• Vallecula	• C10.0	• 146.3
	• Anterior surface of epiglottis	• C10.1	• 146.4
	• Lateral wall of oropharynx	• C10.2	• 146.6
	• Posterior wall of oropharynx	• C10.3	• 146.7
	• Branchial cleft	• C10.4	• 146.8
	• Overlapping lesion of oropharynx	• C10.8	• 146.5, 146.8
	• Oropharynx, unspecified	• C10.9	• 146.9
	Malignant neoplasm of nasopharynx	**C11**	**147**
	• Superior wall of nasopharynx	• C11.0	• 147.0
	• Posterior wall of nasopharynx	• C11.1	• 147.1
	• Lateral wall of nasopharynx	• C11.2	• 147.2
	• Anterior wall of nasopharynx	• C11.3	• 147.3
	• Overlapping lesion of nasopharynx	• C11.8	• 147.8
	• Nasopharynx, unspecified	• C11.9	• 147.9
	Malignant neoplasm of piriform sinus	**C12**	**148.1**
	Malignant neoplasm of hypopharynx	**C13**	**148.0, 148.2-148.9**
	• Postcricoid region	• C13.0	• 148.0
	• Aryepiglottic fold, hypopharyngeal aspect	• C13.1	• 148.2

	• Posterior wall of hypopharynx	• C13.2	• 148.3
	• Overlapping lesion of hypopharynx	• C13.8	• 148.8
	• Hypopharynx, unspecified	• C13.9	• 148.9
	Malignant neoplasms of other and ill-defined conditions in the lip, oral cavity and pharynx	**C14**	**149**
	• Pharynx, unspecified	• C14.0	• 149.0
	• Waldeyer's ring	• C14.2	• 149.1
	• Overlapping lesion of lip, oral cavity and pharynx	• C14.8	• 149.8, 149.9
	Malignant neoplasm of nasal cavity	**C30.0**	**160.0**
	Malignant neoplasm of accessory sinuses	**C31**	**160.2-160.9**
	• Maxillary sinus	• C31.0	• 160.2
	• Ethmoidal sinus	• C31.1	• 160.3
	• Frontal sinus	• C31.2	• 160.4
	• Sphenoidal sinus	• C31.3	• 160.5
	• Overlapping lesion of accessory sinuses	• C31.8	• 160.8
	• Accessory sinus, unspecified	• C31.9	• 160.9
	Malignant neoplasm of larynx	**C32**	**161**
	• Glottis	• C32.0	• 161.0
	• Supraglottis	• C32.1	• 161.1
	• Subglottis	• C32.2	• 161.2
	• Laryngeal cartilage	• C32.3	• 161.3
	• Overlapping lesion of larynx	• C32.8	• 161.8
	• Larynx, unspecified	• C32.9	• 161.9
Digestive System	**Malignant neoplasm of the esophagus**	**C15**	**150**
	• Cervical part of esophagus	• C15.0	• 150.0
	• Thoracic part of esophagus	• C15.1	• 150.1
	• Abdominal part of esophagus	• C15.2	• 150.2
	• Upper third of esophagus	• C15.3	• 150.3
	• Middle third of esophagus	• C15.4	• 150.4
	• Lower third of esophagus	• C15.5	• 150.5
	• Overlapping lesion of esophagus	• C15.8	• 150.8
	• Esophagus, unspecified	• C15.9	• 150.9
	Malignant neoplasm of the stomach	**C16**	**151**
	• Cardia	• C16.0	• 151.0
	• Fundus of stomach	• C16.1	• 151.3
	• Body of stomach	• C16.2	• 151.4
	• Pyloric antrum	• C16.3	• 151.2
	• Pylorus	• C16.4	• 151.1
	• Lesser curvature of stomach, unspecified	• C16.5	• 151.5
	• Greater curvature of stomach, unspecified	• C16.6	• 151.6
	• Overlapping lesion of stomach	• C16.8	• 151.8
	• Stomach, unspecified	• C16.9	• 151.9
	Malignant neoplasm of colon	**C18**	**153**
	• Caecum	• C18.0	• 153.4
	• Appendix	• C18.1	• 153.5
	• Ascending colon	• C18.2	• 153.6
	• Hepatic flexure	• C18.3	• 153.0
	• Transverse colon	• C18.4	• 153.1
	• Splenic flexure	• C18.5	• 153.7

	• Descending colon	• C18.6	• 153.2
	• Sigmoid colon	• C18.7	• 153.3
	• Overlapping lesion of colon	• C18.8	• 153.8
	• Colon, unspecified	• C18.9	• 153.9
	Malignant neoplasm of rectosigmoid junction	**C19**	**154.0**
	Malignant neoplasm of rectum	**C20**	**154.1, 154.8**
	Malignant neoplasm of other and ill-defined digestive organs	**C26.0, C26.8-C26.9**	**159.0, 159.8, 159.9**
	• Intestinal tract, part unspecified	• C26.0	• 159.0
	• Overlapping lesion of digestive system	• C26.8	• 159.8
	• Ill-defined sites within the digestive system	• C26.9	• 159.9
	Malignant neoplasm of liver and intrahepatic bile ducts	**C22**	**155**
	• Liver cell carcinoma	• C22.0	• 155.0
	• Intrahepatic bile duct carcinoma	• C22.1	• 155.1
	• Hepatoblastoma	• C22.2	• 155.0
	• Angiosarcoma of liver	• C22.3	• 155.0
	• Other sarcomas of liver	• C22.4	• 155.0
	• Other specified carcinomas of liver	• C22.7	• 155.0
	• Liver, unspecified	• C22.9	• 155.2
	Malignant neoplasm of retroperitoneum and peritoneum	**C48**	**158**
	• Retroperitoneum	• C48.0	• 158.0
	• Specified parts of peritoneum	• C48.1	• 158.8
	• Peritoneum, unspecified	• C48.2	• 158.9
	• Overlapping lesion of retroperitoneum and peritoneum	• C48.8	• 158.8
Respiratory System	**Malignant neoplasm of trachea**	**C33**	**162.0**
	Malignant neoplasm of bronchus and lung	**C34**	**162.2-162.9**
	• Main bronchus	• C34.0	• 162.2
	• Upper lobe, bronchus or lung	• C34.1	• 162.3
	• Middle lobe, bronchus or lung	• C34.2	• 162.4
	• Lower lobe, bronchus or lung	• C34.3	• 162.5
	• Overlapping lesion of bronchus and lung	• C34.8	• 162.8
	• Bronchus or lung, unspecified	• C34.9	• 162.9
	Malignant neoplasm of heart, mediastinum and pleura	**C38**	**164.1-164.9, 163**
	• Heart	• C38.0	• 164.1
	• Anterior mediastinum	• C38.1	• 164.2
	• Posterior mediastinum	• C38.2	• 164.3
	• Mediastinum, part unspecified	• C38.3	• 164.9
	• Pleura	• C38.4	• 163.0-163.9

	• Overlapping lesion of heart, mediastinum and pleura	• C38.8	• 164.8
	Malignant neoplasm of other and ill-defined sites in the respiratory system and intrathoracic organs	**C39**	**165**
	• Upper respiratory tract, part unspecified	• C39.0	• 165.0
	• Overlapping lesion of respiratory and intrathoracic organs	• C39.8	• 165.8
	• Ill-defined sites within the respiratory system	• C39.9	• 165.9
Mesothelium	**Mesothelioma**	**C45**	**158.8, 163.9, 164.1**
	• Mesothelioma of pleura	• C45.0	• 163.9
	• Mesothelioma of peritoneum	• C45.1	• 158.8
	• Mesothelioma of pericardium	• C45.2	• 164.1
	• Mesothelioma of other sites	• C45.7	No Code
	• Mesothelioma, unspecified	• C45.9	No Code
Soft Tissue	**Malignant neoplasm of peripheral nerves and autonomic nervous system**	**C47**	**171**
	• Peripheral nerves of head, face and neck	• C47.0	• 171.0
	• Peripheral nerves of upper limb, including shoulder	• C47.1	• 171.2
	• Peripheral nerves of lower limb, including hip	• C47.2	• 171.3
	• Peripheral nerves of thorax	• C47.3	• 171.4
	• Peripheral nerves of abdomen	• C47.4	• 171.5
	• Peripheral nerves of pelvis	• C47.5	• 171.6
	• Peripheral nerves of trunk, unspecified	• C47.6	• 171.7
	• Overlapping lesion of peripheral nerves and autonomic nervous system	• C47.8	• 171.8
	• Peripheral nerves and autonomic nervous system, unspecified	• C47.9	• 171.9
	Malignant neoplasm of other connective and soft tissue	**C49**	**171**
	• Connective and soft tissue of head, face and neck	• C49.0	• 171.0
	• Connective and soft tissue of upper limb, including shoulder	• C49.1	• 171.2
	• Connective and soft tissue of lower limb, including hip	• C49.2	• 171.3
	• Connective and soft tissue of thorax	• C49.3	• 171.4
	• Connective and soft tissue of abdomen	• C49.4	• 171.5
	• Connective and soft tissue of pelvis	• C49.5	• 171.6
	• Connective and soft tissue of trunk, unspecified	• C49.6	• 171.7
	• Overlapping lesion of connective and soft tissue	• C49.8	• 171.8
	• Connective and soft tissue, unspecified	• C49.9	• 171.9
Skin (Non-Melanoma)	**Other malignant neoplasms of skin**	**C44**	**173**
	• Skin of lip	• C44.0	• 173.0
	• Skin of eyelid, including canthus	• C44.1	• 173.1
	• Skin of ear and external auricular canal	• C44.2	• 173.2
	• Skin of other and unspecified parts of face	• C44.3	• 173.3
	• Skin of scalp and neck	• C44.4	• 173.4
	• Skin of trunk	• C44.5	• 173.5
	• Skin of upper limb, including shoulder	• C44.6	• 173.6

	• Skin of lower limb, including hip	• C44.7	• 173.7
	• Overlapping lesion of skin	• C44.8	• 173.8
	• Malignant neoplasm of skin, unspecified	• C44.9	• 173.9
	Scrotum	**C63.2**	**187.7**
Melanoma	**Malignant melanoma of skin**	**C43**	**172**
	• Malignant melanoma of lip	• C43.0	• 172.0
	• Malignant melanoma of eyelid, including canthus	• C43.1	• 172.1
	• Malignant melanoma of ear and external auricular canal	• C43.2	• 172.2
	• Malignant melanoma of other and unspecified parts of face	• C43.3	• 172.3
	• Malignant melanoma of scalp and neck	• C43.4	• 172.4
	• Malignant melanoma of trunk	• C43.5	• 172.5
	• Malignant melanoma of upper limb, including shoulder	• C43.6	• 172.6
	• Malignant melanoma of lower limb, including hip	• C43.7	• 172.7
	• Overlapping malignant melanoma of skin	• C43.8	• 172.8
	• Malignant melanoma of skin, unspecified	• C43.9	• 172.9
Female Breast	**Malignant neoplasm of breast**	**C50+**	**174**
	• Nipple and areola	• C50.0	• 174.0
	• Central portion of breast	• C50.1	• 174.1
	• Upper-inner quadrant of breast	• C50.2	• 174.2
	• Lower-inner quadrant of breast	• C50.3	• 174.3
	• Upper-outer quadrant of breast	• C50.4	• 174.4
	• Lower-outer quadrant of breast	• C50.5	• 174.5
	• Auxillary tail of breast	• C50.6	• 174.6
	• Overlapping lesion of breast	• C50.8	• 174.8
	• Breast, unspecified	• C50.9	• 174.9
Female Reproductive Organs	**Malignant neoplasm of ovary**	**C56**	**183.0**
Urinary System	**Malignant neoplasm of prostate**	**C61**	**185**
	Malignant neoplasm of bladder	**C67**	**188**
	• Trigone of bladder	• C67.0	• 188.0
	• Dome of bladder	• C67.1	• 188.1
	• Lateral wall of bladder	• C67.2	• 188.2
	• Anterior wall of bladder	• C67.3	• 188.3
	• Posterior wall of bladder	• C67.4d	• 188.4
	• Bladder neck	• C67.5	• 188.5
	• Ureteric orifice	• C67.6	• 188.6
	• Urachus	• C67.7	• 188.7
	• Overlapping lesion of bladder	• C67.8	• 188.8
	• Bladder, unspecified	• C67.9	• 188.9
	Malignant neoplasms of kidney except renal pelvis	**C64**	**189.0**
	Malignant neoplasm of renal pelvis	**C65**	**189.1**
	Malignant neoplasm of ureter	**C66**	**189.2**
	Malignant neoplasm of other and unspecified urinary organs	**C68**	**189.3-189.9**

	• Urethra	• C68.0	• 189.3
	• Paraurethral gland	• C68.1	• 189.4
	• Overlapping lesion of urinary organs	• C68.8	• 189.8
	• Urinary organ, unspecified	• C68.9	• 189.9
Eye & Orbit	**Malignant neoplasm of eye and adnexa**	**C69**	**190**
	• Conjunctiva	• C69.0	• 190.3
	• Cornea	• C69.1	• 190.4
	• Retina	• C69.2	• 190.5
	• Choroid	• C69.3	• 190.6
	• Ciliary body	• C69.4	• 190.0
	• Lacrimal gland and duct	• C69.5	• 190.2, 190.7
	• Orbit	• C69.6	• 190.1
	• Overlapping lesion of eye and adnexa	• C69.8	• 190.8
	• Eye, unspecified	• C69.9	• 190.9
Thyroid	**Malignant neoplasm of thyroid gland**	**C73**	**193**
Blood & Lymphoid Tissue	**Hodgkin's disease**	**C81**	*
	• Lymphocytic predominance	• C81.0	• 201.4
	• Nodular sclerosis	• C81.1	• 201.5
	• Mixed cellularity	• C81.2	• 201.6
	• Lymphocytic depletion	• C81.3	• 201.7
	• Other Hodgkin's disease	• C81.7	• 201.0-201.2
	• Hodgkin's disease, unspecified	• C81.9	• 201.9
	Follicular [nodular] non-Hodgkin lymphoma	**C82**	*
	• Small cleaved cell, follicular	• C82.0	• 202.0
	• Mixed small cleaved and large cell, follicular	• C82.1	• 202.0
	• Large cell, follicular	• C82.2	• 202.0
	• Other types of follicular non-Hodgkin lymphoma	• C82.7	• 202.0
	• Follicular non-Hodgkin lymphoma, unspecified	• C82.9	• 202.0
	Diffuse non-Hodgkin lymphoma	**C83**	*
	• Small cell (diffuse)	• C83.0	• 200.8
	• Small cleaved cell (diffuse)	• C83.1	• 202.4
	• Mixed small and large cell (diffuse)	• C83.2	• 200.8
	• Large cell (diffuse)	• C83.3	• 200.0
	• Immunoblastic (diffuse)	• C83.4	• 200.8
	• Lymphoblastic (diffuse)	• C83.5	• 200.1
	• Undifferentiated (diffuse)	• C83.6	• 202.8
	• Burkitt's tumor	• C83.7	• 200.2
	• Other types of diffuse non-Hodgkin lymphoma	• C83.8	• 200.8
	• Diffuse non-Hodgkin lymphoma, unspecified	• C83.9	• 202.0
	Peripheral and cutaneous T-cell lymphomas	**C84**	*
	• Mycosis fungoides	• C84.0	• 202.1
	• Sezary's disease	• C84.1	• 202.2
	• T-zone lymphoma	• C84.2	• 202.8
	• Lymphoepithelioid lymphoma	• C84.3	• 202.8
	• Peripheral T-cell lymphoma	• C84.4	• 202.0
	• Other and unspecified T-cell lymphomas	• C84.5	• 202.0
	Other and unspecified types of non-Hodgkin lymphoma	**C85**	*
	• Lymphosarcoma	• C85.0	• 200.1
	• B-cell lymphoma, unspecified	• C85.1	• 202.8
	• Other specified types of non-Hodgkin lymphoma	• C85.7	• 202.8

	• Non-Hodgkin lymphoma, unspecified type	• C85.9	• 200.8
	Malignant immunoproliferative diseases	**C88**	*
	• Waldenstrom's macroglobulinemia	• C88.0	• 273.3
	• Alpha heavy chain disease	• C88.1	• 203.8
	• Gamma heavy chain disease	• C88.2	• 203.8
	• Immunoproliferative small intestinal disease	• C88.3	• 203.8
	• Other malignant immunoproliferative diseases	• C88.7	• 203.8
	• Malignant immunoproliferative disease, unspecified	• C88.9	• 203.8
	Multiple myeloma and malignant plasma cell neoplasms	**C90**	*
	• Multiple myeloma	• C90.0	• 203.0
	• Plasma cell leukemia	• C90.1	• 203.1
	• Plasmacytoma, extramedullary	• C90.2	• 203.8
	Lymphoid leukemia	**C91**	*
	• Acute lymphoblastic leukemia	• C91.0	• 204.0
	• Chronic lymphocytic leukemia	• C91.1	• 204.1
	• Subacute lymphocytic leukemia	• C91.2	• 204.2
	• Prolymphocytic leukemia	• C91.3	• 204.9
	• Hairy-cell leukemia	• C91.4	• 202.4
	• Adult T-cell leukemia	• C91.5	• 204.8
	• Other lymphoid leukemia	• C91.7	• 204.8
	• Lymphoid leukemia, unspecified	• C91.9	• 204.9
	Myeloid leukemia	**C92**	*
	• Acute myeloid leukemia	• C92.0	• 205.0
	• Chronic myeloid leukemia	• C92.1	• 205.1
	• Subacute myeloid leukemia	• C92.2	• 205.2
	• Myeloid sarcoma	• C92.3	• 205.3
	• Acute promyelocytic leukemia	• C92.4	• 205.0
	• Acute myelomonocytic leukemia	• C92.5	• 205.0
	• Other myeloid leukemia	• C92.7	• 205.8
	• Myeloid leukemia, unspecified	• C92.9	• 205.9
	Monocytic leukemia	**C93**	*
	• Acute monocytic leukemia	• C93.0	• 206.0
	• Chronic monocytic leukemia	• C93.1	• 206.1
	• Subacute monocytic leukemia	• C93.2	• 206.2
	• Other monocytic leukemia	• C93.7	• 206.8
	• Monocytic leukemia, unspecified	• C93.9	• 206.9
	Other leukemias of specified cell type	**C94**	*
	• Acute erythremia and erythroleukemia	• C94.0	• 207.0
	• Chronic erythremia	• C94.1	• 207.1
	• Acute megakaryoblastic leukemia	• C94.2	• 207.2
	• Mast cell leukemia	• C94.3	• 207.8
	• Acute pan myelosis	• C94.4	• 238.7
	• Acute myelofibrosis	• C94.5	• 238.7
	• Other specified leukemias	• C94.7	• 207.8
	Leukemia of unspecified cell type	**C95**	*
	• Acute leukemia of unspecified cell type	• C95.0	• 208.0
	• Chronic leukemia of unspecified cell type	• C95.1	• 208.1
	• Subacute leukemia of unspecified cell type	• C95.2	• 208.2
	• Other leukemia of unspecified cell type	• C95.7	• 208.8
	• Leukemia, unspecified	• C95.9	• 208.9
	Other and unspecified malignant neoplasms of lymphoid, hematopoietic and related tissue	**C96**	*

	• Letterer-Siwe disease	• C96.0	• 202.5
	• Malignant histiocytosis	• C96.1	• 202.3
	• Malignant mast cell tumor	• C96.2	• 202.6
	• True histiocytic lymphoma	• C96.3	• 202.3
	• Other specified malignant neoplasms of lymphoid, hematopoietic and related tissue	• C96.7	• 202.8
	• Malignant neoplasm of lymphoid, hematopoietic and related tissue, unspecified	• C96.9	• 202.9
Childhood cancers	Any type of cancer occurring in a person less than 20 years of age.		
Rare cancers	Any type of cancer affecting the populations smaller than 200,000 individuals in the Unites States, *i.e.*, occurring at an incidence rate less than 0.08 percent of the U.S. population. Rare cancers will be determined on a case-by-case basis.		

* For ICD-10 C81-C96 the following ICD-9 codes correlate: 200-208, 238.7, 273.3.
+ For the purposes of this rule, ICD-10 C50 is limited to cancer of the breast in females.
1. WHO (World Health Organization) [1978]. International Classification of Diseases, Ninth Revision. Geneva: World Health Organization.
2. WHO (World Health Organization) [1997]. International Classification of Diseases, Tenth Revision. Geneva: World Health Organization.

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Dated: September 10, 2013.

John Howard,

Administrator, World Trade Center Health Program and Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, Department of Health and Human Services.

[FR Doc. 2013–22800 Filed 9–18–13; 8:45 am]

BILLING CODE 4150–28–C

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2013–0002; Internal Agency Docket No. FEMA–8301]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *http://www.fema.gov/fema/csb.shtm.*

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR Part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

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

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

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

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR Part 64 is amended as follows:

PART 64—[AMENDED]

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

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

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Region I				
Connecticut:				
Ansonia, City of, New Haven County	090071	November 2, 1974, Emerg; September 2, 1981, Reg; October 16, 2013, Susp.	Oct. 16, 2013	Oct. 16, 2013.
Derby, City of, New Haven County	090075	February 4, 1972, Emerg; September 15, 1977, Reg; October 16, 2013, Susp.	do*	Do.
Seymour, Town of, New Haven County	090088	December 18, 1974, Emerg; July 3, 1978, Reg; October 16, 2013, Susp.	do	Do.
Wilton, Town of, Fairfield County	090020	July 31, 1974, Emerg; November 17, 1982, Reg; October 16, 2013, Susp.	do	Do.
Rhode Island:				
Charlestown, Town of, Washington County.	445395	October 30, 1970, Emerg; July 13, 1972, Reg; October 16, 2013, Susp.	do	Do.
Narragansett, Town of, Washington County.	445402	September 18, 1970, Emerg; December 3, 1971, Reg; October 16, 2013, Susp.	do	Do.
New Shoreham, Town of, Washington County.	440036	October 16, 1975, Emerg; April 3, 1985, Reg; October 16, 2013, Susp.	do	Do.
North Kingstown, Town of, Washington County.	445404	September 18, 1970, Emerg; July 14, 1972, Reg; October 16, 2013, Susp.	do	Do.
South Kingstown, Town of, Washington County.	445407	September 11, 1970, Emerg; June 23, 1972, Reg; October 16, 2013, Susp.	do	Do.
Westerly, Town of, Washington County	445410	August 14, 1970, Emerg; July 28, 1972, Reg; October 16, 2013, Susp.	do	Do.
Region III				
West Virginia:				
Hamlin, Town of, Lincoln County	540089	May 27, 1975, Emerg; September 4, 1987, Reg; October 16, 2013, Susp.	do	Do.
Lincoln County, Unincorporated Areas	540088	May 24, 1976, Emerg; September 18, 1987, Reg; October 16, 2013, Susp.	do	Do.
West Hamlin, Town of, Lincoln County	540090	June 26, 1975, Emerg; September 4, 1987, Reg; October 16, 2013, Susp.	do	Do.
Region IV				
Kentucky:				
Central City, City of, Muhlenberg County.	210175	September 10, 1975, Emerg; August 5, 1986, Reg; October 16, 2013, Susp.	do	Do.
Greenville, City of, Muhlenberg County	210176	May 30, 1975, Emerg; August 19, 1986, Reg; October 16, 2013, Susp.	do	Do.
Muhlenberg County, Unincorporated Areas.	210293	N/A, Emerg; August 12, 2002, Reg; October 16, 2013, Susp.	do	Do.
Mississippi:				
Guntown, Town of, Lee County	280345	N/A, Emerg; August 28, 2007, Reg; October 16, 2013, Susp.	do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Lee County, Unincorporated Areas	280227	February 7, 1978, Emerg; March 5, 1990, Reg; October 16, 2013, Susp.	.....do	Do.
Saltillo, City of, Lee County	280261	April 24, 1975, Emerg; September 18, 1987, Reg; October 16, 2013, Susp.	.....do	Do.
Shannon, Town of, Lee County	280343	N/A, Emerg; February 26, 2009, Reg; October 16, 2013, Susp.	.....do	Do.
Tupelo, City of, Lee County	280100	March 4, 1974, Emerg; April 3, 1978, Reg; October 16, 2013, Susp.	.....do	Do.
Verona, Town of, Lee County	280262	May 6, 1975, Emerg; June 4, 1987, Reg; October 16, 2013, Susp.	.....do	Do.
Region V				
Indiana:				
Decatur County, Unincorporated Areas	180430	February 10, 1976, Emerg; November 16, 1983, Reg; October 16, 2013, Susp.	.....do	Do.
Greensburg, City of, Decatur County	180043	February 28, 1975, Emerg; September 30, 1983, Reg; October 16, 2013, Susp.	.....do	Do.
Saint Paul, Town of, Decatur and Shelby Counties.	180399	September 25, 1975, Emerg; January 17, 1985, Reg; October 16, 2013, Susp.	.....do	Do.
Westport, Town of, Decatur County	180517	January 24, 2000, Emerg; N/A, Reg; October 16, 2013, Susp.	.....do	Do.
Region IX				
Arizona:				
Buckeye, Town of, Maricopa County	040039	December 17, 1974, Emerg; February 15, 1980, Reg; October 16, 2013, Susp.	.....do	Do.
Cave Creek, Town of, Maricopa County	040129	June 9, 1988, Emerg; June 9, 1988, Reg; October 16, 2013, Susp.	.....do	Do.
Chandler, City of, Maricopa County	040040	May 16, 1975, Emerg; July 16, 1980, Reg; October 16, 2013, Susp.	.....do	Do.
El Mirage, City of, Maricopa County	040041	August 8, 1975, Emerg; December 1, 1978, Reg; October 16, 2013, Susp.	.....do	Do.
Gilbert, Town of, Maricopa County	040044	June 10, 1975, Emerg; January 16, 1980, Reg; October 16, 2013, Susp.	.....do	Do.
Glendale, City of, Maricopa County	040045	March 20, 1975, Emerg; April 16, 1979, Reg; October 16, 2013, Susp.	.....do	Do.
Peoria, City of, Maricopa County	040050	June 18, 1975, Emerg; November 17, 1978, Reg; October 16, 2013, Susp.	.....do	Do.
Tempe, City of, Maricopa County	040054	November 18, 1974, Emerg; August 15, 1980, Reg; October 16, 2013, Susp.	.....do	Do.
Wickenburg, Town of, Maricopa County	040056	January 16, 1974, Emerg; January 5, 1978, Reg; October 16, 2013, Susp.	.....do	Do.

*do = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: September 4, 2013.

David L. Miller

Associate Administrator, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2013–22836 Filed 9–18–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2013–0002; Internal Agency Docket No. FEMA–8299]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *http://www.fema.gov/fema/csb.shtm.*

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date (''Susp.'')

listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR Part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

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

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

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

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

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

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

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Region III				
Maryland:				
Accident, Town of, Garrett County	240093	May 19, 1975, Emerg; September 1, 1978, Reg; October 2, 2013, Susp.	Oct. 2, 2013	Oct. 2, 2013.
Deer Park, Town of, Garrett County	240102	February 7, 1992, Emerg; August 16, 1994, Reg; October 2, 2013, Susp.	do	Do.
Friendsville, Town of, Garrett County	240035	May 6, 1975, Emerg; September 14, 1979, Reg; October 2, 2013, Susp.	do	Do.
Garrett County, Unincorporated Areas	240034	January 21, 1976, Emerg; June 5, 1985, Reg; October 2, 2013, Susp.	do	Do.
Grantsville, Town of, Garrett County	240165	August 4, 1986, Emerg; September 29, 1988, Reg; October 2, 2013, Susp.	do	Do.
Kitzmiller, Town of, Garrett County	240036	May 23, 1975, Emerg; October 15, 1985, Reg; October 2, 2013, Susp.	do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Loch Lynn Heights, Town of, Garrett County.	240037	May 23, 1975, Emerg; August 15, 1979, Reg; October 2, 2013, Susp.	.....do	Do.
Mountain Lake Park, Town of, Garrett County.	240038	May 6, 1975, Emerg; October 16, 1984, Reg; October 2, 2013, Susp.	.....do	Do.
Oakland, Town of, Garrett County	240039	April 18, 1975, Emerg; July 16, 1979, Reg; October 2, 2013, Susp.	.....do	Do.
Region IV				
Mississippi:				
Coldwater, Town of, Tate County	280265	May 9, 1975, Emerg; August 1, 1986, Reg; October 2, 2013, Susp.	.....do	Do.
Senatobia, City of, Tate County	280171	March 4, 1974, Emerg; September 29, 1978, Reg; October 2, 2013, Susp.	.....do	Do.
Tate County, Unincorporated Areas	280235	May 6, 1975, Emerg; September 27, 1985, Reg; October 2, 2013, Susp.	.....do	Do.
Region V				
Illinois:				
Broadlands, Village of, Champaign County.	170025	April 28, 1975, Emerg; March 9, 1984, Reg; October 2, 2013, Susp.	.....do	Do.
Champaign, City of, Champaign County	170026	June 6, 1975, Emerg; January 16, 1981, Reg; October 2, 2013, Susp.	.....do	Do.
Champaign County, Unincorporated Areas.	170894	January 14, 1975, Emerg; March 1, 1984, Reg; October 2, 2013, Susp.	.....do	Do.
Fisher, Village of, Champaign County ..	170027	August 13, 1974, Emerg; April 3, 1984, Reg; October 2, 2013, Susp.	.....do	Do.
Mahomet, Village of, Champaign County.	170029	April 10, 1975, Emerg; June 15, 1983, Reg; October 2, 2013, Susp.	.....do	Do.
Rantoul, Village of, Champaign County	170031	N/A, Emerg; July 8, 1994, Reg; October 2, 2013, Susp.	.....do	Do.
Sadorus, Village of, Champaign County	170855	N/A, Emerg; March 13, 2013, Reg; October 2, 2013, Susp.	.....do	Do.
Sidney, Village of, Champaign County	170033	July 10, 1975, Emerg; January 17, 1986, Reg; October 2, 2013, Susp.	.....do	Do.
Saint Joseph, Village of, Champaign County.	170032	August 1, 1975, Emerg; November 16, 1983, Reg; October 2, 2013, Susp.	.....do	Do.
Urbana, City of, Champaign County	170035	February 3, 1975, Emerg; January 16, 1981, Reg; October 2, 2013, Susp.	.....do	Do.
Indiana: Allen County, Unincorporated Areas	180302	February 14, 1974, Emerg; September 28, 1990, Reg; October 2, 2013, Susp.	.....do	Do.
Region VIII				
Colorado: Broomfield, City and County of, Broomfield County	085073	February 18, 1972, Emerg; September 7, 1973, Reg; October 2, 2013, Susp.	.....do	Do.

*do = Ditto.
Code for reading third column: Emerg. —Emergency; Reg. —Regular; Susp. —Susp.ension.

Dated: August 19, 2013.

David L. Miller,

Associate Administrator, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2013–22837 Filed 9–18–13; 8:45 am]

BILLING CODE 9110–12–P

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 821

[Docket No. NTSB–GC–2011–0001]

Rules of Practice in Air Safety Proceedings

AGENCY: National Transportation Safety Board (NTSB or Board).

ACTION: Final rule.

SUMMARY: The NTSB finalizes its amendments to portions of its rules of practice for the NTSB's review of certificate actions taken by the Federal Aviation Administration (FAA), as a result of the enactment of the Pilot's Bill of Rights.

DATES: This rule is effective September 19, 2013.

ADDRESSES: A copy of this final rule, published in the **Federal Register** (FR), is available for inspection and copying in the NTSB's public reading room, located at 490 L'Enfant Plaza, SW., Washington, DC 20594–2003. Alternatively, a copy is available on the government-wide Web site on regulations at *http://www.regulations.gov* (Docket ID Number NTSB–GC–2011–0001).

FOR FURTHER INFORMATION CONTACT: David Tochen, General Counsel, (202) 314–6080.

SUPPLEMENTARY INFORMATION:

I. Background

A. Legislative and Regulatory History

The NTSB issued an advance notice of proposed rulemaking (ANPRM), 75 FR 80452 (Dec. 22, 2010) and a notice of proposed rulemaking (NPRM), 77 FR 6760 (Feb. 9, 2012), which the NTSB finalized in a final rule, 77 FR 63245 (Oct. 16, 2012) for 49 CFR parts 821 and 826. (Part 826 sets forth rules of procedure concerning applications for fees and expenses under the Equal Access to Justice Act of 1980.) In a

separate publication, the NTSB issued an interim final rule, 77 FR 63242 (Oct. 16, 2012), which also set forth changes to 49 CFR part 821. The interim final rule contained necessary amendments required by the enactment of the Pilot's Bill of Rights, Pub. L. No. 112–53, 126 Stat. 1159 (August 3, 2012). As noted in the interim final rule, the Pilot's Bill of Rights established statutory changes that, among other things: (1) Require the FAA to disclose its enforcement investigative report (EIR) to each respondent in an aviation certificate enforcement case; (2) require the NTSB to apply the Federal Rules of Civil Procedure (FRCP) and Federal Rules of Evidence (FRE) to each case, to the extent practicable; and (3) provide litigants the option of appealing the Board's orders to either a Federal district court or a Federal court of appeals.

B. Comments Received

In response to the October 16, 2012, interim final rule, the NTSB received ten comments. The NTSB received a comment dated December 17, 2012, from the FAA, which followed two letters the FAA's Chief Counsel submitted. As described more fully below, these letters stated the interim final rule's requirement to release the EIR ''with'' the ''required notification'' was an incorrect interpretation of the Pilot's Bill of Rights, and caused immediate hardship for the FAA. The NTSB placed both letters (dated October 26 and December 4, 2012), as well as the FAA comment in the public docket for this rulemaking. The NTSB General Counsel held discussions with staff from the FAA Chief Counsel's office, as well as with counsel for the Aircraft Owners and Pilots Association (AOPA). The NTSB placed summaries of both conversations in the public docket for this rulemaking.

In addition to feedback from the FAA, the NTSB received comments from nine other organizations, including AOPA, Aerolaw Offices, the Aviation Law Firm, Dixon and Snow, GeoVelo, Hays Hettinger of Carstens & Cahoon, LLP, National Air Transportation Association (NATA), National Business Aviation Association (NBAA), and Smith Amundsen Aerospace. The comments discussed the following issues: (1) Applicability of the FRCP; (2) applicability of the FRE; (3) disclosure of the EIR;

(4) judicial review of Board orders; (5) disclosure of air traffic data; and (6) emergency review determinations.

II. Responses to Comments

A. Applicability of the FRCP

1. Section 821.5

In the interim final rule, the NTSB set forth the following final language to § 821.5: ''In proceedings under subparts C, D, and F of this part, for situations not covered by a specific Board rule, the Federal Rules of Civil Procedure will be followed to the extent they are consistent with sound administrative practice.'' Subpart C contains rules applicable to proceedings under 49 U.S.C. 44703, which governs denials of issuance or renewal of airman certificates. Subpart D includes rules applicable to proceedings under 49 U.S.C. 44709, which governs amendments, modifications, suspensions, and revocations of certificates. Finally, subpart F contains rules applicable to hearings conducted under 49 CFR part 821.

In the preamble of the NTSB's interim final rule, the agency explained it considered the phrase, ''to the extent they are consistent with sound administrative practice,'' to preclude the application of the FRCP that would be obviously inapplicable. The NTSB further explained it would apply the FRCP in conjunction with the Rules of Practice codified in 49 CFR part 821; in this regard, the NTSB analogized part 821 to ''local rules'' a Federal court would apply.

The NTSB received five comments discussing this amendment to § 821.5. Comments from AOPA and GeoVelo both suggest the NTSB replicate the language of the Pilot's Bill of Rights, which requires the NTSB to apply the FRCP ''to the extent practicable.'' The GeoVelo comment includes the suggestion the NTSB clarify that when the rules of part 821 conflict with the FRCP, the FRCP should apply.

The FAA's comment discusses the amendment to § 821.5, and the overall applicability of the FRCP to all NTSB cases. Concerning the applicability of the FRCP, the FAA states the new language of § 821.5 goes beyond the scope of the Pilot's Bill of Rights, because the statute does not require applying the FRCP to cases the FAA commences under 49 U.S.C. 44710, regarding revocation of an airmen's certificate for violating a Federal or state law related to a controlled substance, and 44726, regarding denial or revocation of an airman's certificate for a conviction of a Federal law related to the installation, production, repair, or sale of a counterfeit or fraudulently-represented aviation part or material, as well as civil penalty proceedings. The FAA also urges the NTSB to clarify whether the FRCP will apply to emergency cases under 49 CFR part 821, subpart I. The Pilot's Bill of Rights only specifically required application of the FRCP to subparts C, D, and F of part 821, and the NTSB did not include subpart I in the new text of § 821.5.

2. Section 821.19

The NTSB received two comments discussing paragraphs (a), (b), and (c) of § 821.19. (A discussion concerning paragraph (d) of § 821.19, regarding mandatory disclosure of the EIR, is included in the EIR section below.)

AOPA suggests the NTSB amend § 821.19 to state the FRCP would apply ''to the extent practicable,'' and provide the NTSB's administrative law judges the discretion to determine how to apply the FRCP.

The FAA suggests several amendments to paragraphs (a) (''depositions''), (b) (''exchange of information by the parties''), and (c) (''use of the [FRCP]'') of § 821.19. The FAA states the NTSB should amend § 821.19(a) concerning depositions, because FRCP 30(a) and 31(a) specify when a party ''may'' take a deposition ''without leave,'' and when a party ''must obtain leave'' before taking a deposition. The FAA encourages the NTSB to compare these requirements to those within § 821.19(a), which allows parties to take depositions without first obtaining approval to do so. The FAA suggests the NTSB clarify in § 821.19(a) that the taking of a deposition with or without leave of the Board must be in accord with FRCP 30(a) and 31(a).

The FAA also states § 821.19(b) does not provide a ''sufficient framework to effectuate compliance'' with the FRCP. As amended, § 821.19(b) states parties must exchange information in accordance with the FRCP. The FAA contends § 821.19(b) should address whether parties must attend a scheduling conference, because FRCP 26(a)(1)(C) requires initial disclosures occur ''within 14 days after the parties' Rule 26(f) conference.'' The FAA further notes FRCP 26(f) requires parties establish a ''discovery plan'' after the judge issues a scheduling order, but the NTSB rules provide judges with the discretion to issue prehearing orders. The FAA comment states the NTSB's ''wholesale adoption'' of the FRCP in 821.19(b) is impractical. The FAA suggests the NTSB choose which of the FRCP will apply, and proposes changes to § 821.19(b) in an NPRM requesting comments. The FAA's comment cites *Richardson* v. *Perales,* 402 U.S. 389, 400–01 (1971), in which the Supreme Court recognized application of the

FRCP in administrative cases is impractical. The FAA's comment also disputes a statement the NTSB made in the preamble explaining § 821.19(c), wherein the NTSB indicated it would apply FRCP 11 (Signing pleadings, motions, and other papers; representations to the court; sanctions) to NTSB cases. The FAA states the FRCP provides for a broad range of sanctions, including monetary penalties, but is inapplicable to discovery because FRCP 26(g)(3), 30(d)(2), and 37 provide for monetary penalties in certain circumstances. The FAA states the Pilot's Bill of Rights did not give the NTSB authority to impose monetary penalties. Therefore, the FAA suggests the NTSB add the statement ''and as authorized by law'' to the end of § 821.19(c).

3. Other Issues Concerning Application of the FRCP

The comment the NTSB received from Hays Hettinger of Carstens & Cahoon, LLP, indicated the firm agrees with the NTSB's amendments to its rules concerning the FRCP. Similarly, the Aviation Law Firm stated it supports the NTSB's amendments indicating applicability of the FRCP, especially FRCP 26, which concerns mandatory disclosures and general rules concerning discovery. The firm specifically suggests the NTSB adopt scheduling orders in all cases pursuant to FRCP 16, and attached a sample scheduling order to its comment; the firm did not recommend a section within part 821 in which such a requirement should appear.

AOPA's comment includes a general suggestion: The comment acknowledges many of the FRCP would be inapplicable to NTSB cases, but states it is ''premature to conclude all of the procedural rules beyond pre-hearing discovery are impractical.''

In addition to offering input concerning §§ 821.5 and 821.19, the FAA's comment also suggests the NTSB incorporate FRCP 26(b)(2)(C), which limits all discovery when the discovery request is unreasonably cumulative or duplicative; when the person seeking discovery has already had ample opportunity to obtain the information; or when the burden or expense of the discovery outweighs its benefit. The FAA suggests the NTSB specifically reference the discovery limitations of FRCP 26(b) within the rules of practice.

4. NTSB's Response to Comments

Section 821.5 (General Applicability of FRCP)

The NTSB appreciates commenters' feedback concerning the applicability of the FRCP. First, concerning § 821.5, the NTSB herein changes the language to provide as follows: ''In proceedings under subparts C, D, F, and I, for situations not covered by a specific Board rule, the Federal Rules of Civil Procedure will be followed to the extent practicable.'' Although the Pilot's Bill of Rights does not mandate this inclusion of subpart I (which contains rules applicable to emergency cases), the NTSB maintains it has the discretion to apply the FRCP to all cases, to the extent practicable. In this regard, the NTSB notes it does not have separate rules within part 821 that apply to civil penalty cases or cases involving air carriers; the NTSB has always applied the rules of part 821 to any appeal within the NTSB's jurisdiction. The NTSB plans to continue to apply the rules of part 821 to all such cases, including those the FAA commences under 49 U.S.C. 44710 and 44726. Therefore, in the interest of consistency, the NTSB will enact the amendment noted above.

In addition, the NTSB is removing the language ''to the extent . . . consistent with sound administrative practice,'' and instead inserting the language from the Pilot's Bill of Rights, which requires application of the FRCP ''to the extent practicable.'' The NTSB believes it beneficial to maintain consistency with the statutory language.

The NTSB acknowledges Congress did not define the phrase ''to the extent practicable'' in its consideration and passage of the Pilot's Bill of Rights. Courts have recognized this phrase in the context of agencies' application of the FRE,[1] but have not provided a definition or description of how agencies should interpret the phrase.

Section 821.19(a) (Depositions)

The NTSB believes its current version of § 821.19(a) conveys the NTSB will apply the FRCP and is not in conflict with FRCP provisions regarding taking of depositions; therefore, the NTSB declines to change the text of § 821.19(a). As noted, for situations not covered by a specific Board rule, NTSB administrative law judges will follow the FRCP to the extent practicable. When a party disagrees with the issuance of a notice of deposition, the party may seek relief from the law judge. FRCP 30(a) and 31(a) require parties to seek leave from the court when (1) parties do not stipulate to a deposition, and (2) certain circumstances are present. For example, the FRCP require leave when a party seeks to depose the same person twice, depose a person outside the United States, or take more than ten depositions. In cases before NTSB administrative law judges, parties file motions when they do not stipulate to a deposition, in an effort to persuade the administrative law judge to compel the deposition. Therefore, FRCP 30(a) and 31(a), which require the absence of parties' stipulation as a preliminary requirement for seeking leave, are consistent with practice before the NTSB, which involves notifying the presiding law judge to resolve disputes concerning whether a deposition will occur. In its comment, the FAA stated this rule is inconsistent with the requirements of FRCP 30(a) and 31(a), which require leave of the court prior to noticing a deposition in certain circumstances. The NTSB disagrees with this viewpoint, because parties will seek resolution from an NTSB law judge whenever an opposing party refuses to comply with a deposition request. Therefore, the NTSB will continue to apply § 821.19(a) in conjunction with FRCP 30(a) and 31(a), as set forth in the interim final rule.

Section 821.19(b) (Parties' Exchange of Information)

The NTSB declines to alter the language of § 821.19(b); rather, the NTSB will apply its rules codified in 49 CFR part 821 as ''local rules'' that supplement and provide additional details concerning overall compliance with the FRCP.

The NTSB recognizes the comments suggesting the NTSB mandate scheduling orders in all cases, in conjunction with a formal discovery plan and scheduling conference. The NTSB notes the Board's rules authorize its law judges to issue pre-hearing orders and conduct pre-hearing conferences to regulate the conduct of hearings, including for discovery matters. Consistent with that authority, all NTSB administrative law judges now issue pre-hearing orders setting forth timelines for discovery matters, consistent with the FRCP and the local rules.

The NTSB maintains the prehearing orders issued, and any pre-hearing

[1] *Federal Maritime Comm'n* v. *South Carolina Ports Authority,* 535 U.S. 743, 758–59 (2002) (application of FRCP ''to the extent practicable''); *Nat'l Labor Relations Bd.* v. *Interbake Foods, LLC* 637 F.3d 492 (4th Cir. 2011) (application of FRE ''to the extent practicable); *accord New Life Bakery* v. *Nat'l Labor Relations Bd.,* 980 F.2d 738 (9th Cir. 1992).

conferences conducted, by its administrative law judges will suffice to regulate the discovery process consistent with the FRCP. The NTSB does not believe its application of FRCP 26(f)(1) and (2), to the extent these provisions require discovery conferences and discovery plans, is practicable. Given the NTSB's limited number of administrative law judges and staff, conducting discovery conferences in all cases would be unduly burdensome. As a result, although NTSB administrative law judges will not prohibit parties from requesting discovery conferences by telephone and may hold such conferences when needed, the NTSB will not require judges to order discovery conferences in all cases.

Section 821.19(c) (Use of the Federal Rules of Civil Procedure)

The NTSB declines to make changes to § 821.19(c). The NTSB recognizes the FAA's comment raises concerns with a specific reference to FRCP 11 and states the NTSB would not be permitted to issue monetary sanctions against practitioners. The NTSB notes the regulatory language of § 821.19(c), as amended, does not reference such sanctions; this mention of sanctions in accordance with FRCP 11 appeared only in the NTSB's preamble of the interim final rule. 77 FR 63244.

The FAA suggests the NTSB include ''as authorized by law'' at the end of § 821.19(c). The NTSB believes it is self-evident that it would only sanction a party ''as authorized by law,'' and therefore does not believe it necessary to include such a phrase in the text of the rule.

B. Applicability of the FRE

In the interim final rule, the NTSB amended § 821.38 to provide that in any proceeding under the rules in part 821, all evidence that is relevant, material, reliable and probative, and not unduly repetitious or cumulative, shall be admissible. Section 821.38 of the interim final rule also stated all other evidence would be excluded, and that the NTSB would apply the FRE to all proceedings, unless such application would be inconsistent with the requirements of the APA.

The NTSB's preamble explaining this change stated the amendment was consistent with section 2(a) of the Pilot's Bill of Rights, which mandates the FRE be applied to NTSB proceedings under part 821, subparts C, D, and F ''to the extent practicable.'' The NTSB modeled the final sentence of the paragraph, which referred to the Administrative Procedure Act (APA), on other agencies' procedural rules concerning the application of the FRE.[2]

1. Comments Received

The NTSB received five comments addressing this change. The comments from AOPA, Dixon and Snow, and the FAA suggest the NTSB amend the final sentence of the paragraph, to remove or change the reference to the APA. The FAA's comment asserts the statement concerning the APA is inconsistent with the FRE, because the FRE requires the exclusion of hearsay evidence unless an exception applies to permit the evidence. Both the FAA and the comment from Dixon and Snow recommend the NTSB strike the phrase concerning the APA, and expressly state in the text of the rule that hearsay is inadmissible, unless a hearsay exception under the FRE applies.

The FAA also suggests the NTSB clarify whether the FRE will apply only to proceedings conducted under subparts C, D, and F of part 821, or whether the rules will apply to *all* proceedings (in particular, subpart I, governing emergency cases).

As stated above, AOPA's comment asserts the NTSB erred in making the FRE ''subordinate'' to the APA's rule on evidence; AOPA contends the result of this statement concerning the APA is the NTSB's practices in admitting evidence will not significantly change. AOPA points out the APA provides, ''[a]ny oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence.'' 5 U.S.C. 556(d) Section 821.38, however, states such evidence *shall* be admissible. AOPA contends this distinction amounts to a conflict between the rules.

The comment from GeoVelo recommends the NTSB repeal § 821.21 because it is now ''surplus.'' Section 821.21, titled ''Official notice,'' states that where a law judge or the Board intends to take official notice of a material fact not appearing in the evidence in the record, notice must be given to all parties, who may file a petition disputing that fact within 10 days.

In particular, GeoVelo states that Rule 201 of the Federal Rules of Evidence (FRE 201) already addresses this circumstance. FRE 201, titled, ''Judicial notice of adjudicative facts,'' includes the following language:

(b) *Kinds of Facts That May Be Judicially Noticed.* The court may judicially notice a fact that is not subject to reasonable dispute because it:
(1) is generally known within the trial court's territorial jurisdiction; or
(2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.
(c) *Taking Notice.* The court:
(1) may take judicial notice on its own; or
(2) must take judicial notice if a party requests it and the court is supplied with the necessary information.

The comment from Hays Hettinger disagrees with the language in the Pilot's Bill of Rights requiring application of the FRE to NTSB proceedings. The commenter cites authority indicating the FRE should not apply to administrative adjudications. Nevertheless, the commenter agrees with the NTSB's approach in applying the FRE to all proceedings, by enacting the change to § 821.38.

2. The NTSB's Response to Comments Concerning the FRE

The NTSB carefully has considered all comments regarding the application of the FRE. In the interest of ensuring the public fully understands the NTSB's intent to apply the FRE, and to confirm the NTSB's compliance with the statutory language, the NTSB herein changes the final sentence of § 821.38 to state as follows: ''To the extent practicable, the Federal Rules of Evidence will be applied in these proceedings.'' The NTSB is hopeful this language will assist in avoiding conflicts between the APA and the statutory requirement to apply the FRE. The NTSB is aware the APA allows administrative law judges considerable discretion in overseeing the admission of evidence at hearings, and permits hearsay evidence. However, the FRE clearly excludes such evidence, unless an exception applies. In the interest of ensuring all parties are aware the NTSB will apply the FRE in all cases, the NTSB is removing the reference to the APA, which it had included in the interim final rule.

The NTSB declines to include any specific language in its rules concerning hearsay. The NTSB believes referencing specific portions of the FRE is unnecessary, and could cause confusion if the NTSB included indications that some, but not all, of the FRE would apply. The FRE already contain detailed provisions concerning the exclusion of hearsay evidence;[3] therefore, the NTSB believes discussing hearsay evidence in its rules is repetitious.

Furthermore, the NTSB declines to reference the subparts of the NTSB rules to which the FRE will apply. Section

[2] *See, e.g.,* 46 CFR 502.156 (Federal Maritime Commission rules); 49 CFR 386.56 (Federal Motor Carrier Safety Administration rules).

[3] See Fed. R. Evid. 801–807.

821.38 is codified within subpart F of the NTSB Rules of Practice, which addresses administrative hearings. The subpart does not contain any language indicating its sections will only apply to certain types of cases. Therefore, the NTSB has always applied the provisions within subpart F to all types of hearings over which the NTSB presides. The NTSB does not now believe a need exists to identify that § 821.38 applies to certain types of cases; the NTSB's intent is to apply the section to all cases in which the NTSB holds a hearing.

The NTSB appreciates the suggestion concerning judicial notice of documents; however, the NTSB does not believe § 821.21 conflicts with FRE 201. The NTSB's administrative law judges, in their discretion, take judicial notice of certain documents and other evidence, and their act of doing so does not contravene any portion of FRE 201.

C. Disclosure of the EIR

In the interim final rule, the NTSB included a requirement concerning the FAA's disclosure of its EIR, within § 821.19(d). The paragraph stated a respondent could move to dismiss the FAA's complaint when the FAA failed to provide the releasable portion of its EIR ''with its required notification to the respondent.'' The paragraph included a description of what the NTSB would consider to be the releasable portion of the EIR; this description excluded several items, such as any information that prohibited from disclosure by law, is privileged, internal, would disclose the identity of a confidential source, not relevant, or sensitive security information.

The NTSB explained in the preamble of the interim final rule that this requirement was based on section 2(b) of the Pilot's Bill of Rights, which requires the FAA provide ''timely, written notification'' to certificate holders who are the subject of an FAA enforcement action regarding the ''nature of the investigation.'' In the notification, the FAA must indicate the certificate holder need not respond to an FAA letter of investigation and will not be adversely affected if he or she elects not to respond. The statute requires the Administrator of the FAA to make available the releasable portions of the EIR to each affected certificate holder and provide certain air traffic data. The statute further provides that the Administrator may delay this notification if the FAA determines the notification would threaten the integrity of the investigation.

1. Correspondence and Comments Received

On October 26, 2012, the FAA sent the NTSB's General Counsel a letter stating this requirement was contrary to the language of the Pilot's Bill of Rights. The FAA stated the Pilot's Bill of Rights does not require the FAA to release the EIR to a certificate holder at the time it transmits its letter of investigation, wherein the FAA typically informs the certificate holder that the FAA is investigating a potential violation. The FAA's letter further stated the NTSB misunderstood an FAA Order (''FAA Compliance and Enforcement Program,'' available at *http://www.faa.gov/documentLibrary/media/Order/2150.3%20B%20W-Chg%204.pdf*), describing the FAA's enforcement process and general procedural matters. The FAA also emphasized the statute only required the FAA to ''make [the EIR] available'' to certificate holders, rather than automatically disclose it. The FAA requested the NTSB immediately clarify the rule. The NTSB placed this letter in the docket for this rulemaking. The NTSB General Counsel requested via a telephone call that FAA counsel provide more information concerning the FAA's letter; the NTSB summarized this conversation in a memorandum, which it also placed in the rulemaking docket.[4] Following the conversation, the NTSB General Counsel sent a letter to the FAA indicating the NTSB believed the FAA's concern originated only in a sentence in the preamble of the interim final rule, in which the NTSB stated it understood the FAA intended to release the EIR in conjunction with its transmission of the letter of investigation in each case. The language of § 821.19(d), however, only indicated the FAA needed to ''provide the releasable portion of its EIR *with its required notification* to the respondent.'' The NTSB derived this language from section 2(b) of the Pilot's Bill of Rights. The FAA subsequently sent another letter to the NTSB General Counsel, again reiterating its concern that the rule would require the FAA to provide the EIR at the same time it issued its letter of investigation.

The NTSB received six comments—including the FAA's comment, which the FAA submitted in addition to its letters—discussing the language the NTSB set forth in § 821.19(d). The Aviation Law Firm suggests the NTSB require disclosure of the EIR contemporaneously with either the FAA's Notice of Proposed Certificate Action (NOPCA) or, in emergency cases, with the emergency order. The firm states requiring issuance of the EIR with the FAA's complaint would be ''ineffective'' and would increase delay. The firm also recommends the NTSB add a statement in § 821.19(d) indicating dismissals for failure to release the EIR in a timely manner would occur with prejudice.

AOPA's comment identifies two issues concerning the language of § 821.19(d): the releasable portions (and exclusions listed in § 821.19(d)(2)(i)–(vi) of the rule) and the timing of the required release of the EIR. Concerning the releasable portions, AOPA states it is ''extreme'' that the rule allows the FAA to determine ''unilaterally'' the information it may withhold without oversight from an administrative law judge. AOPA suggests the term ''releasable portions of the EIR'' in the Pilot's Bill of Rights suffices, and the interim rule ''now [limits] what we have always experienced to be available to respondents when asking for 'the releasable portions of the EIR.' '' AOPA contends a better overall rule would be to ''allow the law judge to rule on all of the other requested information, if an FAA claim is disputed by respondent.'' Concerning the timing of the FAA's provision of the EIR, AOPA urges the NTSB to keep the language in the interim rule as-is for the near future, to determine how it works in practice. AOPA states the NTSB's interpretation in requiring the EIR at the time the FAA provides its ''timely, written notification'' is consistent with Congressional intent to provide respondents with the information at the earliest possible time. AOPA also asserts this practice will benefit the FAA by allowing the agency to work with certificate holders more effectively in discussing the charges at issue.

Some comments focus on the sanction of dismissal on motion the NTSB set forth in § 821.19(d). Aerolaw Offices suggests the NTSB ''strengthen'' § 821.19(d) to provide for sanctions (dismissal or otherwise) for FAA's partial failure to release the EIR. The firm states that, as written, the rule only assumes total failure, but it should set forth consequences for partial failures to release the EIR. Aerolaw Offices also emphasizes this rule is important because critical information may be lost if FAA does not provide the EIR in a timely manner. Similarly, the comment from GeoVelo recommends the NTSB provide all dismissals for failure to release the EIR occur with prejudice.

[4] The NTSB also contacted counsel for AOPA, to offer the opportunity for AOPA to provide an opinion concerning the timing of the release of the EIR. A copy of a summary of the conversation with AOPA counsel is also in the docket for this rulemaking.

The comments from GeoVelo and Dixon and Snow also address the preservation of evidence and the exemptions from disclosure listed in § 821.19(d). GeoVelo suggests the NTSB require the FAA immediately to preserve all relevant information and notify all contractors once FAA determines an EIR ''is warranted.'' GeoVelo further urges the NTSB to require the FAA to include information about the time, manner and which agency official made the notification to the contractor(s) in its EIR notice to the certificate holder; in this regard, GeoVelo states the NTSB should expand § 821.19 to apply to more information than EIRs, to include ''all material evidence in its possession which may serve to exonerate the airman as charged.'' Similarly, Dixon and Snow requests the NTSB remove from the list of exemptions ''(ii) Information that is an internal memorandum, note or writing prepared by a person employed by the FAA or another government agency'' because nothing stops the FAA from asserting every document is an ''internal memorandum,'' and because the ''intent of discovery is to find out not only the evidence obtained by the FAA but the process by which it was obtained.'' In this regard, Dixon and Snow contends exemption (ii) within paragraph (d)(2) of § 821.19 is an overly-broad exclusion.

Finally, following the letters from the FAA described above, the FAA also submitted a comment, which again addresses the NTSB's addition of § 821.19(d). Rather than focusing on the timing of the disclosure, as its letters discussed, the FAA's comment focuses on its assertion that the NTSB does not have jurisdiction to enforce the EIR availability requirement the Pilot's Bill of Rights set forth. Specifically, in its comment, the FAA states section 2(b)(2)(E) of the Pilot's Bill of Rights ''is addressed solely to the FAA'' to provide timely, written notification that the EIR will be available. The FAA states it has added a sentence in the new letters of investigation it now issues, advising the certificate holder that the EIR will be available. The FAA contends § 821.19(d), as currently written, undermines the authority of the FAA to investigate violations, and is contrary to the ''expressed intent of Congress.'' The FAA states the Pilot's Bill of Rights only requires the NTSB to ''figure out the extent to which it is practicable to apply the [FRCP] and [FRE] in any proceeding under . . . subpart[s] C, D, and F.'' The FAA asserts the FRCP do not discuss pre-complaint discovery; therefore, the FAA recommends the NTSB remove § 821.19(d).

2. Response to Comments

The NTSB carefully has considered all discussion within the comments concerning § 821.19(d). In particular, the NTSB recognizes Congress determined certificate holders must obtain access to the EIR in a timely fashion, in order to understand the FAA's cases and prepare their defenses. The NTSB, however, notes the plain language of the Pilot's Bill of Rights does not state the NTSB must provide an enforcement mechanism for release of the EIR. In addition, the NTSB is reluctant to insert itself in matters relating to obligations imposed on the FAA prior to the time the NTSB obtains jurisdiction in these cases. The NTSB always has interpreted its authority to oversee and decide airman appeals commences once the appeal is filed. The Pilot's Bill of Rights did not change the NTSB's authority in this regard.

As a result, the NTSB herein updates the language of § 821.19(d) to provide for relief on motion if the FAA does not provide a copy of the EIR in conjunction with its issuance of the complaint. The new text will read as set forth in the regulatory text of this rule. Specifically, it provides the respondent may move to dismiss the complaint when the respondent requests the EIR, but the Administrator fails to provide its releasable portions by the time the Administrator serves the complaint on the respondent.

The NTSB also has updated § 821.19(d)(2)(ii), to clarify it will consider the FAA's work product exempt from disclosure when it reflects the internal deliberative process undertaken in the enforcement investigation. In this regard, the NTSB administrative law judges will apply the work product doctrine as described in FRCP 26(b)(3). As practitioners know, the work product doctrine generally applies to documents created in anticipation of litigation. The NTSB expects the FAA to apply the work product exemption to the portions of the EIR that reflect the internal deliberations relevant to the enforcement investigation; the NTSB anticipates documents that fall within the work product exemption would reflect internal deliberations.

The NTSB recognizes some comments urged the NTSB to remove exemption (ii). However, the NTSB believes it only fair to allow the FAA to protect its internal deliberations, as respondents' attorneys consider their documents containing work product and internal deliberations to be exempt from disclosure. The basis for the work product doctrine—to promote the adversary process by insulating an attorney's litigation preparation from discovery—also applies to FAA certificate enforcement actions.

As summarized above, AOPA's comment included the suggestion that the NTSB merely rely on the phrase ''releasable portions of the EIR,'' from the Pilot's Bill of Rights, in lieu of listing any exemptions. AOPA suggests the NTSB simply allow its administrative law judges to make releasability determinations on any disputed portions of the EIR. The NTSB declines to adopt such general language for § 821.19(d). Without some guidance, parties would not know what portions of the EIR are releasable, as neither the Pilot's Bill of Rights, nor any supporting information from Congress, provides such information. As a result, parties would not be able to anticipate the disclosure requirement, and NTSB administrative law judges would be placed in the position of having to resolve disputes concerning the releasable portions in a piecemeal manner.

The NTSB also recognizes some commenters suggest the NTSB strengthen the sanction it set forth in § 821.19(d); in particular, Aerolaw Offices recommends the NTSB provide for consequences for the FAA's ''partial'' failure to release the EIR. The NTSB believes its administrative law judges are best equipped to address any such ''partial'' failures. Also with regard to sanction, the Aviation Law Firm suggests the NTSB provide for dismissal *with prejudice* when the FAA fails to release the EIR as required. Again, the NTSB declines to adopt a generally applicable rule concerning whether a dismissal will occur with or without prejudice; instead, the NTSB believes its administrative law judges are best suited to make such a determination.

3. Section 821.55(d)

The updated language of § 821.19(d) clearly applies to non-emergency cases. In an NPRM published elsewhere in today's issue of the **Federal Register**, the NTSB proposes incorporating a similar requirement at paragraph (d) of § 821.55, regarding the release of the EIR in emergency cases proceeding under subpart I of the NTSB's rules.

D. Judicial Review of Board Orders

The NTSB received two comments discussing its change to § 821.64, which provides ''[j]udicial review of a final order of the Board may be sought as provided in 49 U.S.C. 1153 and 46110 by the filing of a petition for review

with the appropriate United States Court of Appeals or United States District Court. . .'' The sole change the interim final rule included was the addition of ''United States District Court.'' This addition is the result of subsection 3(d)(1) of the Pilot's Bill of Rights, which provides for judicial review in either a Federal district court or a Federal court of appeals. Previously, only a United States Court of Appeals had jurisdiction to review a final action by the Board.

Smith Amundsen Aerospace submitted a comment that includes a discussion of the NTSB's change to § 821.64. The firm suggests the NTSB review the section ''to recognize that review at the District Court level affords the respondent a [*de novo*] trial on the merits, whereas an appeal to the appropriate Court of Appeals (from either the District Court, or directly from the Board's decision) should be confined to the record compiled (by the District Court or Board, respectively).'' The NTSB does not believe it prudent to change its regulation to inform a reviewing court what type of review the court has. The court overseeing review of an NTSB decision will review the language of the Pilot's Bill of Rights to determine the appropriate type of review.

The FAA's comment also addresses the NTSB's addition to § 821.64. The FAA states the option to appeal a Board order to Federal District Court is only available in certain cases. The FAA notes § 821.64(a) ''does not accurately describe the subset of NTSB final orders subject . . . to appeal to [District Court],'' nor does it cite statutory authority. The FAA suggests § 821.64(a) add a reference to 49 U.S.C. 44703, and clarify judicial review is only available in the cases described in section 2(d)(1) of the Pilot's Bill of Rights. Otherwise, the FAA asserts judicial review is only available in a Federal Court of Appeals under 49 U.S.C. 1153 and 46110. The NTSB has determined it will include a reference in § 821.64 to the Pilot's Bill of Rights, and believes this inclusion will suffice to inform parties of their appeal rights. The NTSB declines to include any specific information concerning courts' jurisdiction or review authority. In this regard, the NTSB would expect the parties to make jurisdictional arguments before the reviewing court.

E. Disclosure of Air Traffic Data

The NTSB received two comments in response to the interim final rule requesting the NTSB implement a rule to enforce the FAA's requirement to release air traffic data. Section 2(b)(4) of the Pilot's Bill of Rights requires the FAA to provide an airman with ''timely access to any air traffic data in the possession of the Federal Aviation Administration that would facilitate the individual's ability to productively participate in a proceeding relating to an investigation described in such paragraph.'' The FAA's implementation of this requirement includes instructions on how an airman may submit a request for such data, which, due to its nature and volume, is on a rapid destruction schedule. Certificate holders must request the data as soon as possible, as the data may exist in contractor records and may be destroyed if the certificate holder waits too long to make the request.

AOPA's comment includes the general suggestion that the NTSB require in § 821.19 the FAA to disclose air traffic data in accordance with the Pilot's Bill of Rights. GeoVelo's comment states FRCP 26(a) requires the FAA to disclose such data. GeoVelo states the FAA must do more than simply post a Web site address at which a pilot may request preservation of the data. GeoVelo suggests the FAA may ''run out the clock'' to arrange for disposal of the data before the certificate holder can obtain it. As a result, GeoVelo also suggests the NTSB modify § 821.19(d) to require the FAA to provide the data as soon as the FAA decides ''an EIR is warranted.''

The NTSB declines to implement any requirement concerning air traffic data. Given the NTSB's determination that its jurisdiction over an FAA certificate enforcement case on appeal does not commence until the certificate holder files an appeal, the NTSB cannot enforce a requirement that the FAA release air traffic data as soon as it begins its investigation into an alleged violation. The Pilot's Bill of Rights does not include any changes in the NTSB's authority to enable the NTSB to oversee any pre-appeal matters. Neither of the comments the NTSB received on the issue of air traffic data addresses this jurisdictional issue.

F. Emergency Review Determinations

Finally, the NTSB recognizes three of the comments it received in response to the interim final rule once again request the NTSB amend § 821.54(e) of its rules. This section sets forth the standard of review of the FAA's decision to pursue a case as an emergency.

The NTSB received two duplicative comments from National Air Transportation Association (NATA) and National Business Aviation Association (NBAA). These comments contain the same text as those comments NATA and NBAA submitted in response to the NTSB's ANPRM and NPRM concerning changes to parts 821 and 826. GeoVelo's comment raised the same argument concerning an airman's ability to challenge the facts on which the FAA's emergency action is based.

The NTSB responded to the issues raised in these comments in its NPRM and Final Rule on that subject.[5] This interim final rule did not consider or implement changes to § 821.54(e). As a result, the NTSB refers commenters to its previous responses, and declines to address again the arguments raised in the comments concerning § 821.54(e).

III. Regulatory Analysis

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of the potential costs and benefits under section 6(a)(3) of that Order. As such, the Office of Management and Budget has not reviewed this rule under Executive Order 12866. Likewise, this rule does not require an analysis under the Unfunded Mandates Reform Act, 2 U.S.C. 1501–1571, or the National Environmental Policy Act, 42 U.S.C. 4321–4347.

In addition, the NTSB has considered whether this rule would have a significant economic impact on a substantial number of small entities, under the Regulatory Flexibility Act (5 U.S.C. 601–612). The NTSB certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. Moreover, in accordance with 5 U.S.C. 605(b), the NTSB will submit this certification to the Chief Counsel for Advocacy at the Small Business Administration.

The NTSB does not anticipate this rule will have a substantial, direct effect on state or local governments or will preempt state law; as such, this rule does not have implications for federalism under Executive Order 13132, Federalism. This rule also complies with all applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. In addition, the NTSB has evaluated this rule under: Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights; Executive Order 13045, Protection of Children from Environmental Health Risks and Safety

[5] 77 FR 6761, 6765–6766 (Feb. 9, 2012); 77 FR 63247–63248 (Oct. 16, 2012).

Risks; Executive Order 13175, Consultation and Coordination with Indian Tribal Governments; Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use; and the National Technology Transfer and Advancement Act, 15 U.S.C. 272 note. The NTSB has concluded that this rule does not contravene any of the requirements set forth in these Executive Orders or statutes, nor does this rule prompt further consideration with regard to such requirements.

List of Subjects for 49 CFR Part 821

Administrative practice and procedure, Airmen, Aviation safety.

For the reasons discussed in the preamble, the NTSB amends 49 CFR part 821 as follows:

PART 821—RULES OF PRACTICE IN AIR SAFETY PROCEEDINGS

■ 1. The authority citation for 49 CFR part 821 continues to read as follows:

Authority: 49 U.S.C. 1101–1155, 44701–44723, 46301, Pub. L. 112–153, unless otherwise noted.

■ 2. Revise § 821.5 to read as follows:

§ 821.5 Procedural rules.

In proceedings under subparts C, D, F, and I, for situations not covered by a specific Board rule, the Federal Rules of Civil Procedure will be followed to the extent practicable.

■ 3. In § 821.19, revise paragraph (d) to read as follows:

§ 821.19 Depositions and other discovery.

* * * * *

(d) *Failure to provide copy of releasable portion of Enforcement Investigative Report (EIR).* (1) Except as provided in § 821.55 with respect to emergency proceedings, where the respondent requests the EIR and the Administrator fails to provide the releasable portion of the EIR to the respondent by the time it serves the complaint on the respondent, the respondent may move to dismiss the complaint or for other relief and, unless the Administrator establishes good cause for that failure, the law judge shall order such relief as he or she deems appropriate, after considering the parties' arguments.

(2) The releasable portion of the EIR shall include all information in the EIR, except for the following:

(i) Information that is privileged;

(ii) Information that constitutes work product or reflects internal deliberative process;

(iii) Information that would disclose the identity of a confidential source;

(iv) Information of which applicable law prohibits disclosure;

(v) Information about which the law judge grants leave to withhold as not relevant to the subject matter of the proceeding or otherwise, for good cause shown; or

(vi) Sensitive security information, as defined at 49 U.S.C. 40119 and 49 CFR 15.5.

(3) Nothing in this section shall be interpreted as preventing the Administrator from releasing to the respondent information in addition to that which is contained in the releasable portion of the EIR.

■ 4. Revise § 821.38 to read as follows:

§ 821.38 Evidence.

In any proceeding under the rules in this part, all evidence which is relevant, material, reliable and probative, and not unduly repetitious or cumulative, shall be admissible. All other evidence shall be excluded. The Federal Rules of Evidence will be applied in these proceedings to the extent practicable.

■ 5. In § 821.64, revise paragraph (a) to read as follows:

§ 821.64 Judicial review.

(a) *General.* Judicial review of a final order of the Board may be sought as provided in 49 U.S.C. 1153 and 46110 by the filing of a petition for review with the appropriate United States Court of Appeals or United States District Court, pursuant to the provisions of Pub. L. 112–53, 126 Stat. 1159 (August 3, 2012), 49 U.S.C. 44703 note. Such petition is due within 60 days of the date of entry (*i.e.,* service date) of the Board's order. Under the applicable statutes, any party may appeal the Board's decision. The Board is not a party in interest in such appellate proceedings and, accordingly, does not typically participate in the judicial review of its decisions. In matters appealed by the Administrator, the other parties should anticipate the need to make their own defense.

* * * * *

Deborah A.P. Hersman,

Acting Chairman.

[FR Doc. 2013–22634 Filed 9–18–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Parts 622 and 640

[Docket No. 120403251–3787–02]

RIN 0648–BB70

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic

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

ACTION: Final rule.

SUMMARY: NMFS adopts as final with some changes an interim final rule published April 17, 2013, which reorganized the regulations implementing the fishery management plans (FMPs) for the Southeast Region, NMFS, and amended references to the Paperwork Reduction Act (PRA) information-collection requirements. The new part 622 contains regulations implementing management measures contained in the FMPs for the following domestic fisheries in the Caribbean, Gulf of Mexico, and South Atlantic: Caribbean coral, Caribbean reef fish, Caribbean spiny lobster, Caribbean queen conch, Gulf red drum, Gulf reef fish, Gulf shrimp, Gulf coral, Gulf and South Atlantic coastal migratory pelagics, Gulf and South Atlantic spiny lobster, South Atlantic coral, South Atlantic snapper-grouper, South Atlantic shrimp, Atlantic dolphin and wahoo, South Atlantic golden crab, and South Atlantic pelagic sargassum. The intended effect of this final rule is to improve the organization of these regulations and simplify their use.

DATES: This final rule is effective September 19, 2013. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of April 17, 2013.

ADDRESSES: Electronic copies of documents supporting this final rule may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov.*

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

SUPPLEMENTARY INFORMATION: Domestic fisheries in the Caribbean, Gulf of Mexico, and South Atlantic are managed under the FMPs prepared by the Caribbean, Gulf of Mexico, and/or

South Atlantic Fishery Management Councils under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*)

On April 17, 2013, NMFS published an interim final rule to reorganize the regulations for the 15 fisheries that had been in part 622, and reorganize and incorporate the part 640 regulations (Gulf and South Atlantic spiny lobster) into part 622 (78 FR 22950). With that incorporation, all Magnuson-Stevens Act fisheries regulations applicable to the Caribbean, Gulf of Mexico, and South Atlantic are in a single location, part 622. The interim final rule also revised the references for PRA requirements in 15 CFR part 902. The background and rationale for the reorganization were explained in the interim final rule and are not repeated here.

Comments and Responses

NMFS provided a 30-day comment period on the interim final rule for the public to comment on the structure and format of the reorganization of 50 CFR part 622, and not on the regulations currently in effect, which are outside the scope of this rulemaking. NMFS received five comments on the interim final rule, including four comment letters from individuals and one submission from a Federal agency. The Federal agency stated that it had no comment. Two of the comments expressed general support for the reorganization and the other two comments were outside the scope of the rulemaking.

Changes From the Interim Final Rule

Prior to the interim final rule, both part 622 and part 640 contained a general prohibitions section that listed specific management prohibitions. The interim final rule revised this approach by including a generic prohibition under each fishery subpart rather than a list of specific prohibtions. After further consideration during the comment period on the interim final rule, NMFS decided to include a list of the specific prohibitions in subpart A, instead of including a generic prohibition under each fishery subpart. NMFS has determined that the previous approach is more direct and easier for the public to understand and is not substantively different in its content or applicability. The regulatory text within part 622 is being revised within this final rule to reflect this change.

All other codified text contained in the interim final rule that published on April 17, 2013, remains unchanged.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Administrator, Southeast Region, NMFS, has determined that this final rule is consistent with the Magnuson-Stevens Act and other applicable laws.

The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause under 5 U.S.C. 553(d)(3) to waive the requirement to delay for 30 days the effectiveness of this rule. Providing a delay of the effectiveness of this rule is unnecessary because this final rule does not make any substantive changes to the regulations. Instead, this final rule makes changes to the reorganizational structure of the regulations implemented in the interim final rule that published on April 17, 2013 (78 FR 22950). Specifically, this final rule removes the generic prohibitions under each fishery subpart implemented in the interim final rule and adds specific prohibitions in the general prohibitions section in § 622.13, as were in effect before the interim final rule was implemented. NMFS determined that having specific prohibitions in the general prohibitions section is more direct and easier for the public to understand and will avoid confusion. Providing a delay of the effectiveness of this rule is also contrary to the public interest as these regulations are already currently in effect and the intent of the reorganization is to provide the regulations in a format that enhances the public's ability to locate and understand applicable regulatory requirements.

Because prior notice and opportunity for public comment was not required for the interim final rule by 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* were inapplicable. Accordingly, no Regulatory Flexibility Analysis was required and none has been prepared. Additionally, no public comments were received subsequent to publication of the interim final rule regarding this determination and NMFS has not received any new information that would affect this determination.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Gulf of Mexico, Incorporation by reference, Puerto Rico, Reporting and recordkeeping requirements, South Atlantic, Virgin Islands.

Dated: September 12, 2013.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, performing the functions and duties of the Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, the interim final rule amending 15 CFR part 902 and 50 CFR parts 622 and 640 that was published at 78 FR 22950 on April 17, 2013, is adopted as final with the following changes.

50 CFR Chapter VI

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. Section 622.13 is revised to read as follows:

§ 622.13 Prohibitions—general.

In addition to the general prohibitions in § 600.725 of this chapter, it is unlawful for any person to do any of the following:

(a) Engage in an activity for which a valid Federal permit, license, or endorsement is required under this part without such permit, license, or endorsement.

(b) Falsify information on an application for a permit, license, or endorsement or submitted in support of such application, as specified in this part.

(c) Fail to display a permit, license, or endorsement, or other required identification, as specified in this part.

(d) Falsify or fail to maintain, submit, or provide information or fail to comply with inspection requirements or restrictions, as specified in this part.

(e) Fail to make a fish, or parts thereof, available for inspection, as specified in this part.

(f) Falsify or fail to display and maintain vessel and gear identification, as specified in this part.

(g) [Reserved]

(h) [Reserved]

(i) Fail to comply with any requirement or restriction regarding ITQ coupons, as specified in § 622.172.

(j) Possess wreckfish as specified in § 622.172, receive wreckfish except as specified in § 622.172, or offload a wreckfish except as specified in § 622.172.

(k) Transfer—

(1) A wreckfish, as specified in § 622.172;

(2) A limited-harvest species, as specified in this part;

(3) A species/species group subject to a bag limit, as specified in this part;

(4) South Atlantic snapper-grouper from a vessel with unauthorized gear on board, as specified in § 622.188; or

(5) A species subject to a commercial trip limit, as specified in this part.

(l) Use or possess prohibited gear or methods or possess fish in association with possession or use of prohibited gear, as specified in this part.

(m) Fish for, harvest, or possess a prohibited species, or a limited-harvest species in excess of its limitation, sell or purchase such species, fail to comply with release requirements, molest or strip eggs from a lobster, or possess a lobster, or part thereof, from which eggs, swimmerettes, or pleopids have been removed or stripped, as specified in this part.

(n) Fish in violation of the prohibitions, restrictions, and requirements applicable to seasonal and/or area closures, including but not limited to: Prohibition of all fishing, gear restrictions, restrictions on take or retention of fish, fish release requirements, and restrictions on use of an anchor or grapple, as specified in this part or as may be specified under this part.

(o) Harvest, possess, offload, sell, or purchase fish in excess of the seasonal harvest limitations, as specified in this part.

(p) Except as allowed for king and Spanish mackerel and Gulf of Mexico and South Atlantic spiny lobster, possess undersized fish, fail to release undersized fish, or sell or purchase undersized fish, as specified in this part.

(q) Fail to maintain a fish intact through offloading ashore, as specified in this part.

(r) Exceed a bag or possession limit, as specified in this part.

(s) Fail to comply with the limitations on traps and pots, including but not limited to: Tending requirements, constructions requirements, and area specific restrictions, as specified in this part.

(t) Fail to comply with the species-specific limitations, as specified in this part.

(u) Fail to comply with the restrictions that apply after closure of a fishery, sector, or component of a fishery, as specified in this part.

(v) Possess on board a vessel or land, purchase, or sell fish in excess of the commercial trip limits, as specified in this part.

(w) Fail to comply with the restrictions on sale/purchase, as specified in this part.

(x) Interfere with fishing or obstruct or damage fishing gear or the fishing vessel of another, as specified in this part.

(y) Fail to comply with the requirements for observer coverage as specified in this part.

(z) Assault, resist, oppose, impede, intimidate, or interfere with a NMFS-approved observer aboard a vessel.

(aa) Prohibit or bar by command, impediment, threat, coercion, or refusal of reasonable assistance, an observer from conducting his or her duties aboard a vessel.

(bb) Fish for or possess golden crab in or from a fishing zone or sub-zone of the South Atlantic EEZ other than the zone or sub-zone for which the vessel is permitted or authorized, as specified in § 622.241.

(cc) Falsify information submitted regarding an application for testing a BRD or regarding testing of a BRD, as specified in §§ 622.53 and 622.207.

(dd) Make a false statement, oral or written, to an authorized officer regarding the installation, use, operation, or maintenance of a vessel monitoring system (VMS) unit or communication service provider.

(ee) Operate or own a vessel that is required to have a permitted operator aboard when the vessel is at sea or offloading without such operator aboard, as specified in this part.

(ff) When a vessel that is subject to Federal fishing regulations is at sea or offloading, own or operate such vessel with a person aboard whose operator permit is revoked, suspended, or modified.

(gg) Fail to comply with any provision related to a vessel monitoring system (VMS) as specified in this part, including but not limited to, requirements for use, installation, activation, access to data, procedures related to interruption of VMS operation, and prohibitions on interference with the VMS.

(hh) Fail to comply with the protected species conservation measure as specified in this part.

(ii) Fail to comply with any provision related to the IFQ program for Gulf red snapper as specified in § 622.21, or the IFQ program for Gulf groupers and tilefishes as specified in § 622.22.

(jj) Falsify any information required to be submitted regarding the IFQ program for Gulf red snapper as specified in § 622.21, or the IFQ program for Gulf groupers and tilefishes as specified in § 622.22.

(kk) Fail to comply with the Caribbean, Gulf of Mexico, and South Atlantic spiny lobster import prohibitions, as specified in this part.

(ll) Possess a Gulf of Mexico or South Atlantic spiny lobster trap in the EEZ at a time not authorized, as specified in subpart R.

(mm) Harvest or attempt to harvest a Gulf of Mexico or South Atlantic spiny lobster by diving without having and using in the water a measuring device, as specified in subpart R.

(nn) Possess Gulf of Mexico or South Atlantic spiny lobsters aboard a vessel that uses or has on board a net or trawl in an amount exceeding the limits, as specified in subpart R.

(oo) Operate a vessel that fishes for or possesses Gulf of Mexico or South Atlantic spiny lobster in or from the EEZ with spiny lobster aboard in an amount exceeding the cumulative bag and possession limit, as specified in subpart R.

(pp) [Reserved]

(qq) Fail to comply with any other requirement or restriction specified in this part or violate any provision(s) of this part.

§ 622.44 [Removed]

■ 3. Section 622.44 is removed.

§ 622.61 [Removed]

■ 4. Section 622.61 is removed.

§ 622.78 [Removed]

■ 5. Section 622.78 is removed.

§ 622.93 [Removed]

■ 6. Section 622.93 is removed.

§ 622.195 [Removed]

■ 7. Section 622.195 is removed.

§ 622.211 [Removed]

■ 8. Section 622.211 is removed.

§ 622.228 [Removed]

■ 9. Section 622.228 is removed.

§ 622.253 [Removed]

■ 10. Section 622.253 is removed.

§ 622.282 [Removed]

■ 11. Section 622.282 is removed.

§ 622.304 [Removed]

■ 12. Section 622.304 is removed.

§ 622.390 [Removed]

■ 13. Section 622.390 is removed.

§ 622.414 [Removed]

■ 14. Section 622.414 is removed and reserved.

§ 622.441 [Removed]

■ 15. Section 622.441 is removed.

§ 622.460 [Removed]

■ 16. Section 622.460 is removed.

§ 622.475 [Removed]

■ 17. Section 622.475 is removed.

§ 622.498 [Removed]

■ 18. Section 622.498 is removed.

[FR Doc. 2013–22728 Filed 9–18–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 121018563–3418–02]

RIN 0648–XC876

Fisheries of the Exclusive Economic Zone Off Alaska; Shortraker Rockfish in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting retention of shortraker rockfish in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary because the 2013 total allowable catch (TAC) of shortraker rockfish in the BSAI has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 16, 2013, through 2400 hrs, A.l.t., December 31, 2013.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2013 TAC for shortraker rockfish in the BSAI is 370 metric tons (mt) as established by the final 2013 and 2014 final harvest specifications for groundfish of the BSAI (78 FR 13813, March 1, 2013).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2013 TAC of shortraker rockfish in the BSAI has been reached. Therefore, NMFS is requiring that shortraker rockfish caught in the BSAI be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay prohibiting the retention of shortraker rockfish in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 13, 2013.

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

This action is required by § 679.20 and § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: September 16, 2013.

Kelly Denit,

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

[FR Doc. 2013–22827 Filed 9–16–13; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 78, No. 182

Thursday, September 19, 2013

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

[NRC–2012–0246]

RIN 3150–AJ20

Proposed Waste Confidence Rule and Draft Generic Environmental Impact Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Public meetings.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) plans to hold public meetings to receive public comments on its forthcoming proposed amendments to the NRC's regulations pertaining to the environmental impacts of the continued storage of spent nuclear fuel beyond a reactor's licensed life for operation and prior to ultimate disposal (proposed Waste Confidence rule). In addition, the NRC will receive public comment on its forthcoming draft generic environmental impact statement (DGEIS), NUREG–2157, ''Waste Confidence Generic Environmental Impact Statement,'' that forms the regulatory basis for the proposed amendments. The meetings are open to the public, and anyone may attend. The NRC is issuing this notice in advance of the release of the proposed Waste Confidence rule and DGEIS in order to maximize public participation at these meetings and ensure that as many parties as possible are able to attend.

DATES: The NRC plans to hold public meetings in October and November 2013, during the 75-day public comment period for the proposed Waste Confidence rule and DGEIS. This document contains specific meeting information in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: Please refer to Docket ID NRC–2012–0246 when contacting the NRC about the availability of information for the proposed Waste Confidence rule and DGEIS. You may access publicly available information related to these documents by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0246.
- *NRC's Waste Confidence Web site:* Go to *http://www.nrc.gov/waste/spent-fuel-storage/wcd.html*.
- *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 PDR reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The DGEIS is not yet finalized, but will be available in ADAMS under Accession No. ML13224A106 before the public meetings. An additional **Federal Register** notice will be published to announce when the DGEIS is available.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Sarah Lopas, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–287–0675; email: *Sarah.Lopas@nrc.gov*.

SUPPLEMENTARY INFORMATION: As part of the public comment process, the NRC plans to hold 12 transcribed public meetings during the public comment period to solicit comments on the proposed Waste Confidence rule and DGEIS. The NRC plans to publish the proposed Waste Confidence rule and DGEIS in September 2013, and it will issue a notice of availability for the proposed rule and the DGEIS in the **Federal Register** at that time.

The proposed Waste Confidence rule would amend the NRC's regulations pertaining to the environmental impacts of the continued storage of spent nuclear fuel beyond a reactor's licensed life for operation and prior to ultimate disposal. The DGEIS forms the regulatory basis for the proposed amendments in the Waste Confidence rule. The DGEIS examines the potential environmental impacts that could occur as a result of the continued storage of spent nuclear fuel at at-reactor and away-from-reactor sites until a repository is available. The DGEIS provides generic environmental impact determinations that would be applicable to a wide range of existing and potential future spent fuel storage sites. While some site-specific information is used in developing the generic impact determinations, the Waste Confidence DGEIS does not replace the environmental analysis, performed pursuant to the National Environmental Policy Act, associated with any individual site licensing action.

The NRC staff plans to hold the following public meetings during the planned, 75-day public comment period to present an overview of the DGEIS and proposed Waste Confidence rule and to accept public comments on the documents.

- October 1, 2013: NRC Headquarters, One White Flint North, First Floor Commission Hearing Room, 11555 Rockville Pike, Maryland 20852.
- October 3, 2013: Crowne Plaza Denver International Airport Convention Center, 15500 East 40th Ave, Denver, Colorado 80239.
- October 7, 2013: Courtyard by Marriott, 1605 Calle Joaquin Road, San Luis Obispo, California 93405.
- October 9, 2013: Sheraton Carlsbad Resort & Spa, 5480 Grand Pacific Drive, Carlsbad, California 92008.
- October 15, 2013: Hilton Garden Inn Toledo Perrysburg, 6165 Levis Commons Blvd., Perrysburg, Ohio, 43551.
- October 17, 2013: Minneapolis Marriott Southwest, 5801 Opus Parkway, Minnetonka, Minnesota 55343.
- October 24: Chicago Marriott Oak Brook, 1401 West 22nd Street, Oak Brook, Illinois 60523.
- October 28, 2013: Radisson Hotel & Suites Chelmsford-Lowell, 10 Independence Drive, Chelmsford, Massachusetts 01824.
- October 30, 2013: Westchester Marriott, 670 White Plains Road, Tarrytown, New York 10591.
- November 4, 2013: Hilton Charlotte University Place, 8629 J.M. Keynes Drive, Charlotte, North Carolina 28262.
- November 6, 2013: Hyatt Regency Orlando—International Airport, 9300 Jeff Fuqua Boulevard, Orlando, Florida 32827.
- November 14, 2013: NRC Headquarters, One White Flint North,

First Floor Commission Hearing Room, 11555 Rockville Pike, Maryland 20852.

The ten regional public meetings will start at 7:00 p.m. local time and will continue until 10:00 p.m. local time. The two NRC headquarters meetings will start at 2:00 p.m. Eastern Time and will continue until 5:00 p.m. Eastern Time. Additionally, NRC staff will host informal discussions during an open house 1 hour prior to the start of each meeting. Open houses will start at 6:00 p.m. local time for regional meetings and 1:00 p.m. Eastern Time for the NRC Headquarters meetings.

To maximize the time for comment, the NRC staff will only be available to answer specific questions on the Waste Confidence rule or DGEIS during the open house. The public meetings will be transcribed and will include: (1) A presentation of the contents of the DGEIS and proposed Waste Confidence rule; and (2) the opportunity for government agencies, organizations, and individuals to provide comments on the DGEIS and proposed rule. No oral comments on the DGEIS or proposed Waste Confidence rule will be accepted during the open house sessions. To be considered, oral comments must be presented during the transcribed portion of the public meeting. The NRC staff will also accept written comments at any time during the public meetings.

Persons interested in presenting oral comments at any of the 12 public meetings are encouraged to pre-register. Persons may pre-register to present oral comments by calling 301–287–9392 or by emailing *WCRegistration@nrc.gov* no later than 3 days prior to the meeting. Members of the public may also register to provide oral comments in-person at each meeting. Individual oral comments may be limited by the time available, depending on the number of persons who register.

If special equipment or accommodations are needed to attend or present information at a public meeting, the need should be brought to the NRC's attention no later than 10 days prior to the meeting to provide the NRC staff adequate notice to determine whether the request can be accommodated. To maximize public participation, the NRC headquarters meetings on October 1, 2013, and November 14, 2013, will be Web-streamed via the NRC's public Web site. See the NRC's Live Meeting Webcast page to participate: *http://video.nrc.gov/*. The NRC headquarters meetings will also feature a moderated teleconference line so remote attendees will have the opportunity to present oral comments. To receive the teleconference number and passcode, call 301–287–9392 or email *WCRegistration@nrc.gov*. Meeting agendas and participation details will be available on the NRC's Waste Confidence Public Involvement Web site at *http://www.nrc.gov/waste/spent-fuel-storage/wcd/pub-involve.html* and on the NRC's Public Meeting Schedule Web site at *http://www.nrc.gov/public-involve/public-meetings/index.cfm* no later than 10 days prior to the meetings.

Dated at Rockville, Maryland, this 12th day of September 2013.

For the Nuclear Regulatory Commission.

Andy Imboden,

Chief, Communication, Planning, and Rulemaking Branch Waste Confidence Directorate, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2013–22801 Filed 9–18–13; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 703 and 721

RIN 3133–AE17

Charitable Donation Accounts

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule with request for comments.

SUMMARY: NCUA proposes to amend its regulations to clarify that a federal credit union (FCU) is authorized to fund a charitable donation account (CDA), a hybrid charitable and investment vehicle described below, as an activity incidental to the business for which an FCU is chartered, provided the account is primarily charitable in nature and meets other regulatory conditions.

DATES: Comments must be received on or before October 21, 2013.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *NCUA Web site: http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx.* Follow the instructions for submitting comments.
- *Email:* Address to *regcomments@ncua.gov.* Include ''[Your name]—Comments on Notice of Proposed Rulemaking for Parts 703 and 721'' in the email subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for email.
- *Mail:* Address to Gerard Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

Public Inspection: You may view all public comments, as submitted, on NCUA's Web site at *http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx,* except those we cannot post for technical reasons. NCUA will not edit or remove identifying or contact information from the public comments submitted. You may inspect paper copies of comments in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an email to *OGCMail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Steven W. Widerman, Senior Staff Attorney, Office of General Counsel, at the above address or by telephone: (703) 518–6540; or Rick Mayfield, Senior Capital Markets Specialist, Office of Examination and Insurance, at the above address or by telephone: (703) 518–6360.

SUPPLEMENTARY INFORMATION:

I. Background
II. Summary of the Proposed Rule
III. Regulatory Procedures

I. Background

1. Federal Credit Union Authority To Make Charitable Contributions

The Federal Credit Union Act (''the Act'') provides that an FCU may ''exercise such incidental powers as shall be necessary or requisite to enable it to carry on effectively the business for which it is incorporated.'' [1] Under this authority, the Board has long recognized that making charitable contributions and donations is among an FCU's incidental powers.[2]

Between 1999 and 2012, FCU donations were limited to two categories of charities: (1) non-profit organizations located or active in the community where the donor FCU had a place of business; and (2) tax-exempt organizations that ''operated primarily to promote and develop credit unions.'' [3] An FCU's donation to these kinds of charities was conditioned on a determination by its board of directors that the donation was in the best interests of the FCU and reasonable given its size and financial condition.[4] In 2012, the Board repealed the restrictions on permissible charities and

[1] 12 U.S.C. 1757(17).

[2] 44 FR 56691 (Oct. 2, 1979); 64 FR 19441 (Apr. 21, 1999); 12 CFR 721.3.

[3] 12 CFR 701.25(a) (2011).

[4] *Id.* 12 CFR 701.25(b).

the conditions for making a donation.[5] The Board then added charitable contributions and donations as a category of activities preapproved by regulation as ''incidental powers necessary and requisite to carry on a credit union's business.''[6] Activities in this preapproved category include donations to nonprofit organizations and credit union-affiliated causes, and to create charitable foundations.

2. Federal Credit Union Investment Authority

The Act grants FCUs the express power to invest in certain enumerated categories of investments.[7] FCUs may invest only in those investments expressly authorized by the Act. Further, part 703, NCUA's investment regulation, limits or prohibits FCUs from purchasing certain investments, otherwise permitted by the Act, for safety and soundness reasons.[8] Investments authorized by the Act and not prohibited or limited by part 703 constitute the universe of permissible investments for FCUs.

3. Why is NCUA proposing this rule?

The Board proposes to amend its regulations to clarify that, under certain circumstances, an FCU is authorized to fund a CDA, which may hold investments that are impermissible for an FCU, as a charitable contribution or donation under its incidental powers authority.[9] The purpose of permitting an FCU to fund a CDA as an incidental power is to help facilitate an FCU's charitable activities. However, for this activity to be considered an incidental power, instead of an impermissible investment, the proposed rule requires the CDA to be primarily charitable in structure. Any investment feature benefitting the FCU must be incidental to that charitable purpose. The CDA must also be structured to preserve safety and soundness and to limit an FCU's exposure to the risks of otherwise impermissible investments.

The details of how a CDA must be structured and how it would work under the proposed rule are discussed in more detail below.

II. Summary of the Proposed Rule

1. Part 721—Establishing and Funding a CDA

Section 721.3 enumerates the categories of activities that are preapproved as incidental powers of an FCU. In order for the funding of a CDA to be characterized as a preapproved incidental power, the proposed rule provides that a CDA must be structured to satisfy the following seven conditions, including a definitions section.

a. *Maximum Aggregate Funding.* An FCU's investment in all CDAs, in the aggregate, must be limited to 3 percent of its net worth for the duration of the accounts. This means that regardless how many CDAs an FCU invests in, at all times, the aggregate book value of all such investments must not exceed 3 percent of net worth. Book value means the value at which the account is carried on your statement of financial condition prepared in accordance with GAAP. FCU's must monitor CDA exposure relative to net worth no less frequently than every quarterly call report cycle and will be expected to comply within 30 days of any breach of the maximum aggregate funding limit. The 3 percent net worth ceiling reflects an amount that generally would allow an FCU to generate income for the charity while ensuring the amount of risk taken will not pose safety and soundness issues.

b. *Segregated Account.* CDA assets must be held in a segregated custodial account or special purpose entity specifically identified as a CDA. This enables an FCU to better manage this activity and provides more transparency for supervisory purposes.

c. *Regulatory Oversight.* If an FCU chooses to establish a CDA using a trust vehicle, then the trustee must be an entity regulated by the Office of the Comptroller of the Currency, the U.S. Securities and Exchange Commission (''SEC'') or another federal regulatory agency. A regulated trustee or other person who is authorized to make investment decisions for a CDA (''manager''), other than the FCU itself, must be registered with the SEC as an investment advisor. This will help to ensure proper regulatory oversight of those professionals who owe fiduciary duties to the FCU, and to mitigate counterparty, credit, interest rate, liquidity, and reputational risks associated with funding a CDA.

d. *Account Documentation.* The parties to the CDA, typically the FCU and trustee or manager, must document the terms and conditions controlling the account in a written operating agreement, trust agreement or similar instrument. The terms of the agreement must be consistent with the requirements and conditions set forth in this proposal. Additionally, the board of directors of an FCU that wishes to fund a CDA must adopt written policies addressing this activity, which also must be consistent with this proposal, and which may be amended from time to time.

An FCU's CDA agreement and policies must provide that the FCU will donate only to charities exempt from taxation under section 501(c)(3) of the Internal Revenue Code, and they must name those charities. The agreement and policies must document the investment strategies the CDA trustee or other manager must follow, and provide that the FCU will account for all aspects of the CDA, including its distributions and liquidation, in accordance with generally accepted accounting principles.

e. *Minimum Distributions to Charities.* An FCU is required to distribute to one or more qualified charities, no less frequently than every 5 years, and upon termination of a CDA, a minimum of 51 percent of the CDA's total return on assets over the period of up to 5 years. If a CDA is terminated before the initial or a subsequent period of up to 5 years elapses, the minimum distribution of total return on assets for that period must be complete by the time the account is closed. Requiring at least one charitable distribution within a 5-year window emulates the structure of a trust that would expire at the end of a term as long as 5 years, triggering such a distribution. Consistent with a CDA's primarily charitable structure, the proposed rule permits an FCU to maintain its account in perpetuity as long as it makes the minimum charitable distribution over each 5-year window of its existence, through one or more individual distributions. The 5-year constraint serves to provide periodic reassessment of risk and ensures timely distribution of charitable payments to the beneficiary.

The proposed rule defines ''qualified charity'' as a charitable organization or other non-profit entity recognized as exempt from taxation under section 501(c)(3) of the Internal Revenue Code, and ''total return'' as the actual rate of return of an investment, including realized interest, capital gains, dividends and distributions over a given period of up to 5 years. These minimum distribution frequency and amount requirements are a distinguishing feature of a CDIA. They are key to characterizing the funding of a CDA as primarily charitable and thus an incidental powers activity.

An FCU may choose to donate in excess of the minimum distribution frequency and amount. Also, the proposed rule allows an FCU to decide how frequently to make distributions. For example, an FCU may choose to make periodic distributions over a

[5] 77 FR 31981 (May 31, 2012).

[6] 12 CFR 721.3(b); See also 12 CFR 721.2.

[7] 12 U.S.C. 1757(7) & (15).

[8] 12 CFR part 703.

[9] 12 CFR 721.3(b).

period of up to 5 years, or a single distribution at the end of that period. These choices should be documented in the CDA agreement and internal policies.

f. *Liquidation of Assets Upon CDA Termination.* Upon termination of the CDA, the funding FCU may receive a distribution of the remaining assets in cash or a distribution in kind of the remaining assets but only if those assets are permissible investments for FCUs pursuant to the Act and part 703.

g. *Definitions.* The proposed rule includes a definitions section to ensure consistent usage of key terms in the proposed rule.

2. Part 703—Exclusion of CDAs From Investment Rules

The proposed rule revises part 703 to clarify that the funding of a CDA satisfying the above conditions is a preapproved incidental power of an FCU, even if the investments in the account are otherwise impermissible for FCUs, and it is not a violation of part 703 or the investment provisions of the Act.

III. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small credit unions (primarily those under $50 million in assets). This proposed rule does not impose any mandatory requirements on small credit unions, and NCUA does not anticipate many small credit unions will fund CDAs with significant amounts of money. NCUA has determined this proposed rule will not have a significant economic impact on a substantial number of small credit unions.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency creates a new paperwork burden on regulated entities or modifies an existing burden. For purposes of the PRA, a paperwork burden may take the form of either a reporting or a recordkeeping requirement, both referred to as information collections. The proposed changes to parts 703 and 721 would clarify that CDAs are an option for FCUs. NCUA has determined that the procedures for an FCU to open, maintain, and monitor a CDA would create a new information collection requirement. As required, NCUA has applied to the Office of Management and Budget (OMB) for approval of the information collection.

To establish a CDA, an FCU must produce an internal policy and board of directors' resolution authorizing the funding of the CDA, must apply to open a segregated account, must engage a regulated trustee or registered investment advisor (''RIA'') to manage the CDA, and must enter into an operating agreement with the chosen trustee or RIA.

To maintain its CDA once it begins operating, an FCU will receive and review periodic activity statements and reports on the account in order to properly monitor, and account for, its performance. The FCU also must determine which qualified charities will receive charitable distributions.

NCUA estimates that, if this proposed rule were to become effective, approximately 100 FCUs would fund CDAs. NCUA further estimates that, on average, it would take an FCU's staff approximately 20 hours to draft, review, and retain the documentation associated with opening a CDA. NCUA also estimates that maintaining and monitoring a CDA and performing all other functions associated with the CDA will take an FCU's staff an additional 8 hours annually. Accordingly, NCUA estimates the aggregate information collection burden for FCUs funding CDAs would be 28 hours times 100 FCUs for a total of 2800 hours for the first year and 8 hours times 100 FCUs for a total of 800 hours annually thereafter.

Organizations and individuals wishing to submit comments on this information collection requirement should direct them to the Office of Information and Regulatory Affairs, OMB, Attn: Shagufta Ahmed, Room 10226, New Executive Office Building, Washington, DC 20503, with a copy to the Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. The PRA requires OMB to make a decision concerning the collection of information contained in the proposed regulation between 30 and 60 days after publication of this document in the **Federal Register**.

NCUA considers comments by the public on this proposed collection of information in:

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the NCUA, including whether the information will have a practical use;
- Evaluating the accuracy of NCUA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. This proposed rule applies only to federally chartered credit unions. Accordingly, the rule 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. NCUA has determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the Executive Order.

Treasury and General Government Appropriations Act, 1999

NCUA has determined that this proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

List of Subjects

12 CFR Part 703

Credit unions, investments.

12 CFR Part 721

Credit unions, functions, implied powers.

By the National Credit Union Administration Board on September 12, 2013.

Gerard Poliquin,

Secretary of the Board.

For the reasons set forth above, NCUA proposes to amend 12 CFR parts 703 and 721 as follows:

PART 703—INVESTMENTS

■ 1. The authority citation for part 703 continues to read as follows:

Authority: 12 U.S.C. 1757(7), 1757(8), 1757(15).

§ 703.1 [Amended]

■ 2. Amend § 703.1 as follows:

■ a. In paragraph (b)(5) by removing the word ''or'';

■ b. In paragraph (b)(6) by removing the period at the end of the paragraph and adding ''; or'' in its place; and

■ c. By adding paragraph (b)(7).

The addition reads as follows:

§ 703.1 Purpose and scope.

* * * * *

(b) * * *

(7) Funding a Charitable Donation Account pursuant to § 721.3(b) of this chapter.

* * * * *

PART 721—INCIDENTAL POWERS

■ 3. The authority citation for part 721 continues to read as follows:

Authority: 12 U.S.C. 1757(17), 1766, 1789.

■ 4. In § 721.3, redesignate paragraph (b) as paragraph (b)(1) and add paragraph (b)(2) to read as follows:

§ 721.3 What categories of activities are preapproved as incidental powers necessary or requisite to carry on a credit union's business?

* * * * *

(b) * * *

(2) *Charitable Donation Accounts.* A charitable income account (''CDA'') is a hybrid charitable and investment vehicle, satisfying the conditions in paragraphs (b)(2)(i) through (vii) of this section, that you may fund as a means to provide charitable contributions and donations to qualified charities. If you fund a CDA that satisfies all of the following conditions, then you may do so free from the investment limitations of the Federal Credit Union Act and part 703 of this chapter:

(i) *Maximum aggregate funding.* The book value of your investments in all CDAs, in the aggregate, as carried on your statement of financial condition prepared in accordance with GAAP, must be limited to 3 percent of your net worth at all times for the duration of the accounts, as measured at least every quarterly call report cycle. This means that regardless of how many CDAs you invest in, the combined book value of all such investments must not exceed 3 percent of your net worth. You must bring your aggregate accounts into compliance with the maximum aggregate funding limit within 30 days of any breach of this limit.

(ii) *Segregated account.* The assets of a CDA must be held in a segregated custodial account or special purpose entity and must be specifically identified as a CDA;

(iii) *Regulatory oversight.* If you choose to establish a CDA using a trust vehicle, the trustee must be regulated by the Office of the Comptroller of the Currency, the U.S. Securities and Exchange Commission (''SEC'') or another federal regulatory agency. A regulated trustee or other person or entity that is authorized to make investment decisions for a CDA (''manager''), other than the credit union itself, must be a Registered Investment Advisor.

(iv) *Account documentation and other written requirements.* The parties to the CDA, typically the funding credit union and trustee or other manager of the account, must document the terms and conditions controlling the account in a written trust agreement or other similar instrument. The terms of the agreement must be consistent with this section. Your board of directors must adopt written policies addressing this funding activity that are consistent with this section, must review the policies annually, and may amend them from time to time.

(A) Your CDA agreement and policies must at a minimum:

(*1*) Provide that the CDA will make charitable contributions and donations only to charities you name therein that are exempt from taxation under section 501(c)(3) of the Internal Revenue Code;

(*2*) Document the investment strategies and risk tolerances the CDA trustee or other manager must follow in administering the account;

(*3*) Provide that you will account for all aspects of the CDA, including distributions to charities and liquidation of the account, in accordance with generally accepted accounting principles; and (4) indicate the frequency with which the trustee or manager of the CDA will make distributions to qualified charities as provided in paragraph (b)(2)(v) of this section;

(B) [Reserved]

(v) *Minimum distribution to charities.* You are required to distribute to one or more qualified charities, no less frequently than every 5 years, or upon termination of a CDA in less than 5 years, a minimum of 51 percent of the account's total return on assets over the period of up to 5 years. You may choose how frequently distributions will be made during each period of up to 5 years. For example, you may choose to make periodic distributions over a period of up to 5 years, or a single distribution at the end of that period. You may choose to donate in excess of the minimum distribution frequency and amount;

(vi) *Liquidation of assets upon CDA termination.* Upon termination of the CDA, you may receive a distribution of the remaining account assets in cash or you may receive a distribution in kind of the remaining account assets but only if those assets are permissible investments for federal credit unions under the Federal Credit Union Act and part 703 of this chapter; and

(vii) *Definitions.* For purposes of this section, the following definitions apply:

(A) *Distribution in kind* is your acceptance of remaining CDA assets, upon termination of the account, in their original form instead of in cash resulting from the liquidation of the assets.

(B) *Qualified charity* is a charitable organization or other non-profit entity recognized as exempt from taxation under section 501(c)(3) of the Internal Revenue Code.

(C) *Registered Investment Advisor* is an investment advisor registered with the SEC pursuant to the Investment Advisers Act of 1940.

(D) *Total return* is the actual rate of return on all investments in a CDA over a given period of up to 5 years, including realized interest, capital gains, dividends, and distributions.

* * * * *

[FR Doc. 2013–22734 Filed 9–18–13; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0789; Directorate Identifier 2013–NM–127–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede airworthiness directive (AD) 2012–12–08, which applies to certain The Boeing Company Model 777–200 and –300 series airplanes. AD 2012–12–08 requires an inspection for the part number of the fuse pin, and replacement of the pin if necessary. Since we issued AD 2012–12–08, we have determined that additional airplanes may be subject to the identified unsafe condition. This proposed AD would retain the actions required by AD 2012–12–08 and add airplanes to the applicability. We are proposing this AD to prevent structural damage to the side and drag brace lock assemblies, which could result in

landing gear collapse during touchdown, rollout, or taxi.

DATES: We must receive comments on this proposed AD by November 4, 2013.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Melanie Violette, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6422; fax: 425–917–6590; email: *melanie.violette@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0789; Directorate Identifier 2013–NM–127–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On June 7, 2012, we issued AD 2012–12–08, Amendment 39–17088 (77 FR 37781, June 25, 2012) (''AD 2012–12–08''), for certain The Boeing Company Model 777–200 and –300 series airplanes. (A correction of AD 2012–12–08 was published in the **Federal Register** on July 20, 2012 (77 FR 42625)). AD 2012–12–08 requires an inspection for the part number of the fuse pin, and replacement of the pin if necessary. AD 2012–12–08 resulted from reports of cracked retract actuator fuse pins that could fail earlier than the previously determined safe life limit of the pins. A fractured retract actuator fuse pin can cause the main landing gear (MLG) to extend without restriction and attempt to lock into position under high dynamic loads. We issued AD 2012–12–08 to prevent structural damage to the side and drag brace lock assemblies, which could result in landing gear collapse during touchdown, rollout, or taxi.

Actions Since AD 2012–12–08 Was Issued

Since we issued AD 2012–12–08, it was discovered that an interchangeability error in the Boeing 777 Illustrated Parts Catalog (IPC) permitted replacing the new pin (–3) with the old pin (–1). Therefore, we have determined that additional airplanes may be subject to the identified unsafe condition.

Relevant Service Information

We reviewed Boeing Special Attention Service Bulletin 777–32–0083, Revision 2, dated May 2, 2013. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for Docket No. FAA–2013–0789.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs.

Proposed AD Requirements

Although this proposed AD does not explicitly restate the requirements of AD 2012–12–08, this proposed AD would retain all requirements of AD 2012–12–08. Those requirements are referenced in the service information identified previously, which, in turn, is referenced in paragraph (g) of this proposed AD. This proposed AD would add airplanes to the applicability statement of AD 2012–12–08.

Costs of Compliance

We estimate that this proposed AD affects 129 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	5 work-hours × $85 per hour = $425	$0	$425	$54,825

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Pin Replacement	1 work-hour × $85 per hour = $85 per pin.	$700 per pin	$785 per pin.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed 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.

The Proposed 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 airworthiness directive (AD) 2012–12–08, Amendment 39–17088 (77 FR 37781, June 25, 2012; corrected July 20, 2012 (77 FR 42625)), and adding the following new AD:

The Boeing Company: Docket No. FAA–2013–0789; Directorate Identifier 2013–NM–127–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by November 4, 2013.

(b) Affected ADs

This AD supersedes AD 2012–12–08, Amendment 39–17088 (77 FR 37781, June 25, 2012; corrected July 20, 2012 (77 FR 42625)).

(c) Applicability

This AD applies to The Boeing Company Model 777–200 and –300 series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 777–32–0083, Revision 2, dated May 2, 2013.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 32, Landing Gear.

(e) Unsafe Condition

This AD was prompted by a determination that additional airplanes may be subject to the identified unsafe condition. We are issuing this AD to prevent structural damage to the side and drag brace lock assemblies, which could result in landing gear collapse during touchdown, rollout, or taxi.

(f) Compliance

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

(g) Part Number Inspection and Replacement

Except as required by paragraph (h) of this AD, at the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 777–32–0083, Revision 2, dated May 2, 2013: Inspect the retract actuator fuse pin to determine the part number, and replace any retract actuator fuse pin having part number 112W1769–1, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–32–0083, Revision 2, dated May 2, 2013. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the retract actuator fuse pin can be conclusively determined from that review. Do all applicable replacements at the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 777–32–0083, Revision 2, dated May 2, 2013.

(h) Exception to Service Information Specifications

Where Boeing Special Attention Service Bulletin 777–32–0083, Revision 2, dated May 2, 2013, specifies a compliance time ''after the Revision 2 date of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(i) Parts Installation Prohibition

(1) For airplanes identified in Group 1 of Boeing Special Attention Service Bulletin 777–32–0083, Revision 2, dated May 2, 2013: As of July 30, 2012 (the effective date of AD 2012–12–08, Amendment 39–17088 (77 FR 37781, June 25, 2012; corrected July 20, 2012 (77 FR 42625)), no person may install a retract actuator fuse pin having part number 112W1769–1 on any airplane.

(2) For airplanes identified in Group 2 of Boeing Special Attention Service Bulletin 777–32–0083, Revision 2, dated May 2, 2013: As of the effective date of this AD, no person may install a retract actuator fuse pin having part number 112W1769–1 on any airplane.

(j) Credit for Previous Actions

(1) This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of AD 2012–12–08, Amendment 39–17088 (77 FR 37781, June 25, 2012; corrected July 20, 2012 (77 FR 42625)) using Boeing Special Attention Service Bulletin 777–32–0083, dated February 5, 2009, which is not incorporated by reference in this AD.

(2) This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Special Attention Service Bulletin 777–32–0083, Revision 1, dated February 17, 2011, which is not incorporated by reference in this AD.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector

or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO–AMOC-Requests@faa.gov.*

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

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

(l) Related Information

(1) For more information about this AD, contact Melanie Violette, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6422; fax: 425–917–6590; email: *melanie.violette@faa.gov.*

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

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

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–22784 Filed 9–18–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0749; Airspace Docket No. 13–ASW–16]

Proposed Amendment of Class D Airspace; Dallas, Addison Airport, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM), withdrawal.

SUMMARY: A NPRM published in the **Federal Register** of September 6, 2013, to amend the Class D airspace ceiling at Addison Airport, Dallas, TX, is being withdrawn. Upon review, the FAA determined that the proposed rulemaking action is premature in that an existing Dallas/Fort Worth Class B airspace rulemaking action is pending.

DATES: As of September 19, 2013, the proposed rule published September 6, 2013, at 78 FR 54795, is withdrawn.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: 817–321–7716.

SUPPLEMENTARY INFORMATION:

History

On September 6, 2013, a NPRM was published in the **Federal Register** proposing to amend the Addison Airport Class D airspace ceiling (78 FR 54795). Subsequent to that publication, the FAA found that references addressing changes or adjustments to air traffic flows in the Dallas-Fort Worth metropolitan area are in error and that the proposed action is premature in that a Dallas/Fort Worth Class B airspace rulemaking action is pending. Upon completion of the Dallas/Fort Worth Class B airspace rulemaking action, the FAA will reconsider future action to modify Addison Airport Class D airspace, if warranted.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Withdrawal

Accordingly, pursuant to the authority delegated to me, the Notice of Proposed Rulemaking, as published in the **Federal Register** on September 6, 2013 (78 FR 54795) (FR Doc. 2013–21751), is hereby withdrawn.

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

Issued in Fort Worth, TX, on September 11, 2013.

David P. Medina,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2013–22852 Filed 9–18–13; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Docket No. FAA–2013–0659; Airspace Docket No. 13–AWP–12

Proposed Establishment of Class D Airspace and Class E Airspace; Laguna AAF, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class D airspace and Class E airspace at Laguna Army Air Field (AAF), (Yuma Proving Ground), Yuma, AZ. The establishment of an air traffic control tower has made this action necessary for the safety and management of Instrument Flight Rules (IFR) aircraft within this airspace.

DATES: Comments must be received on or before November 4, 2013.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2013–0659; Airspace Docket No. 13–AWP–12, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2013–0659 and Airspace Docket No. 13–AWP–12) and be submitted in triplicate to the Docket Management System (see

ADDRESSES section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2013–0659 and Airspace Docket No. 13–AWP–12''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class D airspace from the surface to and including 1,700 feet MSL within a 3.5-mile radius of Laguna AAF (Yuma Proving Ground), Yuma, AZ, excluding R–2306E and R–2307 when in effect; and Class E airspace extending upward from 700 feet above the surface within an 8.8-mile radius of the airfield, with a segment extending from the 8.8-mile radius to 13.5 miles northwest of the airfield. The establishment of an air traffic control tower has made this action necessary and would provide the required controlled airspace for IFR operations at Laguna AAF, (Yuma Proving Ground).

Class D airspace and Class E airspace designations are published in paragraphs 5000 and 6005, respectively, of FAA Order 7400.9X, dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR Part 71.1. The Class D airspace and Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would establish controlled airspace at Laguna AAF, (Yuma Proving Ground), Yuma, AZ.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, and effective September 15, 2013 is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

AWP AZ D Laguna AAF, AZ [New]

Laguna AAF (Yuma Proving Ground), Yuma, AZ
(Lat. 32°51′53″ N., long. 114°23′35″ W.)

That airspace extending upward from the surface to and including 1,700 feet MSL within a 3.5-mile radius of Laguna AAF; excluding that airspace in Restricted Area R–2306E and R–2307 when they are in effect. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP AZ E5 Laguna AAF, AZ [New]

Laguna AAF (Yuma Proving Ground), Yuma, AZ
(Lat. 32°51′53″ N., long. 114°23′35″ W.)

That airspace extending upward from 700 feet above the surface within 8.8-mile radius of the Laguna AAF and within 2 miles each side of the Laguna AAF 348° bearing extending from the 8.8-mile radius to 13.5 miles northwest of the airport.

Issued in Seattle, Washington, on August 29, 2013.

Christopher Ramirez,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2013–22816 Filed 9–18–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–110732–13]

RIN 1545–BL52

Guidance Regarding Dispositions of Tangible Depreciable Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking, notice of public hearing, and partial withdrawal of previously proposed regulations.

SUMMARY: This document contains proposed regulations regarding dispositions of property subject to depreciation under section 168 of the Internal Revenue Code (Code) (Modified Accelerated Cost Recovery System (MACRS) property). The proposed regulations also amend the general asset account regulations under § 1.168(i)–1 and the accounting for MACRS property regulations under § 1.168(i)–7. The proposed regulations will affect all taxpayers that dispose of MACRS property. This document also provides notice of a public hearing on these proposed regulations and partially withdraws the proposed regulations published in the **Federal Register** on December 27, 2011 (76 FR 81128).

DATES: Written and/or electronic comments must be received by November 18, 2013. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for December 19, 2013, at 10 a.m. must be received by November 18, 2013.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–110732–13), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8:00 a.m. and 4:00 p.m. to CC:PA:LPD:PR (REG–110732–13), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, or sent electronically, via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–110732–13). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Kathleen Reed and Patrick Clinton, Office of Associate Chief Counsel (Income Tax and Accounting) (202) 622–4930; and concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Oluwafunmilayo (Funmi) Taylor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

On December 27, 2011, the IRS and the Treasury Department published in the **Federal Register** (76 FR 81060) temporary regulations (TD 9564) regarding the accounting for, and dispositions of, property subject to depreciation under section 168 (MACRS property). The temporary regulations also amended the general asset account regulations under § 1.168(i)–1. On the same date, the IRS published in the **Federal Register** (76 FR 81128) a notice of proposed rulemaking (REG–168745–03) cross-referencing the temporary regulations (2011 proposed regulations). The IRS and the Treasury Department received numerous written comments responding to the notice of proposed rulemaking and held a public hearing on May 9, 2012.

The temporary regulations generally apply to taxable years beginning on or after January 1, 2012. In response to the comments received and the statements made at the public hearing, the IRS and the Treasury Department released Notice 2012–73, 2012–51 IRB 713, on November 20, 2012, announcing that, to help taxpayers transition to the final regulations, the IRS and the Treasury Department will change the applicability date of the temporary regulations to taxable years beginning on or after January 1, 2014, while permitting taxpayers to choose to apply the temporary regulations to taxable years beginning on or after January 1, 2012, and before the applicability date of the final regulations. Notice 2012–73 also alerts taxpayers that the IRS and the Treasury Department intend to publish final regulations in 2013 and expect the final regulations to apply to taxable years beginning on or after January 1, 2014, but that the final regulations would permit taxpayers to apply the provisions of the final regulations to taxable years beginning on or after January 1, 2012. On December 17, 2012, the IRS and the Treasury Department published in the **Federal Register** (77 FR 74583) a technical amendment to TD 9564, which amended the applicability date of the temporary regulations to taxable years beginning on or after January 1, 2014, while permitting taxpayers to choose to apply the temporary regulations to taxable years beginning on or after January 1, 2012, and before the applicability date of the final regulations.

Notice 2012–73 also alerts taxpayers that the IRS and the Treasury Department intend to revise the disposition rules in the temporary regulations. After considering the comment letters and the statements made at the public hearing, the IRS and the Treasury Department decided to withdraw the 2011 proposed regulations under §§ 1.168(i)–1 and 1.168(i)–8 and to propose new regulations. This document contains the new proposed regulations under §§ 1.168(i)–1 and 1.168(i)–8 as well as new proposed regulations under § 1.168(i)–7. The temporary regulations under §§ 1.168(i)–1T and 1.168(i)–8T are not revised and taxpayers continue to have the option of applying those temporary regulations to taxable years beginning on or after January 1, 2012, and before the applicability date of the final regulations.

Summary of Comments and Explanation of Provisions

I. Overview

These proposed regulations under §§ 1.168(i)–1 and 1.168(i)–8 include many of the provisions contained in the 2011 proposed regulations and the temporary regulations under §§ 1.168(i)–1T and 1.168(i)–8T. However, these proposed regulations provide significant changes to the rules relating to the determination of the asset disposed of and a qualifying disposition of an asset in a general asset account, and the proposed regulations under §§ 1.168(i)–1, 1.168(i)–7, and 1.168(i)–8 provide new rules for partial dispositions of assets. The IRS and the Treasury Department intend to publish final regulations under §§ 1.168(i)–1, 1.168(i)–7, and 1.168(i)–8 later this year. Accordingly, these proposed regulations generally are proposed to apply to taxable years beginning on or after January 1, 2014.

II. Disposition Rules for MACRS Property

The IRS and the Treasury Department received several comments on the disposition rules under §§ 1.168(i)–1T and 1.168(i)–8T. Most of the comments related to dispositions of structural components of a building, dispositions of assets in a general asset account, and determination of the unadjusted depreciable basis of a disposed asset in a multiple asset account or a general asset account.

A. Determination of Asset Disposed of and Partial Dispositions

1. The Temporary Regulations

The temporary regulations under § 1.168(i)–8T provide rules for determining gain or loss upon the disposition of MACRS property that are generally consistent with the disposition rules under § 1.168–6 of the proposed regulations on the Accelerated Cost Recovery System of former section 168 (ACRS) (which have been generally applied to MACRS property). However, if an abandoned asset is subject to nonrecourse indebtedness, the temporary regulations clarify that the asset is treated in the same manner as an asset disposed of by sale.

Section 1.168–2(l)(1) of the proposed ACRS regulations provides that a disposition does not include the retirement of a structural component of a building and, consequently, § 1.168–6(b) of the proposed ACRS regulations provides that no loss is recognized upon the retirement of a structural component of a building. The temporary regulations expand the definition of disposition for MACRS property to include the retirement of a structural component of a building and, accordingly, the temporary regulations allow the recognition of a loss upon such a retirement.

The temporary regulations under § 1.168(i)–1T provide rules for establishing general asset accounts, for computing depreciation for general asset accounts, and for determining gain or loss upon the disposition of assets in general asset accounts. Section 1.168(i)–1T(e)(2) provides that, in general, no loss is recognized upon the disposition of an asset from a general asset account. However, § 1.168–1T(e)(3)(iii) provides that a taxpayer may elect to recognize gain or loss upon the disposition of an asset in a general asset account if there is a qualifying disposition. The temporary regulations define the term ''disposition'' to include the retirement of a structural component of a building and define the term ''qualifying disposition'' to allow the recognition of gain or loss upon most dispositions of assets in general asset accounts. Thus, a taxpayer has the option of recognizing a loss on most dispositions of assets in general asset accounts under the temporary regulations.

The temporary regulations under §§ 1.168(i)–1T and 1.168(i)–8T also provide rules for determining the disposed asset. Those sections of the temporary regulations provide that the facts and circumstances of each disposition are considered in determining the appropriate disposed asset. In general, the asset for disposition purposes cannot be larger than the unit of property as determined under § 1.263(a)–3(e)(2), (e)(3), and (e)(5) or as otherwise provided in published guidance in the **Federal Register** or in the Internal Revenue Bulletin. However, under §§ 1.168(i)–1T and 1.168(i)–8T, each building is the asset for disposition purposes, unless more than one building is treated as the asset under § 1.1250–1(a)(2)(ii). If the building includes two or more condominium or cooperative units, then each condominium or cooperative unit (instead of the building) is the asset for disposition purposes. Consistent with including a retirement of a structural component of a building as a disposition, the temporary regulations provide that each structural component of a building, condominium unit, or cooperative unit is the asset for disposition purposes. Further, if a taxpayer properly includes an item in one of the asset classes 00.11 through 00.4 of Rev. Proc. 87–56 (1987–2 CB 674), (see 26 CFR 601.601(d)(2)(ii)(*b*)) or classifies an item in one of the categories under section 168(e)(3) (other than a category that includes buildings or structural components; for example, retail motor fuels outlet and qualified leasehold improvement property), each item is the asset provided it is not larger than the unit of property as determined under § 1.263(a)–3(e)(3) or (e)(5). Consistent with section 168(i)(6), the temporary regulations also provide that if the taxpayer places in service an improvement or addition to an asset after the taxpayer placed the asset in service, the improvement or addition is a separate asset for depreciation purposes. The temporary regulations also provide that a taxpayer generally may use any reasonable, consistent method to treat each of an asset's components as the asset for disposition purposes.

2. Comments on the Temporary Regulations

Several commenters stated that requiring taxpayers to treat the structural components of a building as assets separate from the underlying building increases administrative burdens for taxpayers because of the necessity to track the components. Further, while the temporary regulations permit taxpayers to define the asset for disposition purposes at the smallest component level, effectively allowing taxpayers the ability to recognize a loss on the partial retirement of a larger item, some commenters indicated that such an approach is unduly complicated and will pose significant administrative burdens for taxpayers. Other commenters suggested that the ability to use any reasonable, consistent method to treat each of an asset's components as the asset for disposition purposes be expanded to assets classified in asset classes 00.11 through 00.4 of Rev. Proc. 87–56, which accounts for the property that a taxpayer typically uses in its business (for example, office furniture, computers, cars, corporate jets, and land improvements (other than a building and its structural components)).

Several commenters suggested that the use of general asset accounts be the default rule to eliminate traps for taxpayers. Commenters stated that requiring taxpayers to make a general asset account election when structural components are placed in service to forgo the loss on dispositions of structural components occurring years later was a trap for taxpayers. For example, because a taxpayer that did not elect general asset account treatment cannot forgo a mandatory loss on a disposition of a structural component, the taxpayer would be required to capitalize the replacement of the structural component under § 1.263(a)–3(k)(1)(i) even if the replacement of the structural component does not constitute the replacement of a major component, a significant portion of a major component, or a substantial structural part of the building unit of property under §§ 1.263(a)–3(k)(1)(vi) and 1.263(a)–3(k)(6)(ii). Further, because some structural components are defined in § 1.48–1(e)(2) at a diminutive level (for example, one window in a building), commenters stated that absent including all structural components in a general asset account, taxpayers run the risk of failing to identify every disposition in a given taxable year.

The IRS and the Treasury Department do not think that the use of general asset accounts should be the default rule. However, the IRS and the Treasury Department agree that taxpayers that do not elect general asset account treatment should have the same flexibility to forgo a loss upon the disposition of a structural component as taxpayers that elect general asset account treatment. As discussed in this preamble, these proposed regulations make significant modifications to the disposition rules to allow this flexibility.

3. Structural Components

These proposed regulations change the rule in the temporary regulations under §§ 1.168(i)–1T and 1.168(i)–8T that each structural component of a building, condominium, or cooperative is the asset for tax disposition purposes.

The proposed regulations provide that a building (including its structural components), a condominium (including its structural components), or a cooperative (including its structural components) is the asset for disposition purposes. This rule allows taxpayers to forgo a loss upon the disposition of a structural component of a building without making a general asset account election.

4. Partial Dispositions

A. Assets Not Included in General Asset Accounts

The proposed regulations under § 1.168(i)–8 also provide that the disposition rules apply to a partial disposition of an asset (for example, the disposition of a roof (or a portion of the roof)). This rule allows taxpayers to claim a loss upon the disposition of a structural component (or a portion thereof) of a building or upon the disposition of a component (or a portion thereof) of any other asset without identifying the component as an asset before the disposition event. The partial disposition rule also minimizes circumstances in which an original part and any subsequent replacements of the same part are required to be capitalized and depreciated simultaneously. These proposed regulations provide examples demonstrating the application of the partial disposition rule.

In many cases, the partial disposition rule is elective (''partial disposition election''). However, consistent with the operation of sections 165, 168(i)(7), 1031, and 1033, and because sales of a portion of an asset are common, the partial disposition rule is required to be applied to a disposition of a portion of an asset as a result of a casualty event described in section 165, to a disposition of a portion of an asset for which gain (determined without regard to section 1245 or 1250) is not recognized in whole or in part under section 1031 or 1033, to a transfer of a portion of an asset in a step-in-the-shoes transaction described in section 168(i)(7)(B), or to a sale of a portion of an asset. Consequently, a disposition includes a disposition of a portion of an asset under these circumstances, even if the taxpayer does not make the partial disposition election for that disposed portion. For other transactions, a disposition includes a disposition of a portion of an asset only if the taxpayer makes the partial disposition election for that disposed portion.

A taxpayer may make the partial disposition election for the disposition of a portion of any type of MACRS property, including an asset that is properly included in one of the asset classes 00.11 through 00.4 of Rev. Proc. 87–56. However, consistent with section 168(i)(6), a taxpayer making the partial disposition election for the disposition of a portion of an asset that is properly included in one of the asset classes 00.11 through 00.4 of Rev. Proc. 87–56 must classify the replacement portion of the asset under the same asset class as the disposed portion of the asset.

The partial disposition election is made on the taxpayer's timely filed original Federal tax return, including extensions, for the taxable year in which the portion of the asset is disposed of by the taxpayer. This election may not be made or revoked by the filing of an application for a change in method of accounting. A taxpayer may revoke a partial disposition election by filing a request for a letter ruling and obtaining the consent of the Commissioner of Internal Revenue to revoke this election. The Commissioner may grant a request to revoke this election if the taxpayer acted reasonably and in good faith, and the revocation will not prejudice the interests of the Government. In deciding whether to grant such a request, the Commissioner anticipates applying standards similar to the standards under 26 CFR 301.9100–3 for granting extensions of time for making regulatory elections. If a taxpayer chooses to apply these proposed regulations to its taxable year beginning in 2012 or 2013, these proposed regulations also provide rules for making the partial disposition election for the portion of an asset disposed of by the taxpayer during those taxable years.

These proposed regulations also provide a special partial disposition rule to address commenters' concerns about the effect of an IRS disallowance of a taxpayer's characterization of the replacement of a portion of an asset as a repair. When the IRS disallows a taxpayer's repair deduction for the amount paid or incurred for the replacement of a portion of an asset and capitalizes such amount under § 1.263(a)–2 or § 1.263(a)–3, the taxpayer may make the partial disposition election for the disposition of the portion of the asset to which the IRS's adjustment pertains by filing an application for change in accounting method, provided the asset of which the disposed portion was a part is owned by the taxpayer at the beginning of the year of change (as defined for purposes of section 446(e)).

B. Assets Included in General Asset Accounts

Similarly, the proposed regulations under § 1.168(i)–1 also provide that the disposition rules apply to a partial disposition of an asset included in a general asset account. Consequently, a disposition includes a disposition of a portion of an asset as a result of a casualty event described in section 165, a disposition of a portion of an asset for which gain (determined without regard to section 1245 or 1250) is not recognized in whole or in part under section 1031 or 1033, a transfer of a portion of an asset in a transaction described in section 168(i)(7)(B), a sale of a portion of an asset, or a disposition of a portion of an asset in a transaction described under the anti-abuse rules applicable to general asset accounts. For other transactions, a disposition includes a disposition of a portion of an asset only if the taxpayer makes the election to terminate the general asset account upon the disposition of all assets, including that disposed portion, in that general asset account or makes the qualifying disposition election for that disposed portion. A separate partial disposition election is not provided for assets in a general asset account because a taxpayer can claim a loss upon the disposition of an asset (or a portion thereof) in a general asset account only when the taxpayer makes these two elections.

5. Components of an Asset

Because the partial disposition rule under these proposed regulations allows taxpayers to treat the disposition of an asset's component as a disposition, the IRS and the Treasury Department believe that the rule in §§ 1.168(i)–1T and 1.168(i)–8T allowing taxpayers to use any reasonable, consistent method to treat an asset's components as the asset for disposition purposes is no longer needed. Accordingly, these proposed regulations do not include that temporary regulations rule. The IRS and the Treasury Department request comments addressing whether the rule in §§ 1.168(i)–1T and 1.168(i)–8T allowing taxpayers to use any reasonable, consistent method to treat an asset's components as the asset for disposition purposes is still needed.

6. Disposition Definition

Consistent with these changes, these proposed regulations modify the temporary regulations' definition of a disposition under §§ 1.168(i)–1T and 1.168(i)–8T to provide that a disposition includes the disposition of a structural component (or a portion thereof) of a building only if the partial disposition rule applies to such structural component (or a portion thereof).

7. General Asset Accounts

Finally, these proposed regulations change the temporary regulation definition of a qualifying disposition under § 1.168(i)–1T(e)(3)(iii). The purpose of a general asset account is to reduce the administrative burden of tracking depreciable assets. This purpose was accomplished in the final regulations for general asset accounts under § 1.168(i)–1 (as in effect before the temporary regulations under § 1.168(i)–1T) by allowing a taxpayer to group assets in one or more general asset accounts and by allowing a taxpayer to elect to terminate general asset account treatment only when the taxpayer disposes of all of the assets, or the last asset, in the account, or disposes of an asset in a qualifying disposition, which generally was a casualty or other extraordinary event. The temporary regulations under § 1.168(i)–1T expand a qualifying disposition to include generally any disposition and, as a result, increased the administrative burden of tracking depreciable assets. To reduce this burden, the IRS and the Treasury Department have decided to change the definition of a qualifying disposition so that it is the same as it was under the final regulations for general asset accounts under § 1.168(i)–1 (as in effect before the temporary regulations under § 1.168(i)–1T). Accordingly, these proposed regulations provide that a qualifying disposition is a disposition that does not involve all the assets, the last asset, or the remaining portion of the last asset, remaining in a general asset account and that is: (1) A direct result of a fire, storm, shipwreck, or other casualty, or from theft; (2) a charitable contribution for which a deduction is allowable under section 170; (3) a direct result of a cessation, termination, or disposition of a business, manufacturing, or other income producing process, operation, facility, plant, or other unit (other than by transfer to a supplies, scrap, or similar account); or (4) generally a transaction to which a nonrecognition section of the Code applies.

B. Determination of Basis and Identification of Disposed or Converted Asset

The temporary regulations under §§ 1.168(i)–1T and 1.168(i)–8T provide that if the disposed asset is in a general asset account, is in a multiple asset account, or is a component of a larger asset, and it is impracticable from the taxpayer's records to determine the unadjusted depreciable basis of the disposed asset, the taxpayer may use any reasonable method that is consistently applied to the taxpayer's general asset accounts, multiple asset accounts, or larger assets, as applicable.

Several commenters requested that one or more specific methodologies be provided. They suggested using replacement cost adjusted for inflation using an objective index, using third-party construction estimating and valuation services, or using relative fair market value of acquired components.

In response, these proposed regulations provide nonexclusive examples of reasonable methods. Such examples include: (1) Discounting the cost of the replacement asset to its placed-in-service year cost using the Consumer Price Index; (2) a pro rata allocation of the unadjusted depreciable basis of the general asset account or multiple asset account, as applicable, based on the replacement cost of the disposed asset and the replacement cost of all of the assets in the general asset account or multiple asset account, as applicable; and (3) a study allocating the cost of the asset to its individual components. The IRS and the Treasury Department expect that reasonable methods are available that use information readily available or known to the taxpayer and do not necessitate undertaking expensive studies.

As previously mentioned, these proposed regulations do not include the temporary regulation rule in §§ 1.168(i)–1T and 1.168(i)–8T that allows taxpayers to use any reasonable, consistent method to treat an asset's components as the asset for tax disposition purposes. Consistent with this change, these proposed regulations do not include the temporary regulation rules in §§ 1.168(i)–1T and 1.168(i)–8T regarding the determination of the unadjusted depreciable basis, and identification, of the disposed component of a larger asset. However, these proposed regulations provide rules regarding the determination of the unadjusted depreciable basis, and identification, of the disposed portion of an asset when the partial disposition rule applies.

If the partial disposition rule applies, these proposed regulations provide that a taxpayer may use any reasonable method for determining the unadjusted depreciable basis of the disposed portion of the asset. Also, if a taxpayer disposes of more than one portion of the same asset, the taxpayer may use any reasonable method that is consistently applied to all portions of the same asset for purposes of determining the unadjusted depreciable basis of each disposed portion of the asset. These proposed regulations provide nonexclusive examples of reasonable methods.

If a taxpayer disposes of a portion of the asset and the partial disposition rule applies to that disposition, these proposed regulations provide rules regarding the identification of the asset. When it is impracticable from the taxpayer's records to determine the particular taxable year in which the asset was placed in service by the taxpayer, the taxpayer must identify the asset by using the methods allowed when the asset is in a general asset account or a multiple asset account: the first-in, first-out (FIFO) method, the modified FIFO method, a mortality dispersion table if the asset is a mass asset, or any other method designated by the Secretary in published guidance. A last-in, first-out (LIFO) method is not permitted.

C. Other Changes

The proposed regulations under § 1.168(i)–8 provide that if a taxpayer disposes of a portion of an asset and the partial disposition rule applies to that disposition, the taxpayer must account for the disposed portion in a single asset account beginning in the taxable year in which the disposition occurs. This new rule also is provided in the proposed regulations under § 1.168(i)–7.

The proposed regulations under §§ 1.168(i)–1 and 1.168(i)–8 also provide examples demonstrating the interaction between the disposition rules and the capitalization of tangible property rules under § 1.263(a)–3.

Proposed Effective Date

These regulations are proposed to apply to taxable years beginning on or after January 1, 2014. The regulations also permit taxpayers to rely on the provisions of the proposed regulations for taxable years beginning on or after January 1, 2012, and before the applicability date of the final regulations. The proposed regulations provide that taxpayers may apply the provisions of the final regulations to taxable years beginning on or after January 1, 2012. The temporary regulations under §§ 1.168(i)–1T and 1.168(i)–8T allow taxpayers to apply the temporary regulations to taxable years beginning on or after January 1, 2012, but the final regulations will provide that taxpayers may not apply the temporary regulations to taxable years beginning on or after January 1, 2014.

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, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before the 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 IRS and the Treasury Department request comments on all aspects of these proposed rules. All comments will be available for public inspection and copying at *www.regulations.gov* or upon request.

A public hearing has been scheduled for December 19, 2013, beginning at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments, an outline of the topics to be discussed, and the time to be devoted to each topic (signed original and eight (8) copies) by November 18, 2013. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Statement of Availability for IRS Document

For copies of recently issued Revenue Procedures, Revenue Rulings, notices and other guidance published in the Internal Revenue Bulletin or Cumulative Bulletin please visit the IRS Web site at *http://www.irs.gov.*

Drafting Information

The principal author of these regulations is Kathleen Reed, Office of the Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Partial Withdrawal of Proposed Amendments to the Regulations

Accordingly, under the authority of 26 U.S.C. 7805, §§ 1.168(i)–1 and 1.168(i)–8 of the notice of proposed rulemaking (REG–168745–03) that was published in the **Federal Register** on December 27, 2011 (76 FR 81128), are withdrawn.

Proposed Amendment to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.168(i)–1 also issued under 26 U.S.C. 168(i)(4). * * *

■ **Par. 2.** In § 1.168(i)–0, the entries under § 1.168(i)–1 are amended by:

■ 1. Redesignating the entries for paragraphs (b)(4), (b)(5), and (b)(6) as newly-designated entries for paragraphs (b)(5), (b)(6), and (b)(7).

■ 2. Adding entries for paragraphs (b)(4), (b)(8), and (b)(9).

■ 3. Revising the entries for newly-designated paragraphs (b)(6) and (b)(7).

■ 4. Revising entries for paragraphs (c)(3), (d)(2), (d)(3), (e), (e)(2)(v) through (viii), (e)(3)(vi), (h)(1), (i), and (m).

■ 5. Removing the entry for paragraph (h)(2).

■ 6. Redesignating the entries for paragraph (h)(3) as newly-designated entries for paragraph (h)(2).

The additions and revisions read as follows:

§ 1.168(i)–0 Table of contents for the general asset account rules.

* * * * *

§ 1.168(i)–1 General asset accounts.

* * * * *

(b) * * *

(4) Building.

* * *

(6) Mass assets.

(7) Portion of an asset.

(8) Remaining adjusted depreciable basis of the general asset account.

(9) Structural component.

(c) * * *

(3) Examples.

* * * * *

(d) * * *

(2) Assets in general asset account are eligible for additional first year depreciation deduction.

(3) No assets in general asset account are eligible for additional first year depreciation deduction.

* * * * *

(e) Dispositions from a general asset account.

* * * * *

(2) * * *

(v) Manner of disposition.

(vi) Disposition by transfer to a supplies account.

(vii) Leasehold improvements.

(viii) Determination of asset disposed of.

* * * * *

(3) * * *

(vi) Technical termination of a partnership.

* * * * *

(h) * * *

(1) Conversion to any personal use.

* * * * *

(i) Redetermination of basis.

* * * * *

(m) Effective/applicability date.

■ **Par. 3.** Section 1.168(i)–1 is amended by revising paragraphs (a) through (l)(1), and paragraph (m), to read as follows:

§ 1.168(i)–1 General asset accounts.

(a) *Scope.* This section provides rules for general asset accounts under section 168(i)(4). The provisions of this section apply only to assets for which an election has been made under paragraph (l) of this section.

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Unadjusted depreciable basis* has the same meaning given such term in § 1.168(b)–1(a)(3).

(2) *Unadjusted depreciable basis of the general asset account* is the sum of the unadjusted depreciable bases of all assets included in the general asset account.

(3) *Adjusted depreciable basis of the general asset account* is the unadjusted depreciable basis of the general asset account less the adjustments to basis described in section 1016(a)(2) and (3).

(4) *Building* has the same meaning as that term is defined in § 1.48–1(e)(1).

(5) *Expensed cost* is the amount of any allowable credit or deduction

treated as a deduction allowable for depreciation or amortization for purposes of section 1245 (for example, a credit allowable under section 30 or a deduction allowable under section 179, 179A, or 190). Expensed cost does not include any additional first year depreciation deduction.

(6) *Mass assets* is a mass or group of individual items of depreciable assets—

(i) That are not necessarily homogenous;

(ii) Each of which is minor in value relative to the total value of the mass or group;

(iii) Numerous in quantity;

(iv) Usually accounted for only on a total dollar or quantity basis;

(v) With respect to which separate identification is impracticable; and

(vi) Placed in service in the same taxable year.

(7) *Portion of an asset* is any part of an asset that is less than the entire asset as determined under paragraph (e)(2)(viii) of this section.

(8) *Remaining adjusted depreciable basis of the general asset account* is the unadjusted depreciable basis of the general asset account less the amount of the additional first year depreciation deduction allowed or allowable, whichever is greater, for the general asset account.

(9) *Structural component* has the same meaning as that term is defined in § 1.48–1(e)(2).

(c) *Establishment of general asset accounts*—(1) *Assets eligible for general asset accounts*—(i) *General rules.* Assets that are subject to either the general depreciation system of section 168(a) or the alternative depreciation system of section 168(g) may be accounted for in one or more general asset accounts. An asset is included in a general asset account only to the extent of the asset's unadjusted depreciable basis. However, an asset is not to be included in a general asset account if the asset is used both in a trade or business (or for the production of income) and in a personal activity at any time during the taxable year in which the asset is placed in service by the taxpayer or if the asset is placed in service and disposed of during the same taxable year.

(ii) *Special rules for assets generating foreign source income.* (A) Assets that generate foreign source income, both United States and foreign source income, or combined gross income of a foreign sales corporation (FSC) (as defined in former section 922), domestic international sales corporation (DISC) (as defined in section 992(a)), or possessions corporation (as defined in section 936) and its related supplier may be included in a general asset account if the requirements of paragraph (c)(2)(i) of this section are satisfied. If, however, the inclusion of these assets in a general asset account results in a substantial distortion of income, the Commissioner may disregard the general asset account election and make any reallocations of income or expense necessary to clearly reflect income.

(B) A general asset account shall be treated as a single asset for purposes of applying the rules in § 1.861–9T(g)(3) (relating to allocation and apportionment of interest expense under the asset method). A general asset account that generates income in more than one grouping of income (statutory and residual) is a multiple category asset (as defined in § 1.861–9T(g)(3)(ii)), and the income yield from the general asset account must be determined by applying the rules for multiple category assets as if the general asset account were a single asset.

(2) *Grouping assets in general asset accounts*—(i) *General rules.* If a taxpayer makes the election under paragraph (l) of this section, assets that are subject to the election are grouped into one or more general asset accounts. Assets that are eligible to be grouped into a single general asset account may be divided into more than one general asset account. Each general asset account must include only assets that—

(A) Have the same applicable depreciation method;

(B) Have the same applicable recovery period;

(C) Have the same applicable convention; and

(D) Are placed in service by the taxpayer in the same taxable year.

(ii) *Special rules.* In addition to the general rules in paragraph (c)(2)(i) of this section, the following rules apply when establishing general asset accounts—

(A) Assets subject to the mid-quarter convention may only be grouped into a general asset account with assets that are placed in service in the same quarter of the taxable year;

(B) Assets subject to the mid-month convention may only be grouped into a general asset account with assets that are placed in service in the same month of the taxable year;

(C) Passenger automobiles for which the depreciation allowance is limited under section 280F(a) must be grouped into a separate general asset account;

(D) Assets not eligible for any additional first year depreciation deduction (including assets for which the taxpayer elected not to deduct the additional first year depreciation) provided by, for example, section 168(k), 168(l), 168(m), 168(n), 1400L(b), or 1400N(d), must be grouped into a separate general asset account;

(E) Assets eligible for the additional first year depreciation deduction may only be grouped into a general asset account with assets for which the taxpayer claimed the same percentage of the additional first year depreciation (for example, 30 percent, 50 percent, or 100 percent);

(F) Except for passenger automobiles described in paragraph (c)(2)(ii)(C) of this section, listed property (as defined in section 280F(d)(4)) must be grouped into a separate general asset account;

(G) Assets for which the depreciation allowance for the placed-in-service year is not determined by using an optional depreciation table (for further guidance, see section 8 of Rev. Proc. 87–57, 1987–2 CB 687, 693 (see § 601.601(d)(2) of this chapter)) must be grouped into a separate general asset account;

(H) Mass assets that are or will be subject to paragraph (j)(2)(i)(D) of this section (disposed of or converted mass asset is identified by a mortality dispersion table) must be grouped into a separate general asset account; and

(I) Assets subject to paragraph (h)(2)(iii)(A) of this section (change in use results in a shorter recovery period or a more accelerated depreciation method) for which the depreciation allowance for the year of change (as defined in § 1.168(i)–4(a)) is not determined by using an optional depreciation table must be grouped into a separate general asset account.

(3) *Examples.* The following examples illustrate the application of this paragraph (c). For purposes of these examples, assume that section 168 as in effect on September 19, 2013, applies to taxable years beginning on or after January 1, 2014.

Example 1. In 2014, J, a proprietorship with a calendar year-end, purchases and places in service one item of equipment that costs $550,000. This equipment is section 179 property and also is 5-year property under section 168(e). On its Federal tax return for 2014, J makes an election under section 179 to expense $25,000 of the equipment's cost and makes an election under paragraph (l) of this section to include the equipment in a general asset account. As a result, the unadjusted depreciable basis of the equipment is $525,000. In accordance with paragraph (c)(1) of this section, J must include only $525,000 of the equipment's cost in the general asset account.

Example 2. In 2014, K, a proprietorship with a calendar year-end, purchases and places in service 100 items of equipment. All of these items are 5-year property under section 168(e), are not listed property, and are not eligible for any additional first year depreciation deduction. On its Federal tax return for 2014, K does not make an election under section 179 to expense the cost of any

of the 100 items of equipment and does make an election under paragraph (l) of this section to include the 100 items of equipment in a general asset account. K depreciates its 5-year property placed in service in 2014 using the optional depreciation table that corresponds with the general depreciation system, the 200-percent declining balance method, a 5-year recovery period, and the half-year convention. In accordance with paragraph (c)(2) of this section, K includes all of the 100 items of equipment in one general asset account.

Example 3. The facts are the same as in *Example 2,* except that K decides not to include all of the 100 items of equipment in one general asset account. Instead and in accordance with paragraph (c)(2) of this section, K establishes 100 general asset accounts and includes one item of equipment in each general asset account.

Example 4. L, a calendar-year corporation, is a wholesale distributer. In 2014, L places in service the following properties for use in its wholesale distribution business: computers, automobiles, and forklifts. On its Federal tax return for 2014, L does not make an election under section 179 to expense the cost of any of these items of equipment and does make an election under paragraph (l) of this section to include all of these items of equipment in a general asset account. All of these items are 5-year property under section 168(e) and are not eligible for any additional first year depreciation deduction. The computers are listed property, and the automobiles are listed property and are subject to section 280F(a). L depreciates its 5-year property placed in service in 2014 using the optional depreciation table that corresponds with the general depreciation system, the 200-percent declining balance method, a 5-year recovery period, and the half-year convention. Although the computers, automobiles, and forklifts are 5-year property, L cannot include all of them in one general asset account because the computers and automobiles are listed property. Further, even though the computers and automobiles are listed property, L cannot include them in one general asset account because the automobiles also are subject to section 280F(a). In accordance with paragraph (c)(2) of this section, L establishes three general asset accounts: one for the computers, one for the automobiles, and one for the forklifts.

Example 5. M, a fiscal-year corporation with a taxable year ending June 30, purchases and places in service ten items of new equipment in October 2014, and purchases and places in service five other items of new equipment in February 2015. On its Federal tax return for the taxable year ending June 30, 2015, M does not make an election under section 179 to expense the cost of any of these items of equipment and does make an election under paragraph (l) of this section to include all of these items of equipment in a general asset account. All of these items of equipment are 7-year property under section 168(e), are not listed property, and are property described in section 168(k)(2)(B). All of the ten items of equipment placed in service in October 2014 are eligible for the 50-percent additional first year depreciation deduction provided by section 168(k)(1). All of the five items of equipment placed in service in February 2015 are not eligible for any additional first year depreciation deduction. M depreciates its 7-year property placed in service for the taxable year ending June 30, 2015, using the optional depreciation table that corresponds with the general depreciation system, the 200-percent declining balance method, a 7-year recovery period, and the half-year convention. Although the 15 items of equipment are depreciated using the same depreciation method, recovery period, and convention, M cannot include all of them in one general asset account because some of items of equipment are not eligible for any additional first year depreciation deduction. In accordance with paragraph (c)(2) of this section, M establishes two general asset accounts: one for the ten items of equipment eligible for the 50-percent additional first year depreciation deduction and one for the five items of equipment not eligible for any additional first year depreciation deduction.

(d) *Determination of depreciation allowance*—(1) *In general.* Depreciation allowances are determined for each general asset account. The depreciation allowances must be recorded in a depreciation reserve account for each general asset account. The allowance for depreciation under this section constitutes the amount of depreciation allowable under section 167(a).

(2) *Assets in general asset account are eligible for additional first year depreciation deduction.* If all the assets in a general asset account are eligible for the additional first year depreciation deduction, the taxpayer first must determine the allowable additional first year depreciation deduction for the general asset account for the placed-in-service year and then must determine the amount otherwise allowable as a depreciation deduction for the general asset account for the placed-in-service year and any subsequent taxable year. The allowable additional first year depreciation deduction for the general asset account for the placed-in-service year is determined by multiplying the unadjusted depreciable basis of the general asset account by the additional first year depreciation deduction percentage applicable to the assets in the account (for example, 30 percent, 50 percent, or 100 percent). The remaining adjusted depreciable basis of the general asset account then is depreciated using the applicable depreciation method, recovery period, and convention for the assets in the account.

(3) *No assets in general asset account are eligible for additional first year depreciation deduction.* If none of the assets in a general asset account are eligible for the additional first year depreciation deduction, the taxpayer must determine the allowable depreciation deduction for the general asset account for the placed-in-service year and any subsequent taxable year by using the applicable depreciation method, recovery period, and convention for the assets in the account.

(4) *Special rule for passenger automobiles.* For purposes of applying section 280F(a), the depreciation allowance for a general asset account established for passenger automobiles is limited for each taxable year to the amount prescribed in section 280F(a) multiplied by the excess of the number of automobiles originally included in the account over the number of automobiles disposed of during the taxable year or in any prior taxable year in a transaction described in paragraphs (e)(3)(iii) (disposition of an asset in a qualifying disposition), (e)(3)(iv) (transactions subject to section 168(i)(7)), (e)(3)(v) (transactions subject to section 1031 or section 1033), (e)(3)(vi) (technical termination of a partnership), (e)(3)(vii) (anti-abuse rule), (g) (assets subject to recapture), (h)(1) (conversion to personal use), or (h)(2) (business or income-producing use percentage changes) of this section.

(e) *Dispositions from a general asset account*—(1) *Scope and Definition*—(i) *In general.* This paragraph (e) provides rules applicable to dispositions of assets included in a general asset account. For purposes of this paragraph (e), an asset in a general asset account is disposed of when ownership of the asset is transferred or when the asset is permanently withdrawn from use either in the taxpayer's trade or business or in the production of income. A disposition includes the sale, exchange, retirement, physical abandonment, or destruction of an asset. A disposition also occurs when an asset is transferred to a supplies, scrap, or similar account, or when a portion of an asset is disposed of as described in paragraph (e)(1)(ii) of this section. If a structural component (or a portion thereof) of a building is disposed of in a disposition described in paragraph (e)(1)(ii) of this section, a disposition also includes the disposition of such structural component (or such portion thereof).

(ii) *Disposition of a portion of an asset.* For purposes of applying paragraph (e) of this section, a disposition includes a disposition of a portion of an asset in a general asset account as a result of a casualty event described in section 165, a disposition of a portion of an asset in a general asset account for which gain (determined without regard to section 1245 or section 1250) is not recognized in whole or in part under section 1031 or section 1033, a transfer of a portion of an asset

in a general asset account in a transaction described in section 168(i)(7)(B), a sale of a portion of an asset in a general asset account, or a disposition of a portion of an asset in a general asset account in a transaction is described in paragraph (e)(3)(vii)(B) of this section. For other transactions, a disposition includes a disposition of a portion of an asset in a general asset account only if the taxpayer makes the election under paragraph (e)(3)(ii) of this section to terminate the general asset account in which that disposed portion is included or makes the election under paragraph (e)(3)(iii) of this section for that disposed portion.

(2) *General rules for a disposition*—(i) *No immediate recovery of basis.* Except as provided in paragraph (e)(3) of this section, immediately before a disposition of any asset in a general asset account or a disposition of a portion of such asset as described in paragraph (e)(1)(ii) of this section, the asset or the portion of the asset, as applicable, is treated as having an adjusted depreciable basis (as defined in § 1.168(b)–1(a)(4)) of zero for purposes of section 1011. Therefore, no loss is realized upon the disposition of an asset from the general asset account or upon the disposition of a portion of such asset as described in paragraph (e)(1)(ii) of this section. Similarly, where an asset or a portion of an asset, as applicable, is disposed of by transfer to a supplies, scrap, or similar account, the basis of the asset or the portion of the asset, as applicable, in the supplies, scrap, or similar account will be zero.

(ii) *Treatment of amount realized.* Any amount realized on a disposition is recognized as ordinary income (notwithstanding any other provision of subtitle A of the Internal Revenue Code) to the extent the sum of the unadjusted depreciable basis of the general asset account and any expensed cost (as defined in paragraph (b)(5) of this section) for assets in the account exceeds any amounts previously recognized as ordinary income upon the disposition of other assets in the account or upon the disposition of portions of such assets as described in paragraph (e)(1)(ii) of this section. The recognition and character of any excess amount realized are determined under other applicable provisions of the Internal Revenue Code (other than sections 1245 and 1250 or provisions of the Internal Revenue Code that treat gain on a disposition as subject to section 1245 or 1250).

(iii) *Effect of disposition on a general asset account.* Except as provided in paragraph (e)(3) of this section, the unadjusted depreciable basis and the depreciation reserve of the general asset account are not affected as a result of a disposition of an asset from the general asset account or of a disposition of a portion of such asset as described in paragraph (e)(1)(ii) of this section.

(iv) *Coordination with nonrecognition provisions.* For purposes of determining the basis of an asset or a portion of an asset, as applicable, acquired in a transaction, other than a transaction described in paragraphs (e)(3)(iv) (pertaining to transactions subject to section 168(i)(7)), (e)(3)(v) (pertaining to transactions subject to section 1031 or section 1033), and (e)(3)(vi) (pertaining to technical terminations of partnerships) of this section, to which a nonrecognition section of the Internal Revenue Code applies (determined without regard to this section), the amount of ordinary income recognized under this paragraph (e)(2) is treated as the amount of gain recognized on the disposition.

(v) *Manner of disposition.* The manner of disposition (for example, normal retirement, abnormal retirement, ordinary retirement, or extraordinary retirement) is not taken into account in determining whether a disposition occurs or gain or loss is recognized.

(vi) *Disposition by transfer to a supplies account.* If a taxpayer made an election under § 1.162–3(d) to treat the cost of any rotable spare part, temporary spare part, or standby emergency spare part (as defined in § 1.162–3(c)) as a capital expenditure subject to the allowance for depreciation and also made an election under paragraph (l) of this section to include that rotable, temporary, or standby emergency spare part in a general asset account, the taxpayer can dispose of the rotable, temporary, or standby emergency spare part by transferring it to a supplies account only if the taxpayer has obtained the consent of the Commissioner to revoke the § 1.162–3(d) election. See § 1.162–3(d)(3) for the procedures for revoking a § 1.162–3(d) election.

(vii) *Leasehold improvements.* The rules of paragraph (e) of this section also apply to—

(A) A lessor of leased property that made an improvement to that property for the lessee of the property, has a depreciable basis in the improvement, made an election under paragraph (l) of this section to include the improvement in a general asset account, and disposes of the improvement (or disposes of a portion of the improvement as described in paragraph (e)(1)(ii) of this section) before or upon the termination of the lease with the lessee. See section 168(i)(8)(B); and

(B) A lessee of leased property that made an improvement to that property, has a depreciable basis in the improvement, made an election under paragraph (l) of this section to include the improvement in a general asset account, and disposes of the improvement (or disposes of a portion of the improvement as described in paragraph (e)(1)(ii) of this section) before or upon the termination of the lease.

(viii) *Determination of asset disposed of*—(A) *General rules.* For purposes of applying paragraph (e) of this section to the disposition of an asset in a general asset account (instead of the disposition of the general asset account), the facts and circumstances of each disposition are considered in determining what is the appropriate asset disposed of. The asset for disposition purposes may not consist of items placed in service by the taxpayer on different dates. For purposes of determining what is the appropriate asset disposed of, the unit of property determination under § 1.263(a)–3(e) or in published guidance in the Internal Revenue Bulletin under section 263(a) (see § 601.601(d)(2) of this chapter) does not apply.

(B) *Special rules.* In addition to the general rules in paragraph (e)(2)(viii)(A) of this section, the following rules apply for purposes of applying paragraph (e) of this section to the disposition of an asset in a general asset account (instead of the disposition of the general asset account):

(*1*) Each building (including its structural components) is the asset except as provided in § 1.1250–1(a)(2)(ii) or in paragraph (e)(2)(viii)(B)(*2*) or paragraph (e)(2)(viii)(B)(*4*) of this section.

(*2*) If a building has two or more condominium or cooperative units, each condominium or cooperative unit (including its structural components) is the asset except as provided in § 1.1250–1(a)(2)(ii) or in paragraph (e)(2)(viii)(B)(*4*) of this section.

(*3*) If a taxpayer properly includes an item in one of the asset classes 00.11 through 00.4 of Rev. Proc. 87–56 (1987–2 CB 674) (see § 601.601(d)(2) of this chapter) or properly classifies an item in one of the categories under section 168(e)(3) (except for a category that includes buildings or structural components; for example, retail motor fuels outlet, qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property), each item is the asset provided paragraph (e)(2)(viii)(B)(*4*) of this section does not apply to the item. For example, each desk is the asset, each computer is the

asset, and each qualified smart electric meter is the asset.

(*4*) If the taxpayer places in service an improvement or addition to an asset after the taxpayer placed the asset in service, the improvement or addition is a separate asset.

(ix) *Examples.* The following examples illustrate the application of this paragraph (e)(2). For purposes of these examples, assume that section 168 as in effect on September 19, 2013, applies to taxable years beginning on or after January 1, 2014.

Example 1. A, a calendar-year partnership, maintains one general asset account for one office building that cost $10 million. A discovers a leak in the roof of the building and decides to replace the entire roof. The roof is a structural component of the building. In accordance with paragraph (e)(2)(viii)(B)(*1*) of this section, the office building (including its structural components) is the asset for disposition purposes. The retirement of the replaced roof is not a disposition of a portion of an asset as described in paragraph (e)(1)(ii) of this section. Thus, the retirement of the replaced roof is not a disposition under paragraph (e)(1) of this section. As a result, A continues to depreciate the $10 million cost of the general asset account. If A must capitalize the amount paid for the replacement roof pursuant to § 1.263(a)–3, the replacement roof is a separate asset for disposition purposes pursuant to paragraph (e)(2)(viii)(B)(*4*) of this section and for depreciation purposes pursuant to section 168(i)(6).

Example 2. B, a calendar-year commercial airline company, maintains one general asset account for five aircraft that cost a total of $500 million. These aircraft are described in asset class 45.0 of Rev. Proc. 87–56. B replaces the existing engines on one of the aircraft with new engines. Assume each aircraft is a unit of property as determined under § 1.263(a)–3(e)(3) and each engine of an aircraft is a major component or substantial structural part of the aircraft as determined under § 1.263(a)–3(k)(6). Assume also that B treats each aircraft as the asset for disposition purposes in accordance with paragraph (e)(2)(viii) of this section. The retirement of the replaced engines is not a disposition of a portion of an asset as described in paragraph (e)(1)(ii) of this section. Thus, the retirement of the replaced engines is not a disposition under paragraph (e)(1) of this section. As a result, B continues to depreciate the $500 million cost of the general asset account. If B must capitalize the amount paid for the replacement engines pursuant to § 1.263(a)–3, the replacement engines are a separate asset for disposition purposes pursuant to paragraph (e)(2)(viii)(B)(*4*) of this section and for depreciation purposes pursuant to section 168(i)(6).

Example 3. (i) R, a calendar-year corporation, maintains one general asset account for ten machines. The machines cost a total of $10,000 and are placed in service in June 2014. Of the ten machines, one machine costs $8,200 and nine machines cost a total of $1,800. Assume R depreciates this general asset account using the optional depreciation table that corresponds with the general depreciation system, the 200-percent declining balance method, a 5-year recovery period, and a half-year convention. R does not make a section 179 election for any of the machines, and all of the machines are not eligible for any additional first year depreciation deduction. As of January 1, 2015, the depreciation reserve of the account is $2,000 ($10,000 × 20%).

(ii) On February 8, 2015, R sells the machine that cost $8,200 to an unrelated party for $9,000. Under paragraph (e)(2)(i) of this section, this machine has an adjusted depreciable basis of zero.

(iii) On its 2015 tax return, R recognizes the amount realized of $9,000 as ordinary income because such amount does not exceed the unadjusted depreciable basis of the general asset account ($10,000), plus any expensed cost for assets in the account ($0), less amounts previously recognized as ordinary income ($0). Moreover, the unadjusted depreciable basis and depreciation reserve of the account are not affected by the disposition of the machine. Thus, the depreciation allowance for the account in 2015 is $3,200 ($10,000 × 32%).

Example 4. (i) The facts are the same as in *Example 3.* In addition, on June 4, 2016, R sells seven machines to an unrelated party for a total of $1,100. In accordance with paragraph (e)(2)(i) of this section, these machines have an adjusted depreciable basis of zero.

(ii) On its 2016 tax return, R recognizes $1,000 as ordinary income (the unadjusted depreciable basis of $10,000, plus the expensed cost of $0, less the amount of $9,000 previously recognized as ordinary income). The recognition and character of the excess amount realized of $100 ($1,100 − $1,000) are determined under applicable provisions of the Internal Revenue Code other than section 1245 (such as section 1231). Moreover, the unadjusted depreciable basis and depreciation reserve of the account are not affected by the disposition of the machines. Thus, the depreciation allowance for the account in 2016 is $1,920 ($10,000 × 19.2%).

(3) *Special rules*—(i) *In general.* This paragraph (e)(3) provides the rules for terminating general asset account treatment upon certain dispositions. While the rules under paragraphs (e)(3)(ii) and (iii) of this section are optional rules, the rules under paragraphs (e)(3)(iv), (v), (vi), and (vii) of this section are mandatory rules. A taxpayer elects to apply paragraph (e)(3)(ii) or paragraph (e)(3)(iii) of this section by reporting the gain, loss, or other deduction on the taxpayer's timely filed original Federal tax return (including extensions) for the taxable year in which the disposition occurs. A taxpayer may revoke the election to apply paragraph (e)(3)(ii) or paragraph (e)(3)(iii) of this section only by filing a request for a private letter ruling and obtaining the Commissioner's consent to revoke the election. The Commissioner may grant a request to revoke this election if the taxpayer acted reasonably and in good faith, and the revocation will not prejudice the interests of the Government. See generally § 301.9100–3 of this chapter. The election to apply paragraph (e)(3)(ii) or (iii) of this section may not be made or revoked through the filing of an application for change in accounting method. For purposes of applying paragraph (e)(3)(iii) through (vii) of this section, see paragraph (j) of this section for identifying an asset disposed of and its unadjusted depreciable basis. Solely for purposes of applying paragraphs (e)(3)(iii), (e)(3)(iv)(C), (e)(3)(v)(B), and (e)(3)(vii) of this section, the term *asset* is:

(A) The asset as determined under paragraph (e)(2)(viii) of this section, or

(B) The portion of such asset that is disposed of in a disposition described in paragraph (e)(1)(ii) of this section.

(ii) *Disposition of all assets remaining in a general asset account*—(A) *Optional termination of a general asset account.* Upon the disposition of all of the assets, the last asset, or the remaining portion of the last asset, in a general asset account, a taxpayer may apply this paragraph (e)(3)(ii) to recover the adjusted depreciable basis of the general asset account (rather than having paragraph (e)(2) of this section apply). Under this paragraph (e)(3)(ii), the general asset account terminates and the amount of gain or loss for the general asset account is determined under section 1001(a) by taking into account the adjusted depreciable basis of the general asset account at the time of the disposition (as determined under the applicable convention for the general asset account). The recognition and character of the gain or loss are determined under other applicable provisions of the Internal Revenue Code, except that the amount of gain subject to section 1245 (or section 1250) is limited to the excess of the depreciation allowed or allowable for the general asset account, including any expensed cost (or the excess of the additional depreciation allowed or allowable for the general asset account), over any amounts previously recognized as ordinary income under paragraph (e)(2) of this section.

(B) *Examples.* The following examples illustrate the application of this paragraph (e)(3)(ii). For purposes of these examples, assume that section 168 as in effect on September 19, 2013, applies to taxable years beginning on or after January 1, 2014.

Example 1. (i) T, a calendar-year corporation, maintains a general asset account for 1,000 calculators. The calculators cost a total of $60,000 and are placed in service in 2014. Assume T depreciates this general asset account using the optional depreciation table that corresponds with the general depreciation system, the 200-percent declining balance method, a 5-year recovery period, and a half-year convention. T does not make a section 179 election for any of the calculators, and all of the calculators are not eligible for any additional first year depreciation deduction. In 2015, T sells 200 of the calculators to an unrelated party for a total of $10,000 and recognizes the $10,000 as ordinary income in accordance with paragraph (e)(2) of this section.

(ii) On March 26, 2016, T sells the remaining calculators in the general asset account to an unrelated party for $35,000. T elects to apply paragraph (e)(3)(ii) of this section. As a result, the account terminates and gain or loss is determined for the account.

(iii) On the date of disposition, the adjusted depreciable basis of the account is $23,040 (unadjusted depreciable basis of $60,000 less the depreciation allowed or allowable of $36,960). Thus, in 2016, T recognizes gain of $11,960 (amount realized of $35,000 less the adjusted depreciable basis of $23,040). The gain of $11,960 is subject to section 1245 to the extent of the depreciation allowed or allowable for the account (plus the expensed cost for assets in the account) less the amounts previously recognized as ordinary income ($36,960 + $0 − $10,000 = $26,960). As a result, the entire gain of $11,960 is subject to section 1245.

Example 2. (i) J, a calendar-year corporation, maintains a general asset account for one item of equipment. This equipment costs $2,000 and is placed in service in 2014. Assume J depreciates this general asset account using the optional depreciation table that corresponds with the general depreciation system, the 200-percent declining balance method, a 5-year recovery period, and a half-year convention. J does not make a section 179 election for the equipment, and it is not eligible for any additional first year depreciation deduction. In June 2016, J sells the equipment to an unrelated party for $1,000. J elects to apply paragraph (e)(3)(ii) of this section. As a result, the account terminates and gain or loss is determined for the account.

(ii) On the date of disposition, the adjusted depreciable basis of the account is $768 (unadjusted depreciable basis of $2,000 less the depreciation allowed or allowable of $1,232). Thus, in 2016, J recognizes gain of $232 (amount realized of $1,000 less the adjusted depreciable basis of $768). The gain of $232 is subject to section 1245 to the extent of the depreciation allowed or allowable for the account (plus the expensed cost for assets in the account) less the amounts previously recognized as ordinary income ($1,232 + $0 − $0 = $1,232). As a result, the entire gain of $232 is subject to section 1245.

(iii) *Disposition of an asset in a qualifying disposition*—(A) *Optional determination of the amount of gain, loss, or other deduction.* In the case of a qualifying disposition (described in paragraph (e)(3)(iii)(B) of this section) of an asset, a taxpayer may elect to apply this paragraph (e)(3)(iii) (rather than having paragraph (e)(2) of this section apply). Under this paragraph (e)(3)(iii), general asset account treatment for the asset terminates as of the first day of the taxable year in which the qualifying disposition occurs, and the amount of gain, loss, or other deduction for the asset is determined under § 1.168(i)–8 or § 1.168(i)–8T, as applicable, by taking into account the asset's adjusted depreciable basis at the time of the disposition. The adjusted depreciable basis of the asset at the time of the disposition (as determined under the applicable convention for the general asset account in which the asset was included) equals the unadjusted depreciable basis of the asset less the depreciation allowed or allowable for the asset, computed by using the depreciation method, recovery period, and convention applicable to the general asset account in which the asset was included and by including the portion of the additional first year depreciation deduction claimed for the general asset account that is attributable to the asset disposed of. The recognition and character of the gain, loss, or other deduction are determined under other applicable provisions of the Internal Revenue Code, except that the amount of gain subject to section 1245 (or section 1250) is limited to the lesser of—

(*1*) The depreciation allowed or allowable for the asset, including any expensed cost (or the additional depreciation allowed or allowable) for the asset; or

(*2*) The excess of—

(*i*) The original unadjusted depreciable basis of the general asset account plus, in the case of section 1245 property originally included in the general asset account, any expensed cost; over

(*ii*) The cumulative amounts of gain previously recognized as ordinary income under either paragraph (e)(2) of this section or section 1245 (or section 1250).

(B) *Qualifying dispositions.* A *qualifying disposition* is a disposition that does not involve all the assets, or the last asset, remaining in a general asset account and that is—

(*1*) A direct result of a fire, storm, shipwreck, or other casualty, or from theft;

(*2*) A charitable contribution for which a deduction is allowable under section 170;

(*3*) A direct result of a cessation, termination, or disposition of a business, manufacturing or other income producing process, operation, facility, plant, or other unit (other than by transfer to a supplies, scrap, or similar account); or

(*4*) A transaction, other than a transaction described in paragraph (e)(3)(iv) (pertaining to transactions subject to section 168(i)(7)), (v) (pertaining to transactions subject to section 1031 or section 1033), (vi) (pertaining to technical terminations of partnerships), or (vii) (anti-abuse rule) of this section, to which a nonrecognition section of the Internal Revenue Code applies (determined without regard to this section).

(C) *Effect of a qualifying disposition on a general asset account.* If the taxpayer elects to apply this paragraph (e)(3)(iii) to a qualifying disposition of an asset, then—

(*1*) The asset is removed from the general asset account as of the first day of the taxable year in which the qualifying disposition occurs. For that taxable year, the taxpayer accounts for the asset in a single asset account in accordance with the rules under § 1.168(i)–7(b) or § 1.168(i)–7T(b), as applicable;

(*2*) The unadjusted depreciable basis of the general asset account is reduced by the unadjusted depreciable basis of the asset as of the first day of the taxable year in which the disposition occurs;

(*3*) The depreciation reserve of the general asset account is reduced by the depreciation allowed or allowable for the asset as of the end of the taxable year immediately preceding the year of disposition, computed by using the depreciation method, recovery period, and convention applicable to the general asset account in which the asset was included and by including the portion of the additional first year depreciation deduction claimed for the general asset account that is attributable to the asset disposed of; and

(*4*) For purposes of determining the amount of gain realized on subsequent dispositions that is subject to ordinary income treatment under paragraph (e)(2)(ii) of this section, the amount of any expensed cost with respect to the asset is disregarded.

(D) *Examples.* The following examples illustrate the application of this paragraph (e)(3)(iii). For purposes of these examples, assume that section 168 as in effect on September 19, 2013, applies to taxable years beginning on or after January 1, 2014.

Example 1. (i) Z, a calendar-year corporation, maintains one general asset

account for 12 machines. Each machine costs $15,000 and is placed in service in 2014. Of the 12 machines, nine machines that cost a total of $135,000 are used in Z's Kentucky plant, and three machines that cost a total of $45,000 are used in Z's Ohio plant. Assume Z depreciates this general asset account using the optional depreciation table that corresponds with the general depreciation system, the 200-percent declining balance method, a 5-year recovery period, and the half-year convention. Z does not make a section 179 election for any of the machines, and all of the machines are not eligible for any additional first year depreciation deduction. As of December 31, 2015, the depreciation reserve for the account is $93,600.

(ii) On May 27, 2016, Z sells its entire manufacturing plant in Ohio to an unrelated party. The sales proceeds allocated to each of the three machines at the Ohio plant is $5,000. This transaction is a qualifying disposition under paragraph (e)(3)(iii)(B)(*3*) of this section and Z elects to apply paragraph (e)(3)(iii) of this section.

(iii) For Z's 2016 return, the depreciation allowance for the account is computed as follows. As of December 31, 2015, the depreciation allowed or allowable for the three machines at the Ohio plant is $23,400. Thus, as of January 1, 2016, the unadjusted depreciable basis of the account is reduced from $180,000 to $135,000 ($180,000 less the unadjusted depreciable basis of $45,000 for the three machines), and, as of December 31, 2015, the depreciation reserve of the account is decreased from $93,600 to $70,200 ($93,600 less the depreciation allowed or allowable of $23,400 for the three machines as of December 31, 2015). Consequently, the depreciation allowance for the account in 2016 is $25,920 ($135,000 × 19.2%).

(iv) For Z's 2016 return, gain or loss for each of the three machines at the Ohio plant is determined as follows. The depreciation allowed or allowable in 2016 for each machine is $1,440 (($15,000 × 19.2%)/2). Thus, the adjusted depreciable basis of each machine under section 1011 is $5,760 (the adjusted depreciable basis of $7,200 removed from the account less the depreciation allowed or allowable of $1,440 in 2016). As a result, the loss recognized in 2016 for each machine is $760 ($5,000–$5,760), which is subject to section 1231.

Example 2. (i) A, a calendar-year partnership, maintains one general asset account for one office building that cost $20 million and was placed in service in July 2011. A depreciates this general asset account using the optional depreciation table that corresponds with the general depreciation system, the straight-line method, a 39-year recovery period, and the mid-month convention. As of January 1, 2014, the depreciation reserve for the account is $1,261,000.

(ii) In May 2014, a tornado occurs where the building is located and damages the roof of the building. A decides to replace the entire roof. The roof is replaced in June 2014. The roof is a structural component of the building. Because the roof was damaged as a result of a casualty event described in section 165, the partial disposition rule provided under paragraph (e)(1)(ii) of this section applies to the roof. Although the office building (including its structural components) is the asset for disposition purposes, the partial disposition rule provides that the retirement of the replaced roof is a disposition under paragraph (e)(1) of this section. This retirement is a qualifying disposition under paragraph (e)(3)(iii)(B)(*1*) of this section and A elects to apply paragraph (e)(3)(iii) of this section for the retirement of the damaged roof.

(iii) Of the $20 million cost of the office building, assume $1 million is the cost of the retired roof.

(iv) For A's 2014 return, the depreciation allowance for the account is computed as follows. As of December 31, 2013, the depreciation allowed or allowable for the retired roof is $63,050. Thus, as of January 1, 2014, the unadjusted depreciable basis of the account is reduced from $20,000,000 to $19,000,000 ($20,000,000 less the unadjusted depreciable basis of $1,000,000 for the retired roof), and the depreciation reserve of the account is decreased from $1,261,000 to $1,197,950 ($1,261,000 less the depreciation allowed or allowable of $63,050 for the retired roof as of December 31, 2013). Consequently, the depreciation allowance for the account in 2014 is $487,160 ($19,000,000 × 2.564%).

(v) For A's 2014 return, gain or loss for the retired roof is determined as follows. The depreciation allowed or allowable in 2014 for the retired roof is $11,752 (($1,000,000 × 2.564%) × 5.5/12). Thus, the adjusted depreciable basis of the retired roof under section 1011 is $925,198 (the adjusted depreciable basis of $936,950 removed from the account less the depreciation allowed or allowable of $11,752 in 2014). As a result, the loss recognized in 2014 for the retired roof is $925,198, which is subject to section 1231.

(vi) If A must capitalize the amount paid for the replacement roof under § 1.263(a)–3, the replacement roof is a separate asset for depreciation purposes pursuant to section 168(i)(6). If A includes the replacement roof in a general asset account, the replacement roof is a separate asset for disposition purposes pursuant to paragraph (e)(2)(viii)(B)(*4*) of this section. If A includes the replacement roof in a single asset account or a multiple asset account under § 1.168(i)–7, the replacement roof is a separate asset for disposition purposes pursuant to § 1.168(i)–8(c)(4)(ii)(D).

(iv) *Transactions subject to section 168(i)(7)*—(A) *In general.* If a taxpayer transfers one or more assets in a general asset account (or a portion of such asset) in a transaction described in section 168(i)(7)(B) (pertaining to treatment of transferees in certain nonrecognition transactions), the taxpayer (the transferor) and the transferee must apply this paragraph (e)(3)(iv) to the asset (or the portion of such asset) (instead of applying paragraph (e)(2), (e)(3)(ii), or (e)(3)(iii) of this section). The transferee is bound by the transferor's election under paragraph (l) of this section for the portion of the transferee's basis in the asset (or the portion of such asset) that does not exceed the transferor's adjusted depreciable basis of the general asset account or the asset (or the portion of such asset), as applicable (as determined under paragraph (e)(3)(iv)(B)(*2*) or paragraph (e)(3)(iv)(C)(*2*) of this section, as applicable).

(B) *All assets remaining in general asset account are transferred.* If a taxpayer transfers all the assets, the last asset, or the remaining portion of the last asset, in a general asset account in a transaction described in section 168(i)(7)(B)—

(*1*) The taxpayer (the transferor) must terminate the general asset account on the date of the transfer. The allowable depreciation deduction for the general asset account for the transferor's taxable year in which the section 168(i)(7)(B) transaction occurs is computed by using the depreciation method, recovery period, and convention applicable to the general asset account. This allowable depreciation deduction is allocated between the transferor and the transferee on a monthly basis. This allocation is made in accordance with the rules in § 1.168(d)–1(b)(7)(ii) for allocating the depreciation deduction between the transferor and the transferee;

(*2*) The transferee must establish a new general asset account for all the assets, the last asset, or the remaining portion of the last asset, in the taxable year in which the section 168(i)(7)(B) transaction occurs for the portion of its basis in the assets that does not exceed the transferor's adjusted depreciable basis of the general asset account in which all the assets, the last asset, or the remaining portion of the last asset, were included. The transferor's adjusted depreciable basis of this general asset account is equal to the adjusted depreciable basis of that account as of the beginning of the transferor's taxable year in which the transaction occurs, decreased by the amount of depreciation allocable to the transferor for the year of the transfer (as determined under paragraph (e)(3)(iv)(B)(*1*) of this section). The transferee is treated as the transferor for purposes of computing the allowable depreciation deduction for the new general asset account under section 168. The new general asset account must be established in accordance with the rules in paragraph (c) of this section, except that the unadjusted depreciable bases of all the assets, the last asset, or the remaining portion of the last asset, and the greater of the depreciation allowed or allowable for all the assets, the last asset, or the remaining portion of the last asset

(including the amount of depreciation for the transferred assets that is allocable to the transferor for the year of the transfer), are included in the newly established general asset account. Consequently, this general asset account in the year of the transfer will have a beginning balance for both the unadjusted depreciable basis and the depreciation reserve of the general asset account; and

(*3*) For purposes of section 168 and this section, the transferee treats the portion of its basis in the assets that exceeds the transferor's adjusted depreciable basis of the general asset account in which all the assets, the last asset, or the remaining portion of the last asset, were included (as determined under paragraph (e)(3)(iv)(B)(*2*) of this section) as a separate asset that the transferee placed in service on the date of the transfer. The transferee accounts for this asset under § 1.168(i)–7 or § 1.168(i)–7T, as applicable, or may make an election under paragraph (l) of this section to include the asset in a general asset account.

(C) *Not all assets remaining in general asset account are transferred.* If a taxpayer transfers an asset in a general asset account in a transaction described in section 168(i)(7)(B) and if paragraph (e)(3)(iv)(B) of this section does not apply to this asset—

(*1*) The taxpayer (the transferor) must remove the transferred asset from the general asset account in which the asset is included, as of the first day of the taxable year in which the section 168(i)(7)(B) transaction occurs. In addition, the adjustments to the general asset account described in paragraphs (e)(3)(iii)(C)(*2*) through (*4*) of this section must be made. The allowable depreciation deduction for the asset for the transferor's taxable year in which the section 168(i)(7)(B) transaction occurs is computed by using the depreciation method, recovery period, and convention applicable to the general asset account in which the asset was included. This allowable depreciation deduction is allocated between the transferor and the transferee on a monthly basis. This allocation is made in accordance with the rules in § 1.168(d)–1(b)(7)(ii) for allocating the depreciation deduction between the transferor and the transferee;

(*2*) The transferee must establish a new general asset account for the asset in the taxable year in which the section 168(i)(7)(B) transaction occurs for the portion of its basis in the asset that does not exceed the transferor's adjusted depreciable basis of the asset. The transferor's adjusted depreciable basis of this asset is equal to the adjusted depreciable basis of the asset as of the beginning of the transferor's taxable year in which the transaction occurs, decreased by the amount of depreciation allocable to the transferor for the year of the transfer (as determined under paragraph (e)(3)(iv)(C)(*1*) of this section). The transferee is treated as the transferor for purposes of computing the allowable depreciation deduction for the new general asset account under section 168. The new general asset account must be established in accordance with the rules in paragraph (c) of this section, except that the unadjusted depreciable basis of the asset, and the greater of the depreciation allowed or allowable for the asset (including the amount of depreciation for the transferred asset that is allocable to the transferor for the year of the transfer), are included in the newly established general asset account. Consequently, this general asset account in the year of the transfer will have a beginning balance for both the unadjusted depreciable basis and the depreciation reserve of the general asset account; and

(*3*) For purposes of section 168 and this section, the transferee treats the portion of its basis in the asset that exceeds the transferor's adjusted depreciable basis of the asset (as determined under paragraph (e)(3)(iv)(C)(*2*) of this section) as a separate asset that the transferee placed in service on the date of the transfer. The transferee accounts for this asset under § 1.168(i)–7 or § 1.168(i)–7T, as applicable, or may make an election under paragraph (l) of this section to include the asset in a general asset account.

(v) *Transactions subject to section 1031 or section 1033*—(A) *Like-kind exchange or involuntary conversion of all assets remaining in a general asset account.* If all the assets, the last asset, or the remaining portion of the last asset, in a general asset account are transferred by a taxpayer in a like-kind exchange (as defined under § 1.168–6(b)(11)) or in an involuntary conversion (as defined under § 1.168–6(b)(12)), the taxpayer must apply this paragraph (e)(3)(v)(A) (instead of applying paragraph (e)(2), (e)(3)(ii), or (e)(3)(iii) of this section). Under this paragraph (e)(3)(v)(A), the general asset account terminates as of the first day of the year of disposition (as defined in § 1.168(i)–6(b)(5)) and—

(*1*) The amount of gain or loss for the general asset account is determined under section 1001(a) by taking into account the adjusted depreciable basis of the general asset account at the time of disposition (as defined in § 1.168(i)–6(b)(3)). The depreciation allowance for the general asset account in the year of disposition is determined in the same manner as the depreciation allowance for the relinquished MACRS property (as defined in § 1.168(i)–6(b)(2)) in the year of disposition is determined under § 1.168(i)–6. The recognition and character of gain or loss are determined in accordance with paragraph (e)(3)(ii)(A) of this section (notwithstanding that paragraph (e)(3)(ii) of this section is an optional rule); and

(*2*) The adjusted depreciable basis of the general asset account at the time of disposition is treated as the adjusted depreciable basis of the relinquished MACRS property.

(B) *Like-kind exchange or involuntary conversion of less than all assets remaining in a general asset account.* If an asset in a general asset account is transferred by a taxpayer in a like-kind exchange or in an involuntary conversion and if paragraph (e)(3)(v)(A) of this section does not apply to this asset, the taxpayer must apply this paragraph (e)(3)(v)(B) (instead of applying paragraph (e)(2), (e)(3)(ii), or (e)(3)(iii) of this section). Under this paragraph (e)(3)(v)(B), general asset account treatment for the asset terminates as of the first day of the year of disposition (as defined in § 1.168(i)–6(b)(5)), and—

(*1*) The amount of gain or loss for the asset is determined by taking into account the asset's adjusted depreciable basis at the time of disposition (as defined in § 1.168(i)–6(b)(3)). The adjusted depreciable basis of the asset at the time of disposition equals the unadjusted depreciable basis of the asset less the depreciation allowed or allowable for the asset, computed by using the depreciation method, recovery period, and convention applicable to the general asset account in which the asset was included and by including the portion of the additional first year depreciation deduction claimed for the general asset account that is attributable to the relinquished asset. The depreciation allowance for the asset in the year of disposition is determined in the same manner as the depreciation allowance for the relinquished MACRS property (as defined in § 1.168(i)–6(b)(2)) in the year of disposition is determined under § 1.168(i)–6. The recognition and character of the gain or loss are determined in accordance with paragraph (e)(3)(iii)(A) of this section (notwithstanding that paragraph (e)(3)(iii) of this section is an optional rule); and

(*2*) As of the first day of the year of disposition, the taxpayer must remove the relinquished asset from the general asset account and make the adjustments to the general asset account described in paragraphs (e)(3)(iii)(C)(*2*) through (*4*) of this section.

(vi) *Technical termination of a partnership.* In the case of a technical termination of a partnership under section 708(b)(1)(B), the terminated partnership must apply this paragraph (e)(3)(vi) (instead of applying paragraph (e)(2), (e)(3)(ii), or (e)(3)(iii) of this section). Under this paragraph (e)(3)(vi), all of the terminated partnership's general asset accounts terminate as of the date of its termination under section 708(b)(1)(B). The terminated partnership computes the allowable depreciation deduction for each of its general asset accounts for the taxable year in which the technical termination occurs by using the depreciation method, recovery period, and convention applicable to the general asset account. The new partnership is not bound by the terminated partnership's election under paragraph (l) of this section.

(vii) *Anti-abuse rule*—(A) *In general.* If an asset in a general asset account is disposed of by a taxpayer in a transaction described in paragraph (e)(3)(vii)(B) of this section, general asset account treatment for the asset terminates as of the first day of the taxable year in which the disposition occurs. Consequently, the taxpayer must determine the amount of gain, loss, or other deduction attributable to the disposition in the manner described in paragraph (e)(3)(iii)(A) of this section (notwithstanding that paragraph (e)(3)(iii)(A) of this section is an optional rule) and must make the adjustments to the general asset account described in paragraphs (e)(3)(iii)(C)(*1*) through (*4*) of this section.

(B) *Abusive transactions.* A transaction is described in this paragraph (e)(3)(vii)(B) if the transaction is not described in paragraph (e)(3)(iv), (e)(3)(v), or (e)(3)(vi) of this section, and if the transaction is entered into, or made, with a principal purpose of achieving a tax benefit or result that would not be available absent an election under this section. Examples of these types of transactions include—

(*1*) A transaction entered into with a principal purpose of shifting income or deductions among taxpayers in a manner that would not be possible absent an election under this section to take advantage of differing effective tax rates among the taxpayers; or

(*2*) An election made under this section with a principal purpose of disposing of an asset from a general asset account to utilize an expiring net operating loss or credit if the transaction is not a bona fide disposition. The fact that a taxpayer with a net operating loss carryover or a credit carryover transfers an asset to a related person or transfers an asset pursuant to an arrangement where the asset continues to be used (or is available for use) by the taxpayer pursuant to a lease (or otherwise) indicates, absent strong evidence to the contrary, that the transaction is described in this paragraph (e)(3)(vii)(B).

(f) *Assets generating foreign source income*—(1) *In general.* This paragraph (f) provides the rules for determining the source of any income, gain, or loss recognized, and the appropriate section 904(d) separate limitation category or categories for any foreign source income, gain, or loss recognized on a disposition (within the meaning of paragraph (e)(1) of this section) of an asset in a general asset account that consists of assets generating both United States and foreign source income. These rules apply only to a disposition to which paragraphs (e)(2) (general disposition rules), (e)(3)(ii) (disposition of all assets remaining in a general asset account), (e)(3)(iii) (disposition of an asset in a qualifying disposition), (e)(3)(v) (transactions subject to section 1031 or section 1033), or (e)(3)(vii) (anti-abuse rule) of this section applies. Solely for purposes of applying this paragraph (f), the term *asset* is:

(i) The asset as determined under paragraph (e)(2)(viii) of this section, or

(ii) The portion of such asset that is disposed of in a disposition described in paragraph (e)(1)(ii) of this section.

(2) *Source of ordinary income, gain, or loss*—(i) *Source determined by allocation and apportionment of depreciation allowed.* The amount of any ordinary income, gain, or loss that is recognized on the disposition of an asset in a general asset account must be apportioned between United States and foreign sources based on the allocation and apportionment of the—

(A) Depreciation allowed for the general asset account as of the end of the taxable year in which the disposition occurs if paragraph (e)(2) of this section applies to the disposition;

(B) Depreciation allowed for the general asset account as of the time of disposition if the taxpayer applies paragraph (e)(3)(ii) of this section to the disposition of all assets, the last asset, or the remaining portion of the last asset, in the general asset account, or if all the assets, the last asset, or the remaining portion of the last asset, in the general asset account are disposed of in a transaction described in paragraph (e)(3)(v)(A) of this section; or

(C) Depreciation allowed for the asset disposed of for only the taxable year in which the disposition occurs if the taxpayer applies paragraph (e)(3)(iii) of this section to the disposition of the asset in a qualifying disposition, if the asset is disposed of in a transaction described in paragraph (e)(3)(v)(B) of this section (like-kind exchange or involuntary conversion), or if the asset is disposed of in a transaction described in paragraph (e)(3)(vii) of this section (anti-abuse rule).

(ii) *Formula for determining foreign source income, gain, or loss.* The amount of ordinary income, gain, or loss recognized on the disposition that shall be treated as foreign source income, gain, or loss must be determined under the formula in this paragraph (f)(2)(ii). For purposes of this formula, the allowed depreciation deductions are determined for the applicable time period provided in paragraph (f)(2)(i) of this section. The formula is:

Foreign Source Income, Gain, or Loss from The Disposition of an Asset	=	Total Ordinary Income, Gain, or Loss from the Disposition of an Asset	×	Allowed Depreciation Deductions Allocated and Apportioned to Foreign Source Income/Total Allowed Depreciation Deductions for the General Asset Account or for the Asset Disposed of (as applicable).

(3) *Section 904(d) separate categories.* If the assets in the general asset account generate foreign source income in more than one separate category under section 904(d)(1) or another section of the Internal Revenue Code (for example, income treated as foreign source income under section 904(g)(10)), or under a United States income tax treaty that requires the foreign tax credit limitation to be determined separately for specified types of income, the amount of ''foreign source income, gain, or loss from the disposition of an asset'' (as determined under the formula in paragraph (f)(2)(ii) of this section) must be allocated and apportioned to the applicable separate category or

categories under the formula in this paragraph (f)(3). For purposes of this formula, the allowed depreciation deductions are determined for the applicable time period provided in paragraph (f)(2)(i) of this section. The formula is:

Foreign Source Income, Gain, or Loss in a Separate Cateogory = Foreign Source Income, Gain, or Loss from The Disposition of an Asset × Allowed Depreciation Deductions Allocated and Apportioned to a Separate Category Total/Allowed Depreciation Deductions and Apportioned to Foreign Source Income.

(g) *Assets subject to recapture.* If the basis of an asset in a general asset account is increased as a result of the recapture of any allowable credit or deduction (for example, the basis adjustment for the recapture amount under section 30(d)(2), 50(c)(2), 168(l)(7), 168(n)(4), 179(d)(10), 179A(e)(4), or 1400N(d)(5)), general asset account treatment for the asset terminates as of the first day of the taxable year in which the recapture event occurs. Consequently, the taxpayer must remove the asset from the general asset account as of that day and must make the adjustments to the general asset account described in paragraphs (e)(3)(iii)(C)(*2*) through (*4*) of this section.

(h) *Changes in use*—(1) *Conversion to any personal use.* An asset in a general asset account becomes ineligible for general asset account treatment if a taxpayer uses the asset in any personal activity during a taxable year. Upon a conversion to any personal use, the taxpayer must remove the asset from the general asset account as of the first day of the taxable year in which the change in use occurs (the year of change) and must make the adjustments to the general asset account described in paragraphs (e)(3)(iii)(C)(*2*) through (*4*) of this section.

(2) *Change in use results in a different recovery period or depreciation method*—(i) *No effect on general asset account election.* A change in the use described in § 1.168(i)–4(d) (change in use results in a different recovery period or depreciation method) of an asset in a general asset account shall not cause or permit the revocation of the election made under this section.

(ii) *Asset is removed from the general asset account.* Upon a change in the use described in § 1.168(i)–4(d), the taxpayer must remove the asset from the general asset account as of the first day of the year of change (as defined in § 1.168(i)–4(a)) and must make the adjustments to the general asset account described in paragraphs (e)(3)(iii)(C)(*2*) through (*4*) of this section. If, however, the result of the change in use is described in § 1.168(i)–4(d)(3) (change in use results in a shorter recovery period or a more accelerated depreciation method) and the taxpayer elects to treat the asset as though the change in use had not occurred pursuant to § 1.168(i)–4(d)(3)(ii), no adjustment is made to the general asset account upon the change in use.

(iii) *New general asset account is established*—(A) *Change in use results in a shorter recovery period or a more accelerated depreciation method.* If the result of the change in use is described in § 1.168(i)–4(d)(3) (change in use results in a shorter recovery period or a more accelerated depreciation method) and adjustments to the general asset account are made pursuant to paragraph (h)(2)(ii) of this section, the taxpayer must establish a new general asset account for the asset in the year of change in accordance with the rules in paragraph (c) of this section, except that the adjusted depreciable basis of the asset as of the first day of the year of change is included in the general asset account. For purposes of paragraph (c)(2) of this section, the applicable depreciation method, recovery period, and convention are determined under § 1.168(i)–4(d)(3)(i).

(B) *Change in use results in a longer recovery period or a slower depreciation method.* If the result of the change in use is described in § 1.168(i)–4(d)(4) (change in use results in a longer recovery period or a slower depreciation method), the taxpayer must establish a separate general asset account for the asset in the year of change in accordance with the rules in paragraph (c) of this section, except that the unadjusted depreciable basis of the asset, and the greater of the depreciation of the asset allowed or allowable in accordance with section 1016(a)(2), as of the first day of the year of change are included in the newly established general asset account. Consequently, this general asset account as of the first day of the year of change will have a beginning balance for both the unadjusted depreciable basis and the depreciation reserve of the general asset account. For purposes of paragraph (c)(2) of this section, the applicable depreciation method, recovery period, and convention are determined under § 1.168(i)–4(d)(4)(ii).

(i) *Redetermination of basis.* If, after the placed-in-service year, the unadjusted depreciable basis of an asset in a general asset account is redetermined due to a transaction other than that described in paragraph (g) of this section (for example, due to contingent purchase price or discharge of indebtedness), the taxpayer's election under paragraph (l) of this section for the asset also applies to the increase or decrease in basis resulting from the redetermination. For the taxable year in which the increase or decrease in basis occurs, the taxpayer must establish a new general asset account for the amount of the increase or decrease in basis in accordance with the rules in paragraph (c) of this section. For purposes of paragraph (c)(2) of this section, the applicable recovery period for the increase or decrease in basis is the recovery period of the asset remaining as of the beginning of the taxable year in which the increase or decrease in basis occurs, the applicable depreciation method and applicable convention for the increase or decrease in basis are the same depreciation method and convention applicable to the asset that applies for the taxable year in which the increase or decrease in basis occurs, and the increase or decrease in basis is deemed to be placed in service in the same taxable year as the asset.

(j) *Identification of disposed or converted asset*—(1) *In general.* The rules of this paragraph (j) apply when an asset in a general asset account is disposed of or converted in a transaction described in paragraphs (e)(3)(iii) (disposition of an asset in a qualifying disposition), (e)(3)(iv)(B) (transactions subject to section 168(i)(7)), (e)(3)(v)(B) (transactions subject to section 1031 or section 1033), (e)(3)(vii) (anti-abuse rule), (g) (assets subject to recapture), or (h)(1) (conversion to any personal use) of this section.

(2) *Identifying which asset is disposed of or converted*—(i) *In general.* For purposes of identifying which asset in a general asset account is disposed of or converted, a taxpayer must identify the disposed of or converted asset by using—

(A) The specific identification method of accounting. Under this method of accounting, the taxpayer can determine the particular taxable year in which the disposed of or converted asset was placed in service by the taxpayer;

(B) A first-in, first-out method of accounting if the taxpayer can readily determine from its records the total dispositions of assets with the same recovery period during the taxable year but the taxpayer cannot readily determine from its records the unadjusted depreciable basis of the disposed of or converted asset. Under this method of accounting, the taxpayer identifies the general asset account with the earliest placed-in-service year that has the same recovery period as the disposed of or converted asset and that has assets at the beginning of the taxable year of the disposition or conversion, and the taxpayer treats the disposed of or converted asset as being from that general asset account. To determine which general asset account has assets at the beginning of the taxable year of the disposition or conversion, the taxpayer reduces the number of assets originally included in the account by the number of assets disposed of or converted in any prior taxable year in a transaction to which this paragraph (j) applies;

(C) A modified first-in, first-out method of accounting if the taxpayer can readily determine from its records the total dispositions of assets with the same recovery period during the taxable year and the unadjusted depreciable basis of the disposed of or converted asset. Under this method of accounting, the taxpayer identifies the general asset account with the earliest placed-in-service year that has the same recovery period as the disposed of or converted asset and that has assets at the beginning of the taxable year of the disposition or conversion with the same unadjusted depreciable basis as the disposed of or converted asset, and the taxpayer treats the disposed of or converted asset as being from that general asset account. To determine which general asset account has assets at the beginning of the taxable year of the disposition or conversion, the taxpayer reduces the number of assets originally included in the account by the number of assets disposed of or converted in any prior taxable year in a transaction to which this paragraph (j) applies;

(D) A mortality dispersion table if the asset is a mass asset accounted for in a separate general asset account in accordance with paragraph (c)(2)(ii)(H) of this section and if the taxpayer can readily determine from its records the total dispositions of assets with the same recovery period during the taxable year. The mortality dispersion table must be based upon an acceptable sampling of the taxpayer's actual disposition and conversion experience for mass assets or other acceptable statistical or engineering techniques. To use a mortality dispersion table, the taxpayer must adopt recordkeeping practices consistent with the taxpayer's prior practices and consonant with good accounting and engineering practices; or

(E) Any other method as the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter) on or after September 19, 2013. See paragraph (j)(2)(iii) of this section regarding the last-in, first-out method of accounting.

(ii) *Disposition of a portion of an asset.* If a taxpayer disposes of a portion of an asset and paragraph (e)(1)(ii) of this section applies to that disposition, the taxpayer may identify the asset by using any applicable method provided in paragraph (j)(2)(i) of this section (after taking into account paragraph (j)(2)(iii) of this section).

(iii) *Last-in, first-out method of accounting.* For purposes of paragraph (j)(2) of this section, a last-in, first-out method of accounting may not be used. Under a last-in, first-out method of accounting, the taxpayer identifies the general asset account with the most recent placed-in-service year that has the same recovery period as the disposed of or converted asset and that has assets at the beginning of the taxable year of the disposition or conversion, and the taxpayer treats the disposed of or converted asset as being from that general asset account.

(3) *Basis of disposed of or converted asset.* Solely for purposes of this paragraph (j)(3), the term *asset* is the asset as determined under paragraph (e)(2)(viii) of this section or the portion of such asset that is disposed of in a disposition described in paragraph (e)(1)(ii) of this section. After identifying which asset in a general asset account is disposed of or converted, the taxpayer may use any reasonable method that is consistently applied to all assets in the same general asset account for purposes of determining the unadjusted depreciable basis of the disposed of or converted asset in that general asset account. Examples of a reasonable method include, but are not limited to, discounting the cost of the replacement asset to its placed-in-service year cost using the Consumer Price Index, a pro rata allocation of the unadjusted depreciable basis of the general asset account based on the replacement cost of the disposed asset and the replacement cost of all of the assets in the general asset account, and a study allocating the cost of the asset to its individual components.

(k) *Effect of adjustments on prior dispositions.* The adjustments to a general asset account under paragraphs (e)(3)(iii), (e)(3)(iv), (e)(3)(v), (e)(3)(vii), (g), or (h) of this section have no effect on the recognition and character of prior dispositions subject to paragraph (e)(2) of this section.

(l) *Election*—(1) *Irrevocable election.* If a taxpayer makes an election under this paragraph (l), the taxpayer consents to, and agrees to apply, all of the provisions of this section to the assets included in a general asset account. Except as provided in paragraphs (c)(1)(ii)(A), (e)(3), (g), or (h) of this section or except as otherwise expressly provided by other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter), an election made under this section is irrevocable and will be binding on the taxpayer for computing taxable income for the taxable year for which the election is made and for all subsequent taxable years. An election under this paragraph (l) is made separately by each person owning an asset to which this section applies (for example, by each member of a consolidated group, at the partnership level (and not by the partner separately), or at the S corporation level (and not by the shareholder separately)).

* * * * *

(m) *Effective/applicability date*—(1) *In general.* This section applies to taxable years beginning on or after January 1, 2014. Except as provided in paragraphs (m)(2), (m)(3), and (m)(4) of this section, § 1.168(i)–1 as contained in 26 CFR part 1 edition revised as of April 1, 2011, applies to taxable years beginning before January 1, 2014.

(2) *Early application of this section.* A taxpayer may choose to apply the provisions of this section to taxable years beginning on or after January 1, 2012.

(3) *Early application of regulation project REG–110732–13.* A taxpayer may rely on the provisions of this section in regulation project REG–110732–13 for taxable years beginning on or after January 1, 2012. However, a taxpayer may not rely on the provisions of this section in regulation project REG–110732–13 for taxable years beginning on or after January 1, 2014.

(4) *Optional application of TD 9564.* A taxpayer may choose to apply § 1.168(i)–1T as contained in TD 9564 (76 FR 81060) December 27, 2011, to taxable years beginning on or after January 1, 2012. However, a taxpayer may not apply § 1.168(i)–1T as contained in TD 9564 (76 FR 81060) December 27, 2011, to taxable years beginning on or after January 1, 2014.

(5) *Change in method of accounting.* A change to comply with this section for depreciable assets placed in service in a taxable year ending on or after December 30, 2003, is a change in method of accounting to which the provisions of section 446(e) and the regulations under section 446(e) apply. A taxpayer also may treat a change to comply with this section for depreciable assets placed in service in a taxable year ending before December 30, 2003, as a change in method of accounting to which the provisions of section 446(e) and the regulations under section 446(e) apply. This paragraph (m)(5) does not apply to a change to comply with paragraphs (e)(3)(ii), (e)(3)(iii), or paragraph (l) of this section.

■ **Par. 4.** Section 1.168(i)–7 is amended by:

■ 1. Adding a new sentence at end of paragraph (b).

■ 2. Revising paragraph (e).

The addition and revision read as follows:

§ 1.168(i)–7 Accounting for MACRS property.

* * * * *

(b) * * * If a taxpayer disposes of a portion of an asset and § 1.168(i)–8(d)(1) applies to that disposition, the taxpayer must account for the disposed portion in a single asset account beginning in the taxable year in which the disposition occurs. See § 1.168(i)–8(h)(3)(i).

* * * * *

(e) *Effective/applicability date*—(1) *In general.* This section applies to taxable years beginning on or after January 1, 2014.

(2) *Early application of this section.* A taxpayer may choose to apply the provisions of this section to taxable years beginning on or after January 1, 2012.

(3) *Early application of regulation project REG–110732–13.* A taxpayer may rely on the provisions of this section in regulation project REG–110732–13 for taxable years beginning on or after January 1, 2012. However, a taxpayer may not rely on the provisions of this section in regulation project REG–110732–13 for taxable years beginning on or after January 1, 2014.

(4) *Optional application of TD 9564.* A taxpayer may choose to apply § 1.168(i)–7T as contained in TD 9564 (76 FR 81060) December 27, 2011, to taxable years beginning on or after January 1, 2012. However, a taxpayer may not apply § 1.168(i)–7T as contained in TD 9564 (76 FR 81060) December 27, 2011, to taxable years beginning on or after January 1, 2014.

(5) *Change in method of accounting.* A change to comply with this section for depreciable assets placed in service in a taxable year ending on or after December 30, 2003, is a change in method of accounting to which the provisions of section 446(e) and the regulations under section 446(e) apply. A taxpayer also may treat a change to comply with this section for depreciable assets placed in service in a taxable year ending before December 30, 2003, as a change in method of accounting to which the provisions of section 446(e) and the regulations under section 446(e) apply.

■ **Par. 5.** Section 1.168(i)–8 is added to read as follows:

§ 1.168(i)–8 Dispositions of MACRS property.

(a) *Scope.* This section provides rules applicable to dispositions of MACRS property (as defined in § 1.168(b)–1(a)(2)) or to depreciable property (as defined in § 1.168(b)–1(a)(1)) that would be MACRS property but for an election made by the taxpayer either to expense all or some of the property's cost under section 179, 179A, 179B, 179C, 179D, or 1400I(a)(1), or any similar provision, or to amortize all or some of the property's cost under section 1400I(a)(2) or any similar provision. This section also applies to dispositions described in paragraph (d)(1) of this section of a portion of such property. Except as provided in § 1.168(i)–1(e)(iii), this section does not apply to dispositions of assets included in a general asset account. For rules applicable to dispositions of assets included in a general asset account, see § 1.168(i)–1(e) or § 1.168(e)–1T, as applicable.

(b) *Definitions.* For purposes of this section—

(1) *Building* has the same meaning as that term is defined in § 1.48–1(e)(1).

(2) *Disposition* occurs when ownership of the asset is transferred or when the asset is permanently withdrawn from use either in the taxpayer's trade or business or in the production of income. A disposition includes the sale, exchange, retirement, physical abandonment, or destruction of an asset. A disposition also occurs when an asset is transferred to a supplies, scrap, or similar account, or when a portion of an asset is disposed of as described in paragraph (d)(1) of this section. If a structural component (or a portion thereof) of a building is disposed of in a disposition described in paragraph (d)(1) of this section, a disposition also includes the disposition of such structural component (or such portion thereof).

(3) *Mass assets* is a mass or group of individual items of depreciable assets—

(i) That are not necessarily homogenous;

(ii) Each of which is minor in value relative to the total value of the mass or group;

(iii) Numerous in quantity;

(iv) Usually accounted for only on a total dollar or quantity basis;

(v) With respect to which separate identification is impracticable; and

(vi) Placed in service in the same taxable year.

(4) *Portion of an asset* is any part of an asset that is less than the entire asset as determined under paragraph (c)(4) of this section.

(5) *Structural component* has the same meaning as that term is defined in § 1.48–1(e)(2).

(6) *Unadjusted depreciable basis of the multiple asset account or pool* is the sum of the unadjusted depreciable bases (as defined in § 1.168(b)–1(a)(3)) of all assets included in the multiple asset account or pool.

(c) *Special rules*—(1) *Manner of disposition.* The manner of disposition (for example, normal retirement, abnormal retirement, ordinary retirement, or extraordinary retirement) is not taken into account in determining whether a disposition occurs or gain or loss is recognized.

(2) *Disposition by transfer to a supplies account.* If a taxpayer made an election under § 1.162–3(d) to treat the cost of any rotable spare part, temporary spare part, or standby emergency spare part (as defined in § 1.162–3(c)) as a capital expenditure subject to the allowance for depreciation, the taxpayer can dispose of the rotable, temporary, or standby emergency spare part by transferring it to a supplies account only if the taxpayer has obtained the consent of the Commissioner to revoke the § 1.162–3(d) election. See § 1.162–3(d)(3) for the procedures for revoking a § 1.162–3(d) election.

(3) *Leasehold improvements.* This section also applies to—

(i) A lessor of leased property that made an improvement to that property for the lessee of the property, has a depreciable basis in the improvement, and disposes of the improvement before or upon the termination of the lease with the lessee. See section 168(i)(8)(B); and

(ii) A lessee of leased property that made an improvement to that property, has a depreciable basis in the improvement, and disposes of the improvement before or upon the termination of the lease.

(4) *Determination of asset disposed of*—(i) *General rules.* For purposes of

applying this section, the facts and circumstances of each disposition are considered in determining what is the appropriate asset disposed of. The asset for disposition purposes may not consist of items placed in service by the taxpayer on different dates. For purposes of determining what is the appropriate asset disposed of, the unit of property determination under § 1.263(a)–3(e) or in published guidance in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter) under section 263(a) does not apply.

(ii) *Special rules.* In addition to the general rules in paragraph (c)(4)(i) of this section, the following rules apply for purposes of applying this section:

(A) Each building (including its structural components) is the asset except as provided in § 1.1250–1(a)(2)(ii) or in paragraph (c)(4)(ii)(B) or paragraph (c)(4)(ii)(D) of this section.

(B) If a building has two or more condominium or cooperative units, each condominium or cooperative unit (including its structural components) is the asset except as provided in § 1.1250–1(a)(2)(ii) or in paragraph (c)(4)(ii)(D) of this section.

(C) If a taxpayer properly includes an item in one of the asset classes 00.11 through 00.4 of Rev. Proc. 87–56 (1987–2 CB 674) (see § 601.601(d)(2) of this chapter) or properly classifies an item in one of the categories under section 168(e)(3) (except for a category that includes buildings or structural components; for example, retail motor fuels outlet, qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property), each item is the asset provided paragraph (c)(4)(ii)(D) of this section does not apply to the item. For example, each desk is the asset, each computer is the asset, and each qualified smart electric meter is the asset.

(D) If the taxpayer places in service an improvement or addition to an asset after the taxpayer placed the asset in service, the improvement or addition is a separate asset.

(d) *Disposition of a portion of an asset*—(1) *In general.* For purposes of applying this section, a disposition includes a disposition of a portion of an asset as a result of a casualty event described in section 165, a disposition of a portion of an asset for which gain (determined without regard to section 1245 or section 1250) is not recognized in whole or in part under section 1031 or section 1033, a transfer of a portion of an asset in a transaction described in section 168(i)(7)(B), or a sale of a portion of an asset, even if the taxpayer does not make the election under paragraph (d)(2)(i) of this section for that disposed portion. For other transactions, a disposition includes a disposition of a portion of an asset only if the taxpayer makes the election under paragraph (d)(2)(i) of this section for that disposed portion.

(2) *Partial disposition election*—(i) *In general.* A taxpayer may make an election under this paragraph (d)(2) to apply this section to a disposition of a portion of an asset. If the asset is properly included in one of the asset classes 00.11 through 00.4 of Rev. Proc. 87–56 (1987–2 CB 674) (see § 601.601(d)(2) of this chapter), a taxpayer may make an election under this paragraph (d)(2) to apply this section to a disposition of a portion of such asset only if the taxpayer classifies the replacement portion of the asset under the same asset class as the disposed portion of the asset.

(ii) *Time and manner for making election*—(A) *Time for making election.* Except as provided in paragraph (d)(2)(iii) or paragraph (d)(2)(iv) of this section, a taxpayer must make the election specified in paragraph (d)(2)(i) of this section by the due date (including extensions) of the original Federal tax return for the taxable year in which the portion of an asset is disposed of by the taxpayer.

(B) *Manner of making election.* Except as provided in paragraph (d)(2)(iii) or paragraph (d)(2)(iv) of this section, a taxpayer must make the election specified in paragraph (d)(2)(i) of this section by applying the provisions of this section for the taxable year in which the portion of an asset is disposed of by the taxpayer, by reporting the gain, loss, or other deduction on the taxpayer's timely filed (including extensions) original Federal tax return for that taxable year, and, if the asset is properly included in one of the asset classes 00.11 through 00.4 of Rev. Proc. 87–56 (1987–2 CB 674) (see § 601.601(d)(2) of this chapter), by classifying the replacement portion of such asset under the same asset class as the disposed portion of the asset in the taxable year in which the replacement portion is placed in service by the taxpayer. Except as provided in paragraph (d)(2)(iii) or paragraph (d)(2)(iv)(B) of this section, the election specified in paragraph (d)(2)(i) of this section may not be made through the filing of an application for change in accounting method.

(iii) *Special rule for subsequent Internal Revenue Service adjustment.* This paragraph (d)(2)(iii) applies when a taxpayer deducted the amount paid or incurred for the replacement of a portion of an asset as a repair under § 1.162–4, the taxpayer did not make the election specified in paragraph (d)(2)(i) of this section for the disposed portion of that asset within the time and in the manner under paragraph (d)(2)(ii) or paragraph (d)(2)(iv) of this section, and as a result of an examination of the taxpayer's Federal tax return, the Internal Revenue Service disallows the taxpayer's repair deduction for the amount paid or incurred for the replacement of the portion of that asset and instead capitalizes such amount under § 1.263(a)–2 or § 1.263(a)–3. If this paragraph (d)(2)(iii) applies, the taxpayer may make the election specified in paragraph (d)(2)(i) of this section for the disposition of the portion of the asset to which the Internal Revenue Service's adjustment pertains by filing an application for change in accounting method, provided the asset of which the disposed portion was a part is owned by the taxpayer at the beginning of the year of change (as defined for purposes of section 446(e)).

(iv) *Special rules for 2012 or 2013 returns.* If, under paragraph (j)(2) or paragraph (j)(3) of this section, a taxpayer chooses to apply the provisions of this section to a taxable year beginning on or after January 1, 2012, and ending on or before September 19, 2013 (applicable taxable year), and the taxpayer did not make the election specified in paragraph (d)(2)(i) of this section on its timely filed original Federal tax return for the applicable taxable year, including extensions, the taxpayer must make the election specified in paragraph (d)(2)(i) of this section for the applicable taxable year by filing either—

(A) An amended Federal tax return for the applicable taxable year on or before 180 days from the due date including extensions of the taxpayer's Federal tax return for the applicable taxable year, notwithstanding that the taxpayer may not have extended the due date; or

(B) An application for change in accounting method with the taxpayer's timely filed original Federal tax return for the first or second taxable year succeeding the applicable taxable year.

(v) *Revocation.* A taxpayer may revoke the election specified in paragraph (d)(2)(i) of this section only by filing a request for a private letter ruling and obtaining the Commissioner's consent to revoke the election. The Commissioner may grant a request to revoke this election if the taxpayer acted reasonably and in good faith, and the revocation will not prejudice the interests of the Government. See generally § 301.9100–3 of this chapter. The election specified in paragraph (d)(2)(i) of this section may

not be revoked through the filing of an application for change in accounting method.

(e) *Gain or loss on dispositions.* Solely for purposes of this paragraph (e), the term *asset* is an asset within the scope of this section or the portion of such asset that is disposed of in a disposition described in paragraph (d)(1) of this section. Except as provided by section 280B and § 1.280B–1, the following rules apply when an asset is disposed of during a taxable year:

(1) If an asset is disposed of by sale, exchange, or involuntary conversion, gain or loss must be recognized under the applicable provisions of the Internal Revenue Code.

(2) If an asset is disposed of by physical abandonment, loss must be recognized in the amount of the adjusted depreciable basis (as defined in § 1.168(b)–1(a)(4)) of the asset at the time of the abandonment (taking into account the applicable convention). However, if the abandoned asset is subject to nonrecourse indebtedness, paragraph (e)(1) of this section applies to the asset (instead of this paragraph (e)(2)). For a loss from physical abandonment to qualify for recognition under this paragraph (e)(2), the taxpayer must intend to discard the asset irrevocably so that the taxpayer will neither use the asset again nor retrieve it for sale, exchange, or other disposition.

(3) If an asset is disposed of other than by sale, exchange, involuntary conversion, physical abandonment, or conversion to personal use (as, for example, when the asset is transferred to a supplies or scrap account), gain is not recognized. Loss must be recognized in the amount of the excess of the adjusted depreciable basis of the asset at the time of the disposition (taking into account the applicable convention) over the asset's fair market value at the time of the disposition (taking into account the applicable convention).

(f) *Basis of asset disposed of*—(1) *In general.* The adjusted basis of an asset disposed of for computing gain or loss is its adjusted depreciable basis at the time of the asset's disposition (as determined under the applicable convention for the asset).

(2) *Assets disposed of are in multiple asset accounts.* If the taxpayer accounts for the asset disposed of in a multiple asset account or pool and it is impracticable from the taxpayer's records to determine the unadjusted depreciable basis (as defined in § 1.168(b)–1(a)(3)) of the asset disposed of, the taxpayer may use any reasonable method that is consistently applied to all assets in the same multiple asset account or pool for purposes of determining the unadjusted depreciable basis of assets disposed of. Examples of a reasonable method include, but are not limited to, discounting the cost of the replacement asset to its placed-in-service year cost using the Consumer Price Index, a pro rata allocation of the unadjusted depreciable basis of the multiple asset account or pool based on the replacement cost of the disposed asset and the replacement cost of all of the assets in the multiple asset account or pool, and a study allocating the cost of the asset to its individual components. To determine the adjusted depreciable basis of an asset disposed of in a multiple asset account, the depreciation allowed or allowable for the asset disposed of is computed by using the depreciation method, recovery period, and convention applicable to the multiple asset account or pool in which the asset disposed of was included and by including the additional first year depreciation deduction claimed for the asset disposed of.

(3) *Disposition of a portion of an asset.* This paragraph (f)(3) applies only when a taxpayer disposes of a portion of an asset and paragraph (d)(1) of this section applies to that disposition. For computing gain or loss, the adjusted basis of the disposed portion of the asset is the adjusted depreciable basis of that disposed portion at the time of its disposition (as determined under the applicable convention for the asset). The taxpayer may use any reasonable method for purposes of determining the unadjusted depreciable basis (as defined in § 1.168(b)–1(a)(3)) of the disposed portion of the asset. If a taxpayer disposes of more than one portion of the same asset and paragraph (d)(1) of this section applies to more than one of those dispositions, the taxpayer may use any reasonable method that is consistently applied to all portions of the same asset for purposes of determining the unadjusted depreciable basis of each disposed portion of the asset. Examples of a reasonable method include, but are not limited to, discounting the cost of the replacement portion of the asset to its placed-in-service year cost using the Consumer Price Index, a pro rata allocation of the unadjusted depreciable basis of the asset based on the replacement cost of the disposed portion of the asset and the replacement cost of the asset, and a study allocating the cost of the asset to its individual components. To determine the adjusted depreciable basis of the disposed portion of the asset, the depreciation allowed or allowable for the disposed portion is computed by using the depreciation method, recovery period, and convention applicable to the asset in which the disposed portion was included and by including the portion of the additional first year depreciation deduction claimed for the asset that is attributable to the disposed portion.

(g) *Identification of asset disposed of*—(1) *In general.* Except as provided in paragraph (g)(2) or paragraph (g)(3) of this section, a taxpayer must use the specific identification method of accounting to identify which asset is disposed of by the taxpayer. Under this method of accounting, the taxpayer can determine the particular taxable year in which the asset disposed of was placed in service by the taxpayer.

(2) *Asset disposed of is in a multiple asset account.* If a taxpayer accounts for the asset disposed of in a multiple asset account or pool and the total dispositions of assets with the same recovery period during the taxable year are readily determined from the taxpayer's records, but it is impracticable from the taxpayer's records to determine the particular taxable year in which the asset disposed of was placed in service by the taxpayer, the taxpayer must identify the asset disposed of by using—

(i) A first-in, first-out method of accounting if the unadjusted depreciable basis of the asset disposed of cannot be readily determined from the taxpayer's records. Under this method of accounting, the taxpayer identifies the multiple asset account or pool with the earliest placed-in-service year that has the same recovery period as the asset disposed of and that has assets at the beginning of the taxable year of the disposition, and the taxpayer treats the asset disposed of as being from that multiple asset account or pool;

(ii) A modified first-in, first-out method of accounting if the unadjusted depreciable basis of the asset disposed of can be readily determined from the taxpayer's records. Under this method of accounting, the taxpayer identifies the multiple asset account or pool with the earliest placed-in-service year that has the same recovery period as the asset disposed of and that has assets at the beginning of the taxable year of the disposition with the same unadjusted depreciable basis as the asset disposed of, and the taxpayer treats the asset disposed of as being from that multiple asset account or pool;

(iii) A mortality dispersion table if the asset disposed of is a mass asset. The mortality dispersion table must be based upon an acceptable sampling of the taxpayer's actual disposition experience for mass assets or other acceptable

statistical or engineering techniques. To use a mortality dispersion table, the taxpayer must adopt recordkeeping practices consistent with the taxpayer's prior practices and consonant with good accounting and engineering practices; or

(iv) Any other method as the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter) on or after September 19, 2013. See paragraph (g)(4) of this section regarding the last-in, first-out method of accounting.

(3) *Disposition of a portion of an asset.* If a taxpayer disposes of a portion of an asset and paragraph (d)(1) of this section applies to that disposition, but it is impracticable from the taxpayer's records to determine the particular taxable year in which the asset was placed in service, the taxpayer must identify the asset by using any applicable method provided in paragraph (g)(2) of this section (after taking into account paragraph (g)(4) of this section).

(4) *Last-in, first-out method of accounting.* For purposes of paragraph (g)(2) of this section, a last-in, first-out method of accounting may not be used. Under a last-in, first-out method of accounting, the taxpayer identifies the multiple asset account or pool with the most recent placed-in-service year that has the same recovery period as the asset disposed of and that has assets at the beginning of the taxable year of the disposition, and the taxpayer treats the asset disposed of as being from that multiple asset account or pool.

(h) *Accounting for asset disposed of*—(1) *Depreciation ends.* Depreciation ends for an asset at the time of the asset's disposition (as determined under the applicable convention for the asset). See § 1.167(a)–10(b). If the asset disposed of is in a single asset account initially or as a result of § 1.168(i)–8(h)(2)(i) or § 1.168(i)–8(h)(3)(i), the single asset account terminates at the time of the asset's disposition (as determined under the applicable convention for the asset). If a taxpayer disposes of a portion of an asset and paragraph (d)(1) of this section applies to that disposition, depreciation ends for that disposed portion of the asset at the time of the disposition of the disposed portion (as determined under the applicable convention for the asset).

(2) *Asset disposed of in a multiple asset account or pool.* If the taxpayer accounts for the asset disposed of in a multiple asset account or pool, then—

(i) As of the first day of the taxable year in which the disposition occurs, the asset disposed of is removed from the multiple asset account or pool and is placed into a single asset account. See § 1.168(i)–7(b) or § 1.168(i)–7T(b), as applicable;

(ii) The unadjusted depreciable basis of the multiple asset account or pool must be reduced by the unadjusted depreciable basis of the asset disposed of as of the first day of the taxable year in which the disposition occurs. See paragraph (f)(2) of this section for determining the unadjusted depreciable basis of the asset disposed of;

(iii) The depreciation reserve of the multiple asset account or pool must be reduced by the depreciation allowed or allowable for the asset disposed of as of the end of the taxable year immediately preceding the year of disposition, computed by using the depreciation method, recovery period, and convention applicable to the multiple asset account or pool in which the asset disposed of was included and by including the additional first year depreciation deduction claimed for the asset disposed of; and

(iv) In determining the adjusted depreciable basis of the asset disposed of at the time of disposition (taking into account the applicable convention), the depreciation allowed or allowable for the asset disposed of is computed by using the depreciation method, recovery period, and convention applicable to the multiple asset account or pool in which the asset disposed of was included and by including the additional first year depreciation deduction claimed for the asset disposed of.

(3) *Disposition of a portion of an asset.* This paragraph (h)(3) applies only when a taxpayer disposes of a portion of an asset and paragraph (d)(1) of this section applies to that disposition. In this case—

(i) As of the first day of the taxable year in which the disposition occurs, the disposed portion is placed into a single asset account. See § 1.168(i)–7(b);

(ii) The unadjusted depreciable basis of the asset must be reduced by the unadjusted depreciable basis of the disposed portion of the first day of the taxable year in which the disposition occurs. See paragraph (f)(3) of this section for determining the unadjusted depreciable basis of the disposed portion;

(iii) The depreciation reserve of the asset must be reduced by the depreciation allowed or allowable for the disposed portion as of the end of the taxable year immediately preceding the year of disposition, computed by using the depreciation method, recovery period, and convention applicable to the asset in which the disposed portion was included and by including the portion of the additional first year depreciation deduction claimed for the asset that is attributable to the disposed portion; and

(iv) In determining the adjusted depreciable basis of the disposed portion at the time of disposition (taking into account the applicable convention), the depreciation allowed or allowable for the disposed portion is computed by using the depreciation method, recovery period, and convention applicable to the asset in which the disposed portion was included and by including the portion of the additional first year depreciation deduction claimed for the asset that is attributable to the disposed portion.

(i) *Examples.* The application of this section is illustrated by the following examples. For purposes of these examples, assume that section 168 as in effect on September 19, 2013, applies to taxable years beginning on or after January 1, 2014.

Example 1. A owns an office building with four elevators. A replaces one of the elevators. The elevator is a structural component of the office building. In accordance with paragraph (c)(4)(ii)(A) of this section, the office building (including its structural components) is the asset for disposition purposes. A does not make the partial disposition election provided under paragraph (d)(2) of this section for the elevator. Thus, the retirement of the replaced elevator is not a disposition. As a result, depreciation continues for the cost of the building (including the cost of the retired elevator and the building's other structural components), and A does not recognize a loss for this retired elevator. If A must capitalize the amount paid for the replacement elevator pursuant to § 1.263(a)–3, the replacement elevator is a separate asset for disposition purposes pursuant to paragraph (c)(4)(ii)(D) of this section and for depreciation purposes pursuant to section 168(i)(6).

Example 2. The facts are the same as in *Example 1,* except A accounts for each structural component of the office building as a separate asset in its fixed asset system. Although A treats each structural component as a separate asset in its records, the office building (including its structural components) is the asset for disposition purposes in accordance with paragraph (c)(4)(ii)(A) of this section. Accordingly, the result is the same as in *Example 1.*

Example 3. The facts are the same as in *Example 1,* except A makes the partial disposition election provided under paragraph (d)(2) of this section for the elevator. Although the office building (including its structural components) is the asset for disposition purposes, the result of A making the partial disposition election for the elevator is that the retirement of the replaced elevator is a disposition. Thus, depreciation for the retired elevator ceases at the time of its retirement (taking into account the applicable convention), and A recognizes a loss upon this retirement. Further, A must capitalize the amount paid for the replacement elevator pursuant to § 1.263(a)–3(k)(1)(i), and the replacement elevator is a

separate asset for disposition purposes pursuant to paragraph (c)(4)(ii)(D) of this section and for depreciation purposes pursuant to section 168(i)(6).

Example 4. B, a calendar-year commercial airline company, owns several aircraft that are used in the commercial carrying of passengers and described in asset class 45.0 of Rev. Proc. 87–56. B replaces the existing engines on one of the aircraft with new engines. Assume each aircraft is a unit of property as determined under § 1.263(a)–3(e)(3) and each engine of an aircraft is a major component or substantial structural part of the aircraft as determined under § 1.263(a)–3(k)(6). Assume also that B treats each aircraft as the asset for disposition purposes in accordance with paragraph (c)(4) of this section. B makes the partial disposition election provided under paragraph (d)(2) of this section for the engines in the aircraft. Although the aircraft is the asset for disposition purposes, the result of B making the partial disposition election for the engines is that the retirement of the replaced engines is a disposition. Thus, depreciation for the retired engines ceases at the time of their retirement (taking into account the applicable convention), and B recognizes a loss upon this retirement. Further, B must capitalize the amount paid for the replacement engines pursuant to § 1.263(a)–3(k)(1)(i), and the replacement engines are a separate asset for disposition purposes pursuant to paragraph (c)(4)(ii)(D) of this section and for depreciation purposes pursuant to section 168(i)(6).

Example 5. The facts are the same as in *Example 4,* except B does not make the partial disposition election provided under paragraph (d)(2) of this section for the engines. Thus, the retirement of the replaced engines on one of the aircraft is not a disposition. As a result, depreciation continues for the cost of the aircraft (including the cost of the retired engines), and B does not recognize a loss for these retired engines. If B must capitalize the amount paid for the replacement engines pursuant to § 1.263(a)–3, the replacement engines are a separate asset for disposition purposes pursuant to paragraph (c)(4)(ii)(D) of this section and for depreciation purposes pursuant to section 168(i)(6).

Example 6. C, a corporation, owns several trucks that are used in its trade or business and described in asset class 00.241 of Rev. Proc. 87–56. C replaces the engine on one of the trucks with a new engine. Assume each truck is a unit of property as determined under § 1.263(a)–3(e)(3) and each engine is a major component or substantial structural part of the truck as determined under § 1.263(a)–3(k)(6). Because the trucks are described in asset class 00.241 of Rev. Proc. 87–56, C must treat each truck as the asset for disposition purposes. C does not make the partial disposition election provided under paragraph (d)(2) of this section for the engine. Thus, the retirement of the replaced engine on the truck is not a disposition. As a result, depreciation continues for the cost of the truck (including the cost of the retired engine), and C does not recognize a loss for this retired engine. If C must capitalize the amount paid for the replacement engine pursuant to § 1.263(a)–3, the replacement engine is a separate asset for disposition purposes pursuant to paragraph (c)(4)(ii)(D) of this section and for depreciation purposes pursuant to section 168(i)(6).

Example 7. D owns a retail building. D replaces 60 percent of the roof of this building. In accordance with paragraph (c)(4)(ii)(A) of this section, the retail building (including its structural components) is the asset for disposition purposes. Assume D must capitalize the costs incurred for replacing 60 percent of the roof pursuant to § 1.263(a)–3(k)(1)(vi). D makes the partial disposition election provided under paragraph (d)(2) of this section for the 60 percent of the replaced roof. Thus, the retirement of 60 percent of the roof is a disposition. As a result, depreciation for 60 percent of the roof ceases at the time of its retirement (taking into account the applicable convention), and D recognizes a loss upon this retirement. Further, D must capitalize the amount paid for the 60 percent of the roof pursuant to § 1.263(a)–3(k)(1)(i) and (vi) and the replacement 60 percent of the roof is a separate asset for disposition purposes pursuant to paragraph (c)(4)(ii)(D) of this section and for depreciation purposes pursuant to section 168(i)(6).

Example 8. (i) The facts are the same as in *Example 7.* Ten years after replacing 60 percent of the roof, D replaces 55 percent of the roof of the building. In accordance with paragraph (c)(4)(ii)(A) and (D) of this section, for disposition purposes, the retail building (including its structural components except the replacement 60 percent of the roof) is an asset and the replacement 60 percent of the roof is a separate asset. Assume D must capitalize the costs incurred for replacing 55 percent of the roof pursuant to § 1.263(a)–3(k)(1)(vi). D makes the partial disposition election provided under paragraph (d)(2) of this section for the 55 percent of the replaced roof. Thus, the retirement of 55 percent of the roof is a disposition.

(ii) However, D cannot determine from its records whether the replaced 55 percent is part of the 60 percent of the roof replaced ten years ago or whether the replaced 55 percent is part of the remaining 40 percent of the original roof. Pursuant to paragraph (g)(3) of this section, D identifies which asset it disposed of by using the first-in, first-out method of accounting. As a result, D disposed of the remaining 40 percent of the original roof and 25 percent of the 60 percent of the roof replaced ten years ago.

(iii) Thus, depreciation for the remaining 40 percent of the original roof ceases at the time of its retirement (taking into account the applicable convention), and D recognizes a loss upon this retirement. Further, depreciation for 25 percent of the 60 percent of the roof replaced ten years ago ceases at the time of its retirement (taking into account the applicable convention), and D recognizes a loss upon this retirement. Also, D must capitalize the amount paid for the 55 percent of the roof pursuant to § 1.263(a)–3(k)(1)(i) and (vi), and the replacement 55 percent of the roof is a separate asset for disposition purposes pursuant to paragraph (c)(4)(ii)(D) of this section and for depreciation purposes pursuant to section 168(i)(6).

Example 9. (i) On July 1, 2011, E, a calendar-year taxpayer, purchased and placed in service a multi-story office building that costs $20,000,000. The cost of each structural component of the building was not separately stated. E accounts for the building in its records as a single asset with a cost of $20,000,000. E depreciates the building as nonresidential real property and uses the optional depreciation table that corresponds with the general depreciation system, the straight-line method, a 39-year recovery period, and the mid-month convention. As of January 1, 2014, the depreciation reserve for the building is $1,261,000.

(ii) On June 30, 2014, E replaces one of the office building's elevators. E did not dispose of any other structural components of this building in 2014. E makes the partial disposition election provided under paragraph (d)(2) of this section for this elevator. Although the office building (including its structural components) is the asset for disposition purposes, the result of E making the partial disposition election for the elevator is that the retirement of the replaced elevator is a disposition. Because E cannot identify the cost of the structural components of the office building from its records, E determines the cost of any disposed structural component of this building by discounting the cost of the replacement structural component to its placed-in-service year cost using the Consumer Price Index. Using this reasonable method, E determines the cost of the retired elevator by discounting the cost of the replacement elevator to its cost in 2011 (the placed-in-service year) using the Consumer Price Index, resulting in $150,000 of the $20,000,000 purchase price for the building to be the cost of the retired elevator. Using the optional depreciation table that corresponds with the general depreciation system, the straight-line method, a 39-year recovery period, and the mid-month convention, the depreciation allowed or allowable for the retired elevator as of December 31, 2013, is $9,457.50.

(iii) For E's 2014 Federal tax return, the loss for the retired elevator is determined as follows. The depreciation allowed or allowable for 2014 for the retired elevator is $1,763 ((unadjusted depreciable basis of $150,000 × depreciation rate of 2.564% for 2014) × 5.5/12 months). Thus, the adjusted depreciable basis of the retired elevator is $138,779.50 (the adjusted depreciable basis of $140,542.50 removed from the building cost less the depreciation allowed or allowable of $1,763 for 2014). As a result, E recognizes a loss of $138,779.50 for the retired elevator in 2014, which is subject to section 1231.

(iv) For E's 2014 Federal tax return, the depreciation allowance for the building is computed as follows. As of January 1, 2014, the unadjusted depreciable basis of the building is reduced from $20,000,000 to $19,850,000 ($20,000,000 less the unadjusted depreciable basis of $150,000 for the retired elevator), and the depreciation reserve of the building is reduced from $1,261,000 to $1,251,542.50 ($1,261,000 less the depreciation allowed or allowable of $9,457.50 for the retired elevator as of

December 31, 2013). Consequently, the depreciation allowance for the building for 2014 is $508,954 ($19,850,000 × depreciation rate of 2.564% for 2014).

(v) E also must capitalize the amount paid for the replacement elevator pursuant to § 1.263(a)–3(k)(1)(i). The replacement elevator is a separate asset for tax disposition purposes pursuant to paragraph (c)(4)(ii)(D) of this section and for depreciation purposes pursuant to section 168(i)(6).

Example 10. (i) Since 2005, F, a calendar year taxpayer, has accounted for items of MACRS property that are mass assets in pools. Each pool includes only the mass assets that have the same depreciation method, recovery period, and convention, and are placed in service by F in the same taxable year. None of the pools are general asset accounts under section 168(i)(4) and the regulations under section 168(i)(4). F identifies any dispositions of these mass assets by specific identification.

(ii) During 2014, F sells 10 items of mass assets with a 5-year recovery period each for $100. Under the specific identification method, F identifies these mass assets as being from the pool established by F in 2012 for mass assets with a 5-year recovery period. Assume F depreciates this pool using the optional depreciation table that corresponds with the general depreciation system, the 200-percent declining balance method, a 5-year recovery period, and the half-year convention. F elected not to deduct the additional first year depreciation provided by section 168(k) for 5-year property placed in service during 2012. As of January 1, 2014, this pool contains 100 similar items of mass assets with a total cost of $25,000 and a total depreciation reserve of $13,000. Because all the items of mass assets in the pool are similar, F allocates the cost and depreciation allowed or allowable for the pool ratably among each item in the pool. Using this reasonable method (because all the items of mass assets in the pool are similar), F allocates a cost of $250 ($25,000 × (1/100)) to each disposed of mass asset and depreciation allowed or allowable of $130 ($13,000 × (1/100)) to each disposed of mass asset. The depreciation allowed or allowable in 2014 for each disposed of mass asset is $24 (($250 × 19.2%)/2). As a result, the adjusted depreciable basis of each disposed of mass asset under section 1011 is $96 ($250–$130—$24). Thus, F recognizes a gain of $4 for each disposed of mass asset in 2014, which is subject to section 1245.

(iii) Further, as of January 1, 2014, the unadjusted depreciable basis of the 2012 pool of mass assets with a 5-year recovery period is reduced from $25,000 to $22,500 ($25,000 less the unadjusted depreciable basis of $2,500 for the 10 disposed of items), and the depreciation reserve of this 2012 pool is reduced from $13,000 to $11,700 ($13,000 less the depreciation allowed or allowable of $1,300 for the 10 disposed of items as of December 31, 2013). Consequently, as of January 1, 2014, the 2012 pool of mass assets with a 5-year recovery period has 90 items with a total cost of $22,500 and a depreciation reserve of $11,700. Thus, the depreciation allowance for this pool for 2014 is $4,320 ($22,500 × 19.2%).

Example 11. (i) The facts are the same as in *Example 10.* Because of changes in F's recordkeeping in 2015, it is impracticable for F to continue to identify disposed of mass assets using specific identification and to determine the unadjusted depreciable basis of the disposed of mass assets. As a result, F files a Form 3115, Application for Change in Accounting Method, to change to a first-in, first-out method beginning with the taxable year beginning on January 1, 2015, on a modified cut-off basis. See § 1.446–1(e)(2)(ii)(*d*)(*2*)(*vii*). Under the first-in, first-out method, the mass assets disposed of in a taxable year are deemed to be from the pool with the earliest placed-in-service year that has assets as of the beginning of the taxable year of the disposition with the same recovery period as the asset disposed of. The Commissioner of Internal Revenue consents to this change in method of accounting.

(ii) During 2015, F sells 20 items of mass assets with a 5-year recovery period each for $50. As of January 1, 2015, the 2008 pool is the pool with the earliest placed-in-service year for mass assets with a 5-year recovery period, and this pool contains 25 items of mass assets with a total cost of $10,000 and a total depreciation reserve of $10,000. Thus, F allocates a cost of $400 ($10,000 × (1/25)) to each disposed of mass asset and depreciation allowed or allowable of $400 to each disposed of mass asset. As a result, the adjusted depreciable basis of each disposed of mass asset is $0. Thus, F recognizes a gain of $50 for each disposed of mass asset in 2015, which is subject to section 1245.

(iii) Further, as of January 1, 2015, the unadjusted depreciable basis of the 2008 pool of mass assets with a 5-year recovery period is reduced from $10,000 to $2,000 ($10,000 less the unadjusted depreciable basis of $8,000 for the 20 disposed of items ($400 × 20)), and the depreciation reserve of this 2008 pool is reduced from $10,000 to $2,000 ($10,000 less the depreciation allowed or allowable of $8,000 for the 20 disposed of items as of December 31, 2014). Consequently, as of January 1, 2015, the 2008 pool of mass assets with a 5-year recovery period has 5 items with a total cost of $2,000 and a depreciation reserve of $2,000.

(j) *Effective/applicability date*—(1) *In general.* This section applies to taxable years beginning on or after January 1, 2014.

(2) *Early application of this section.* A taxpayer may choose to apply the provisions of this section to taxable years beginning on or after January 1, 2012.

(3) *Early application of regulation project REG–110732–13.* A taxpayer may rely on the provisions of this section in regulation project REG–110732–13 for taxable years beginning on or after January 1, 2012. However, a taxpayer may not rely on the provisions of this section in regulation project REG–110732–13 for taxable years beginning on or after January 1, 2014.

(4) *Optional application of TD 9564.* A taxpayer may choose to apply § 1.168(i)–8T as contained in TD 9564 (76 FR 81060) December 27, 2011, to taxable years beginning on or after January 1, 2012. However, a taxpayer may not apply § 1.168(i)–8T as contained in TD 9564 (76 FR 81060) December 27, 2011, to taxable years beginning on or after January 1, 2014.

(5) *Change in method of accounting.* A change to comply with this section for depreciable assets placed in service in a taxable year ending on or after December 30, 2003, is a change in method of accounting to which the provisions of section 446(e) and the regulations under section 446(e) apply. A taxpayer also may treat a change to comply with this section for depreciable assets placed in service in a taxable year ending before December 30, 2003, as a change in method of accounting to which the provisions of section 446(e) and the regulations under section 446(e) apply. This paragraph (j)(5) does not apply to a change to comply with paragraph (d)(2) of this section (except as provided in paragraph (d)(2)(iii) or (d)(2)(iv)(B) of this section).

Beth Tucker,

Deputy Commissioner for Operations Support.

[FR Doc. 2013–21753 Filed 9–13–13; 11:15 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–1045]

RIN 1625AA00

Safety Zone; Military Munitions Recovery, Raritan River, Raritan, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent safety zone within the waters of the Raritan River upstream of the Perth Amboy Railroad Bridge. This proposed safety zone is necessary to provide for the protection of the maritime public and safety of navigation during removal of underwater explosive hazards in the Raritan River. This action is intended to protect the public from the dangers posed by underwater explosives by restricting unauthorized persons and vessels from traveling through or conducting underwater activities within a portion of the Raritan River while military munitions are rendered safe,

detonated, and/or removed from the area. Entry into this zone (as well as a broad array of other actions) would be prohibited within the safety zone unless authorized by the Captain of the Port New York or the designated on-scene representative.

DATES: Comments and related material must be received by the Coast Guard on or before October 21, 2013.

Requests for public meetings must be received by the Coast Guard on or before September 26, 2013.

ADDRESSES: You may submit comments identified by docket number USCG–2012–1045 using any one of the following methods:

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

(2) *Fax:* (202) 493–2251.

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Hannah Eko, U. S. Coast Guard, Sector New York, Waterways Management Division, telephone (718) 354–4114, email *Hannah.O.Eko@uscg.mil* or BMC Craig Lapeijko, Coast Guard First District Waterways Management Branch, telephone (617) 223–8381, email *craig.d.lapeijko@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
USACE United States Army Corps of Engineers

A. Public Participation and Request for Comments

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

1. Submitting Comments

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

To submit your comment online, go to *http://www.regulations.gov,* type the docket number [USCG–2012–1045] in the ''SEARCH'' box and click ''SEARCH''. Click on ''Submit a Comment'' on the line associated with this rulemaking.

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

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2012–1045) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

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

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before September 26, 2013., using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Basis and Purpose

The legal basis for the proposed rule is 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1., which collectively authorize the Coast Guard to establish safety zones.

The U.S. Army Corps of Engineers (USACE) has been investigating the former Raritan Arsenal for over 20 years. The former Raritan Arsenal was approximately 3,200 acres and enclosed by Woodbridge Avenue and the Raritan River; between Mill Road and Clearview Avenue. USACE investigations in the past have located military munitions and hazardous and toxic waste in the former Raritan Arsenal region. Beginning in the fall of 2013, the USACE plans to conduct a remedial investigation within the Raritan River using advanced metal detection, removal, and detonation techniques. The USACE has established a Web site for this project at *http://www.nan.usace.army.mil/Missions/Environmental/EnvironmentalRemediation/FormerlyUsedDefenseSites/FormerRaritanArsenal.aspx.*

The USACE is conducting a remedial investigation within the Raritan River using advanced metal detection, removal, and detonation techniques. This investigation is tentatively scheduled to begin in the fall of 2013 and may extend into 2014 or beyond. The Coast Guard believes that a safety

is needed to protect vessel traffic from the dangers of underwater explosives by restricting unauthorized persons and vessels from traveling through or conducting underwater activities within a portion of the Raritan River while military munitions are rendered safe, detonated, or removed from the area.

C. Discussion of Proposed Rule

The Coast Guard proposes to establish a safety zone encompassing all navigable waters of the Raritan River upstream of the Perth Amboy Railroad Bridge to ensure the safety of mariners and vessels around the military munitions removal area.

This safety zone would be enforced while on-scene workers are retrieving military munitions that could pose a hazard to persons or vessels operating in the area. Each military munitions retrieval is expected to require the activation of the safety zone for a minimum of 60 minutes. Intended work hours (subject to change) are 6:00 a.m. through 6:00 p.m., Monday through Friday. The USACE will provide notice of the activation of the safety zone via vessels stationed at the eastern and western boundaries of the safety zone. These vessels will have flashing yellow lights to alert mariners to their presence and that the safety zone is being enforced.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

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

Although this proposed rule would restrict access to a small portion of the Raritan River until military munitions are rendered safe and removed, the effect of this regulation would not be significant due to the following reasons: The safety zone would cover only a small portion of the navigable waters within the Raritan River during limited intervals of time. We expect portions of the safety zone to be activated for short period while the military munitions are being removed or detonated. In addition, vessels may be authorized to enter the zone with permission of the COTP.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit, fish, dive, or anchor in a portion of the Raritan River upstream of the Perth Amboy Railroad Bridge during the time the safety zone is activated.

This proposed safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This safety zone would only be activated for limited periods of time while the USACE is retrieving or detonating military munitions. Vessel traffic would be minimal because the location of the safety zone is in an area that does not experience high volumes of vessel traffic, with typical commercial traffic being very minimal. Upstream recreational vessel entities will be contacted concerning this safety zone. Before the activation of the zone, maritime advisories would be issued and widely available to users of the waterway in the vicinity of the Raritan River.

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

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.170 to read as follows:

§ 165.170 Safety Zone; Military Munitions Recovery, Raritan River, Raritan, NJ.

(a) *Location.*

The following area is a safety zone: All navigable waters of the Raritan River upstream of the Perth Amboy Railroad Bridge, which spans the waterway at approximately 40°29′46.3″ N, 74°16′51.5″ W.

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

(1) ''Designated representative'' means any U.S. Army Corps of Engineers personnel, any commissioned, warrant, or petty officer of the U.S. Coast Guard, and any member of the Coast Guard Auxiliary who has been designated by the Captain of the Port New York (COTP), to act on his or her behalf. As a designated representative, the U.S. Army Corps of Engineers official patrol vessel will communicate with vessels via VHF–FM radio or loudhailer.

(2) ''Official patrol vessel'' means any Coast Guard, Coast Guard Auxiliary, Army Corp of Engineers, state, or local law enforcement vessels assigned or approved by the COTP.

(c) *Regulations.*

(1) The general regulations in 33 CFR 165.23 apply.

(2) Entry, transit, diving, dredging, dumping, fishing, trawling, conducting salvage operations, remaining or anchoring within the safety zone described in paragraph (a) of this section is prohibited unless authorized by the COTP.

(3) Upon being hailed by a U.S. Coast Guard vessel, U.S. Army Corps of Engineers vessel or a designated representative, by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(4) Vessel operators desiring to enter, transit, dive, dredge, dump, fish, trawl, conduct salvage operations, remain within or anchor within the safety zone must contact the COTP or a designated representative via VHF channel 16 or by phone at (718) 354–4353 (Sector New York Command Center) to request permission.

(5) Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or a designated representative.

Dated: September 6, 2013.

G. Loebl,

Captain, U.S. Coast Guard, Captain of the Port New York.

[FR Doc. 2013–22756 Filed 9–18–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0676]

RIN 1625–AA00

Safety Zone; Motion Picture Production; Chicago, Illinois

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the temporary safety zone for motion picture filming in Calumet Harbor, Chicago, IL from 9 p.m. until 6 a.m., from September 15 through September 29, 2013. This action is necessary and intended to ensure safety of life on navigable waters during nighttime filming of a motion picture in Calumet Harbor. During the aforementioned period, the Coast Guard will enforce restrictions upon, and control movement of, vessels in a specified safety zone. During the enforcement period, no person or vessel may enter the safety zone without permission of the Captain of the Port, Lake Michigan.

DATES: The 33 CFR 165.T09–0676(a), Calumet Harbor, safety zone, will be enforced from 9 p.m. until 6 a.m., from September 15 through September 29, 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, Milwaukee, WI at (414) 747–7148, email *Joseph.P.McCollum@uscg.mil.*

SUPPLEMENTARY INFORMATION: This notice provides an updated enforcement schedule for the Calumet Harbor safety zone listed in 33 CFR 165.T09–0676 Safety Zone; Motion Picture Production; Chicago, IL (78 FR 20241, August 20, 2013). This updated schedule

accommodates the anticipated nighttime filming of a motion picture in the Calumet Harbor safety zone. Specifically, this zone encompasses all waters of Lake Michigan, Calumet Harbor west of an imaginary line connecting 41°44′29.4″ N, 087°31′33.9″ W and 41°44′21″ N, 087°31′47.12″ W (NAD 83). This zone will be enforced from 9 p.m. until 6 a.m. during filming from September 15 through September 29, 2013. This notice does not impact or change the enforcement schedule published August 20, 2013, for the five safety zones in 33 CFR 165.T09–0676: from 6 a.m. to 9 p.m. on intermittent dates from August 20 through September 30, 2013.

All vessels must obtain permission from the Captain of the Port, Lake Michigan, or his on-scene representative to enter, move within, or exit the safety zone. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port, Lake Michigan, or his designated representative.

This notice is issued under authority of 33 CFR 165.T09–0676 Safety Zone; Motion Picture Production; Chicago, IL and 5 U.S.C. 552(a). Because this notice has been written to accommodate late-night filming in the production of a motion picture, the Coast Guard anticipates that this zone will not be enforced for each night of September 15 until September 29, but only during those nights in which filming occurs. As such, in addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this event via Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port, Lake Michigan, or his on-scene representative may be contacted via VHF Channel 16.

Dated: September 10, 2013.

M.W. Sibley,

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

[FR Doc. 2013–22762 Filed 9–18–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter VI

[Docket ID ED–2013–OPE–0124]

Negotiated Rulemaking Committee, Negotiator Nominations and Schedule of Committee Meetings—Title IV Federal Student Aid Programs, Violence Against Women Act

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Intention to establish negotiated rulemaking committee.

SUMMARY: We announce our intention to establish a negotiated rulemaking committee to prepare proposed regulations to address the changes to the campus safety and security reporting requirements in the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), made by the Violence Against Women Reauthorization Act of 2013 (VAWA). The committee will include representatives of organizations or groups with interests that are significantly affected by the subject matter of the proposed regulations. We request nominations for individual negotiators who represent key stakeholder constituencies for the issues to be negotiated to serve on the committee, and we set a schedule for committee meetings.

DATES: We must receive your nominations for negotiators to serve on the committee on or before October 21, 2013. The dates, times, and locations of the committee meetings are set out in the *Schedule for Negotiations* section in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: Please send your nominations for negotiators to Wendy Macias, U.S. Department of Education, 1990 K Street NW., Room 8017, Washington, DC 20006. Telephone: (202) 502–7526 or by email: *wendy.macias@ed.gov.*

FOR FURTHER INFORMATION CONTACT: For information about the content of this notice, including information about the negotiated rulemaking process or the nomination submission process, contact: Wendy Macias, U.S. Department of Education, 1990 K Street NW., room 8017, Washington, DC 20006. Telephone: (202) 502–7526 or by email: *wendy.macias@ed.gov.*

For general information about the negotiated rulemaking process, see *The Negotiated Rulemaking Process for Title IV Regulations, Frequently Asked Questions* at *http://www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html.*

If you use a telecommunications device for the deaf (TDD) or text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On May 1, 2012, we published a notice in the **Federal Register** (77 FR 25658) announcing our intent to establish a negotiated rulemaking committee under section 492 of the Higher Education Act of 1965, as amended (HEA).

On April 16, 2013, we published a notice in the **Federal Register** (78 FR 2247), which we corrected on April 30, 2013 (78 FR 25235), announcing additional topics for consideration for action by the negotiated rulemaking committee. The additional topics for consideration were cash management of funds provided under the title IV Federal Student Aid programs, State authorization for programs offered through distance education or correspondence education, State authorization for foreign locations of institutions located in a State, clock to credit hour conversion, gainful employment, changes to the campus safety and security reporting requirements in the Clery Act made by the VAWA (Pub. L. 113–4), and the definition of ''adverse credit'' for borrowers in the Federal Direct PLUS Loan Program.

We announced three public hearings at which interested parties could comment on the new topics suggested by the Department and suggest additional topics for consideration for action by the negotiating committee. On May 13, 2013, we announced in the **Federal Register** (78 FR 27880) the addition of a fourth hearing. The hearings were held on May 21, 2013, in Washington, DC; May 23, 2013, in Minneapolis, Minnesota; May 30, 2013, in San Francisco, California; and June 4, 2013, in Atlanta, Georgia. We also invited parties unable to attend a public hearing to submit written comments on the additional topics and to submit other topics for consideration. Transcripts from all six public hearings are available at *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/index.html.* Written comments submitted in response to the May 1, 2012, and April 16, 2013, notices may be viewed through the Federal eRulemaking Portal at *www.regulations.gov.* Instructions for finding comments are available on the site under ''How to Use Regulations.gov'' in the Help section. Individuals can enter docket ID ED–2012–OPE–0008 in the search box to locate the appropriate docket.

On June 12, 2013, while we continued to review the testimony offered at the public hearings and the comments submitted through the public comment process regarding other proposed rulemaking topics, we announced our intention to establish a negotiated rulemaking committee to prepare proposed regulations to establish standards for programs that prepare students for gainful employment in a recognized occupation (78 FR 35179).

Regulatory Issues: After considering the information received at the regional hearings and the written comments, we have decided to establish an additional negotiating committee to prepare proposed regulations to address the changes made by the VAWA to the campus safety and security reporting requirements in the Clery Act. In addition, we may propose additional changes to clarify and update the existing campus safety and security reporting requirements. We intend to select negotiators for the committee who represent the interests significantly affected by the topics proposed for negotiations. In so doing, we will follow the requirement in section 492(b)(1) of the HEA that the individuals selected must have demonstrated expertise or experience in the relevant subjects under negotiation. We will also select individual negotiators who reflect the diversity among program participants, in accordance with section 492(b)(1) of the HEA. Our goal is to establish a committee that will allow significantly affected parties to be represented while keeping the committee size manageable.

The committee may create subgroups on particular topics that may involve additional individuals who are not members of the committee. Such individuals who are not selected as members of the committee will be able to attend the meetings, have access to the individuals representing their constituencies, and participate in informal working groups on various issues between the meetings. The committee meetings will be open to the public.

While this committee will focus on changes made by the VAWA to the campus safety and security reporting requirements in the Clery Act, the Department continues to review the valuable testimony offered at the public hearings and the comments submitted through the public comment process regarding other proposed rulemaking topics. These include cash management of funds provided under title IV Federal Student Aid programs, regulations designed to prevent fraud, State authorization for programs offered through distance education or correspondence education, State authorization for foreign locations of institutions located in a State, clock to credit hour conversion, the definition of ''adverse credit'' for borrowers in the Federal Direct PLUS Loan Program; and campus-based Federal Student Aid program reforms. We anticipate announcing our intention to establish a negotiated rulemaking committee to consider some or all of these other proposed rulemaking topics in the coming months.

Constituencies: We have identified the following constituencies as having interests that are significantly affected by the topics proposed for negotiations. The Department plans to seat as negotiators individuals from organizations or groups representing these constituencies:

- Students.
  - We are particularly interested in organizations or groups representing lesbian, gay, bisexual, and transgendered students; male students; female students; minority students; and students with disabilities.
- Legal assistance organizations that represent students.
- Consumer advocacy organizations.
  - We are particularly interested in victims' and human rights organizations, Title IX advocacy groups, and anti-defamation groups.
- State higher education executive officers.
- State attorneys general and other appropriate State officials.
- Institutions of higher education eligible to receive Federal assistance under title III, Parts A, B, and F and title V of the HEA, which include Historically Black Colleges and Universities, Hispanic-Serving Institutions, American Indian Tribally Controlled Colleges and Universities, Alaska Native and Native Hawaiian-Serving Institutions, Predominantly Black Institutions, and other institutions with a substantial enrollment of needy students as defined in title III of the HEA.
- Two-year public institutions of higher education.
- Four-year public institutions of higher education.
- Private, non-profit institutions of higher education.
- Private, for-profit institutions of higher education.
- Institutional campus public safety officials.
- Institutional student affairs/disciplinary divisions.
- Institutional centers for women, lesbian, gay, bisexual, and transgendered individuals.
- Institutional attorneys.
- Indian tribal governments.
- Campus safety advocates.

The goal of the committee is to develop proposed regulations that reflect a final consensus of the committee. Consensus means that there is no dissent by any member of the negotiating committee, including the committee member representing the Department. An individual selected as a negotiator will be expected to represent the interests of his or her organization or group and participate in the negotiations in a manner consistent with the goal of developing proposed regulations on which the committee will reach consensus. If consensus is reached, all members of the organization or group represented by a negotiator are bound by the consensus and are prohibited from commenting negatively on the resulting proposed regulations. The Department will not consider any such negative comments on the proposed regulations that are submitted by members of such an organization or group.

Nominations: Nominations should include:

- The name of the nominee, the organization or group the nominee represents, and a description of the interests that the nominee represents.
- Evidence of the nominee's expertise or experience in the subjects to be negotiated.
- Evidence of support from individuals or groups within the constituency that the nominee will represent.
- The nominee's commitment that he or she will actively participate in good faith in the development of the proposed regulations.
- The nominee's contact information, including address, phone number, fax number, and email address.

For a better understanding of the negotiated rulemaking process, nominees should review *The Negotiated Rulemaking Process for Title IV Regulations, Frequently Asked Questions* at *http://www.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html* prior to committing to serve as a negotiator.

Nominees will be notified whether or not they have been selected as negotiators as soon as the Department's review process is completed.

Schedule for Negotiations: The VAWA Committee will meet for three sessions on the following dates:

Session 1: January 13–14, 2014
Session 2: February 24–25, 2014
Session 3: March 31–April 1, 2014
Sessions will run from 9 a.m. to 5 p.m.

The meetings for the committee will be held at the U.S. Department of Education at: 1990 K Street NW. Eighth Floor Conference Center, Washington, DC 20006

The meetings are open to the public.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person

listed under **FOR FURTHER INFORMATION CONTACT**.

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Program Authority: 20 U.S.C. 1098a.

Dated: September 13, 2013.

Lynn B. Mahaffie,

Acting Deputy Assistant Secretary for Policy, Planning, and Innovation, delegated the authority to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

[FR Doc. 2013–22868 Filed 9–18–13; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2012–0475; FRL–9901–05–Region 8]

Approval and Promulgation of Air Quality Implementation Plans; State of Colorado Second Ten-Year PM_{10} Maintenance Plan for Aspen

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of the State Implementation Plan (SIP) revisions submitted by the State of Colorado. On May 25, 2011, the Governor of Colorado's designee submitted to EPA a revised maintenance plan for the Aspen area for the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to 10 microns (PM_{10}), which was adopted by the State on December 16, 2010. As required by Clean Air Act (CAA) section 175A(b), this revised maintenance plan addresses maintenance of the PM_{10} standard for a second 10-year period beyond the area's original redesignation to attainment for the PM_{10} NAAQS. In addition, EPA is proposing approval of the revised maintenance plan's 2023 transportation conformity motor vehicle emissions budget for PM_{10}. This action is being taken under sections 110 and 175A of the CAA.

DATES: Written comments must be received on or before October 21, 2013.

ADDRESSES: Submit your comments, identified by Docket number EPA–R08–OAR–2012–0475, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: ostigaard.crystal@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Carl Daly, Director, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Carl Daly, Director, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

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

FOR FURTHER INFORMATION CONTACT: Crystal Ostigaard, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6602, *ostigaard.crystal@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Rules section of this **Federal Register**, EPA is approving the State's SIP revision through a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. Then, EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. See the information provided in the Direct Final action of the same title which is located in the Rules section of this **Federal Register**.

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

Dated: August 28, 2013.

Shaun L. McGrath,

Regional Administrator, Region 8.

[FR Doc. 2013–22735 Filed 9–18–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0141; FRL–9901–16–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Attainment Plan for the Philadelphia-Wilmington, Pennsylvania-New Jersey-Delaware Nonattainment Area for the 1997 Annual Fine Particulate Matter Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule; Supplemental.

SUMMARY: EPA is issuing a supplement to its proposed approval of Delaware's state implementation plan (SIP) published in the **Federal Register** on November 19, 2012. The SIP revision demonstrates Delaware's attainment of the 1997 annual fine particulate matter ($PM_{2.5}$) national ambient air quality standard (NAAQS) for the Philadelphia-Wilmington, Pennsylvania-New Jersey-Delaware (PA–NJ–DE) $PM_{2.5}$ nonattainment area. This supplemental proposal addresses the potential effects of a January 4, 2013 decision of the United States Court of Appeals for the District of Columbia Circuit (DC Circuit Court) remanding to EPA two final rules implementing the 1997 $PM_{2.5}$ NAAQS on EPA's proposed action. In addition, EPA is revising its proposed approval of Delaware's attainment plan for the 1997 annual $PM_{2.5}$ NAAQS to not rely upon regulations which were part of the plan submitted by Delaware because they are not necessary to demonstrate attainment. Finally, EPA is proposing to approve the 2009 and 2012 motor

vehicle emissions budgets (MVEBs) used for transportation conformity purposes for New Castle County in Delaware. EPA is seeking comment only on the issues raised in this supplemental proposal and is not reopening for comment other issues addressed in its prior proposal.

DATES: Written comments must be received on or before October 21, 2013.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2010–0141 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2010–0141, Cristina Fernandez, Associate Director, Office of Air Planning Program, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2010–0141. 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.

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 during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by email at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

EPA previously proposed to approve a SIP revision submitted by the State of Delaware to meet the attainment plan requirements for the 1997 annual $PM_{2.5}$ NAAQS for the Philadelphia-Wilmington, Pennsylvania-New Jersey-Delaware (PA–NJ–DE) nonattainment area (the ''Philadelphia Area'') on November 19, 2012 (77 FR 69399). Delaware initially submitted the attainment plan on April 3, 2008, and amended it on April 25, 2012, in order to address issues related to MVEBs. This SIP submission did not include the New Source Review (NSR) program requirements for the 1997 $PM_{2.5}$ NAAQS, which the State and EPA have addressed separately.[1]

EPA's November 19, 2012 notice of proposed rulemaking (NPR), proposed to approve Delaware's SIP submission as meeting all relevant statutory and regulatory requirements for attainment plans for the 1997 annual $PM_{2.5}$ NAAQS.[2] EPA stated in the NPR that it had ''determined that Delaware's attainment demonstration meets the applicable requirements of the Clean Air Act (CAA), as described in the $PM_{2.5}$ Implementation Rule published on April 25, 2007.'' Thus, Delaware submitted the attainment plan, and EPA proposed action on that submission, premised upon the belief that attainment plan requirements for the 1997 annual $PM_{2.5}$ NAAQS should be designed to meet, and measured against, the statutory requirements of CAA as interpreted in EPA's existing implementation rules.[3]

Subsequent to Delaware's submission of the attainment plan and EPA's proposed action upon it, however, the D.C. Circuit Court issued a decision with potential impacts on EPA's proposed action. On January 4, 2013, in *NRDC* v. *EPA,* the D.C. Circuit Court remanded to EPA both the ''Final Clean Air Fine Particle Implementation Rule'' (the ''2007 $PM_{2.5}$ Implementation Rule'')[4] and the ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)'' final rule (the ''2008 $PM_{2.5}$ NSR/Prevention of Significant Deterioration (PSD) Implementation Rule'').[5] The D.C. Circuit Court found that EPA erred in both rules in implementing the 1997 $PM_{2.5}$ NAAQS solely pursuant to the general implementation provisions of subpart 1 of Part D of Title I of the CAA (subpart 1), rather than also pursuant to the implementation provisions specific to particulate matter in subpart 4 of Part D of Title I (subpart 4).[6] As a result, the D.C. Circuit Court remanded both rules and instructed EPA ''to repromulgate these rules pursuant to subpart 4 consistent with this opinion.'' Significantly, the D.C. Circuit Court's decision remanded the rules to EPA and did not vacate them. In a future rulemaking action, EPA intends to respond to the D.C. Circuit Court's remand and to promulgate new implementation regulations for the $PM_{2.5}$ NAAQS in accordance with the requirements of subpart 4. In the

[1] EPA approved Delaware's SIP submission for the NSR program requirements for the 1997 $PM_{2.5}$ NAAQS on October 2, 2012 (77 FR 60053).

[2] *See* 77 FR 69399. EPA notes that the November 19, 2012 NPR also addressed the MVEBs for transportation conformity purposes for New Castle County, Delaware. EPA is supplementing its proposed action on the MVEBs and is taking additional comment on that portion of the prior proposed action based on EPA's further evaluation of Delaware's proposed MVEBs even though MVEBs are unaffected by the intervening court decision in *NRDC* v. *EPA.*

[3] EPA notes that although the CAA imposes no statutory duty upon EPA to issue implementation rules or guidance for the $PM_{2.5}$ NAAQS, historically, EPA has elected to issue implementation rules or guidance in order to assist states with the development of SIPs so that both states and EPA can better meet their respective statutory obligations.

[4] *See* 72 FR 20586, April 25, 2007.

[5] *See* 73 FR 28321, May 16, 2008.

[6] The D.C. District Court's opinion in *NRDC* v. *EPA* did not expressly consider that implementation under subpart 4 requirements also includes continued application of relevant subpart 1 requirements, to the extent that subpart 4 does not override subpart 1.

interim, one limited purpose of this supplemental rulemaking action on the Delaware attainment plan for the Philadelphia Area is to reevaluate EPA's proposed approval in light of the potential effects of the D.C. Circuit Court's decision on implementation of the 1997 $PM_{2.5}$ NAAQS.

In addition, EPA notes that in a separate rulemaking action, published on February 22, 2013, EPA identified deficiencies associated with several regulations within the approved Delaware SIP including a specific provision within 7–1100–1142 Del. Code Regs § 2 (Regulation 1142, Section 2.0, Control of Nitrogen Oxide (NOx) Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries). *See* 78 FR 12460, February 22, 2013. In that proposed rulemaking action, EPA identified specific Delaware regulations in which state officials are provided unbounded discretion to set alternative emission limits during periods of start-up and shutdown of equipment through a permitting process that does not entail subsequent approval of the alternative emission limits through a SIP submission. EPA has proposed to find that this process constitutes an impermissible director's discretion provision with the potential to allow impermissible discretionary exemptions from SIP emission limits. *See* 78 FR at 12495–12496. Today's rulemaking action providing supplemental analysis and a revised proposal on Delaware's 1997 annual $PM_{2.5}$ attainment plan is separate from the February 22, 2013 action. EPA's action in this supplemental proposal does not reopen the public comment period associated with the separate February 22, 2013 action; nor does today's rulemaking action purport to revise or amend that separate proposed action. EPA will be taking a separate final action on the February 22, 2013 proposed rulemaking action. Today's rulemaking action proposes to revise EPA's original proposal in the November 19, 2012 NPR to propose approval of Delaware's 1997 $PM_{2.5}$ attainment plan as meeting the requirements for attainment plans for the 1997 $PM_{2.5}$ NAAQS, without reliance on certain measures identified in the attainment plan: (1) Regulation 1142 Section 2.0 for NO_X emissions at petroleum refineries; (2) certain control measures for volatile organic compound (VOC) emissions; and (3) the Clean Air Interstate Rule (CAIR). These measures are not necessary for the purposes of Reasonably Available Control Measures (RACM), Reasonably Available Control Technology (RACT), section 189(e), or the attainment demonstration. EPA is not relying on Regulation 1142 Section 2.0, the VOC control measures, and CAIR as these measures are not necessary for expeditious attainment of the 1997 $PM_{2.5}$ NAAQS in the Philadelphia Area for the reasons described in detail in this rulemaking action.[7]

Like many of the areas which EPA initially designated nonattainment for the 1997 $PM_{2.5}$ NAAQS, the Philadelphia Area has already attained these NAAQS. EPA has issued both a clean data determination and a determination of attainment for the Philadelphia Area.[8] However, because Delaware has already submitted the attainment plan for the Philadelphia Area, and has not withdrawn it, EPA needs to evaluate the SIP submission for compliance with the CAA. In the context of taking action under section 110(k) to approve or disapprove a previously submitted attainment plan for the 1997 $PM_{2.5}$ NAAQS for an area that has attained the NAAQS, EPA believes that it would be helpful after the D.C. Circuit Court's decision to consider such pending attainment plans in light of the provisions of subpart 4.

Accordingly, EPA has considered possible approaches to evaluating pending attainment plans for the 1997 $PM_{2.5}$ NAAQS that states have already developed and submitted to EPA in reliance on the remanded 2007 $PM_{2.5}$ Implementation Rule. One potential approach would be for EPA to request that the state in question simply withdraw its pending SIP submission *in toto,* engage in a new state rulemaking process to revise and restructure the contents of the submission in order to address subpart 4 requirements explicitly, and then to resubmit the revised submission to EPA. Such an approach could, however, require substantial investment of additional rulemaking resources by both the state and EPA and could inject substantial unwarranted delay into the process. Although such an approach might be appropriate in the case of some nonattainment areas, *e.g.,* those with continuing nonattainment problems for the 1997 $PM_{2.5}$ NAAQS, EPA questions whether this approach would be constructive in all areas. In particular, EPA questions the necessity for such a resource and time intensive approach for areas that are already factually attaining the 1997 $PM_{2.5}$ NAAQS through the attainment plan already adopted and submitted by the state.

An alternative approach would be for EPA to proceed to evaluate the State's existing attainment plan submission for the 1997 $PM_{2.5}$ NAAQS in order to determine whether it would meet not only the applicable requirements of subpart 1, but also meet the applicable requirements of subpart 4. This approach would be consistent with the D.C. Circuit Court's decision that EPA must implement the $PM_{2.5}$ NAAQS consistent with the requirements of subpart 4. As set forth in this rulemaking action, although Delaware's plan was originally submitted to address subpart requirements in light of the important fact that the Area has attained the 1997 $PM_{2.5}$ NAAQS, EPA believes that the submission adequately addresses the requirements of both subparts 1 and 4. In these circumstances, where the existing attainment plan submission is adequate, Delaware and EPA can preserve limited resources for efforts that may be needed to address any ongoing nonattainment problems under the 2006 $PM_{2.5}$ NAAQS and the 2012 $PM_{2.5}$ NAAQS.

EPA intends to provide a comprehensive response to the DC Circuit Court's remand in *NRDC* v. *EPA* in a future rulemaking action. In the interim, EPA will proceed to review attainment plans that have already been submitted but are not yet approved where appropriate. In this supplemental notice, EPA examines the substance of Delaware's SIP submission with regard to consistency with subpart 4 as well as subpart 1. With respect to the relevant substantive requirements for attainment plans, EPA notes that subpart 1 contains general air quality planning requirements for areas designated nonattainment. By contrast, subpart 4 contains air quality planning requirements specifically applicable to PM_{10} nonattainment areas.[9] Under the D.C. Circuit Court's January 4, 2013 decision in *NRDC* v. *EPA,* these same statutory requirements also apply for $PM_{2.5}$ nonattainment areas. EPA has longstanding general guidance documents that interpret the 1990 amendments to the CAA, commonly known as the ''General Preamble'' and the ''Addendum,'' that make recommendations to states for meeting the statutory requirements for SIPs for nonattainment areas including those of

[7] As discussed in more detail later in this notice, EPA is also proposing herein to approve the 2009 and 2012 MVEBs for New Castle County in Delaware.

[8] EPA issued both a determination of attainment and a clean data determination for the Philadelphia Area on May 16, 2012 (77 FR 28782).

[9] PM_{10} refers to particulates nominally 10 micrometers in diameter or smaller. CAA section 302(t).

subpart 4.[10] In the General Preamble, EPA discussed the relationship of subpart 1 and subpart 4 SIP requirements, and pointed out that subpart 1 requirements were to an extent ''subsumed by, or integrally related to, the more specific PM_{10} requirements.'' [11]

The requirements of subpart 1 for attainment plans include, among other things: (1) Section 172(c)(1) (RACM, RACT, and attainment demonstrations); (2) section 172(c)(2) (reasonable further progress (''RFP'')); (3) section 172(c)(3) (emissions inventories); (4) section 172(c)(5) (NSR permit program); and (5) section 172(c)(9) (contingency measures). The subpart 4 requirements for attainment plans are generally comparable, but also impose distinct requirements for nonattainment areas based upon the area's classification as either ''moderate'' or ''serious'' and set some specific timing requirements, such as for imposition of control measures. In general, the specific requirements for attainment plans required initially of all areas under subpart 4 include: (1) Section 189(a)(1)(A) (NSR permit program); (2) section 189(a)(1)(B), (attainment demonstration); (3) section 189(a)(1)(C) (RACM and RACT); (4) section 189(c) (RFP and quantitative milestones); and (5) section 189(e) (precursor requirements for major stationary sources). Subpart 4 also includes additional statutory SIP planning requirements in the event that EPA reclassifies a moderate nonattainment area to a serious nonattainment area and in the event the area needs additional extensions of time to attain the NAAQS. The General Preamble and Addendum provide useful additional guidance on the specific subpart 4 statutory requirements.

For the purposes of evaluating the Delaware attainment plan for the Philadelphia Area for the 1997 annual $PM_{2.5}$ NAAQS, EPA believes that the State's submission satisfies the relevant provisions of subpart 4. The analysis supporting this conclusion is described in more detail in this rulemaking action. After addressing the classification of the Area under subpart 4, EPA discusses the pending SIP submission from the perspective of subpart 4 requirements, following the same topic order as the November 19, 2012 NPR: (1) Pollutants addressed; (2) emissions inventory requirements; (3) modeling; (4) RACM and RACT; (5) RFP; (6) contingency measures; and (7) attainment date. For each of these topics, EPA considers the potential impact of the D.C. Circuit Court's decision in *NRDC* v. *EPA* on EPA's proposed approval of the Delaware attainment plan for the 1997 annual $PM_{2.5}$ NAAQS for the Philadelphia Area.

II. EPA's Analysis

A. Classification

A preliminary step in evaluating the State's attainment plan submission for compliance with subpart 4 requirements is ascertaining the correct classification of the Philadelphia Area as either a ''moderate'' or a ''serious'' nonattainment area. EPA's designations for the 1997 annual $PM_{2.5}$ NAAQS did not include any classifications for nonattainment areas, but this Area would automatically have been classified as a ''moderate'' nonattainment area.[12] Under section 188, the CAA provides that all areas designated nonattainment under subpart 4 should initially be classified ''by operation of law'' as moderate nonattainment areas, and that they remain classified as moderate nonattainment areas unless and until EPA later reclassifies the area as a serious nonattainment area.[13]

Thus, for purposes of evaluating the attainment plan submitted by Delaware for the Philadelphia Area, EPA believes that it is appropriate to consider the Area as a moderate nonattainment area with regard to the requirements of subpart 4. Sections 189(a) and (c) apply to moderate nonattainment areas and include the following requirements: (1) An approved permit program for construction of new and modified major stationary sources (section 189(a)(1)(A)); (2) an attainment demonstration (section 189(a)(1)(B)); (3) provisions for RACM and RACT (section 189(a)(1)(C)); (4) RFP and quantitative milestones (section 189(c)); and (5) regulation of $PM_{2.5}$ precursors (in general to meet RACM and RACT requirements and as specifically required for major stationary sources by section 189(e)).[14] Other subpart 1 requirements for attainment plans continue to apply to $PM_{2.5}$ nonattainment areas under subpart 4 and include the following: (1) Emissions inventories (section 172(c)(3)) and (2) contingency measures (section 172(c)(9)).

B. Pollutants Addressed

Another consideration in evaluating the State's attainment plan from the perspective of the D.C. Circuit Court's decision and subpart 4 is the approach to control of $PM_{2.5}$ precursors in the Philadelphia Area. EPA's 2007 $PM_{2.5}$ Implementation Rule included regulatory presumptions concerning certain $PM_{2.5}$ precursors applicable to attainment plans and control measures related to those plans. Specifically, in 40 CFR 51.1002, EPA provided that a state should address sources of $PM_{2.5}$, sulfur dioxide (SO_2), and NO_X emissions in its attainment plan, but that a state was ''not required to address VOC [and ammonia] as . . . $PM_{2.5}$ attainment plan precursor[s] and to evaluate sources of VOC [and ammonia] emissions in the State for control measures.''

EPA established these presumptions concerning VOCs and ammonia in the 2007 $PM_{2.5}$ Implementation Rule because of uncertainties regarding the emission inventories for these pollutants and the effectiveness of specific control measures in various regions of the country in reducing $PM_{2.5}$ concentrations. EPA also left open the possibility, however, for such regulation of VOC and ammonia emissions as $PM_{2.5}$ precursors in any nonattainment area where that was necessary for

[10] *See* ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' (57 FR 13498, April 16, 1992) (hereafter, General Preamble). EPA notes that it has issued additional guidance for attainment plans for PM_{10} in particular, including extra requirements for areas classified as ''serious'' nonattainment areas under subpart 4. *See* ''State Implementation Plans for Serious PM_{10} Nonattainment Areas, and Attainment Date Waivers for PM_{10} Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' (59 FR 41998, August 16,1994) (hereafter, Addendum).

[11] *See* 57 FR 13538.

[12] EPA notes that in 2005, it was proceeding under the assumption that it was appropriate to implement the 1997 $PM_{2.5}$ NAAQS under subpart 1 and accordingly did not classify areas at the time of the designations.

[13] EPA has already addressed the requirements of section 188 concerning classifications under subpart 4, including the issue of discretionary and mandatory reclassification from moderate to serious, in the General Preamble. *See* 57 FR 13498, at 13537–8. There is no basis to conclude that the Philadelphia Area should be reclassified from moderate to serious. Under section 188(b), EPA has authority to reclassify a moderate area to serious before the attainment date if the Administrator determines that the area cannot attain the NAAQS by the applicable attainment date under section 188(c)(1) for moderate areas, *i.e.,* by the end of the sixth calendar year after designation. Under section 188(b)(2), EPA has a duty to reclassify such a moderate area to serious if the area fails to attain by the applicable attainment date. Because the Philadelphia Area began attaining the 1997 annual $PM_{2.5}$ NAAQS in 2010, and continued to attain in the sixth calendar year following the designation of the area effective in April of 2005, there would therefore be no basis for reclassification of the area to serious and thus no need to require the state to address the statutory requirements for an attainment plan for a serious nonattainment area under subpart 4.

[14] EPA notes that this action does not address the NSR permit program requirements for the 1997 $PM_{2.5}$ NAAQS. Delaware has addressed those requirements in a separate SIP submission which EPA approved on October 2, 2012 (77 FR 60053).

purposes of attaining the 1997 $PM_{2.5}$ NAAQS. EPA intended these to be rebuttable presumptions that either the state or EPA might reverse through notice and comment rulemaking, if that were necessary to provide for attainment in a given nonattainment area. These presumptions were not limited to emissions only from major stationary sources, but rather were presumptions applicable to precursor emissions from any sources of emissions within the area.[15]

EPA's approach to the consideration of $PM_{2.5}$ precursors was called into question in the D.C. Circuit Court's decision in *NRDC* v. *EPA.* The D.C. Circuit Court's decision made specific reference to both section 189(e) and 40 CFR 51. 1002, and stated that:

> In light of our disposition, we need not address the petitioners' challenge to the presumptions in [40 CFR 51.1002] that volatile organic compounds and ammonia are not $PM_{2.5}$ precursors, as subpart 4 expressly governs precursor presumptions.[16]

Elsewhere in the D.C. Circuit Court's opinion, however, the D.C. Circuit Court explicitly observed that:

> Ammonia is a precursor to fine particulate matter, making it a precursor to both $PM_{2.5}$ and PM_{10}. For a PM_{10} nonattainment area governed by subpart 4, a precursor is presumptively regulated. See 42 U.S.C. § 7513a(e) [section 189(e)].[17]

The D.C. Circuit Court reasoned that EPA's approach to precursors in the 2007 $PM_{2.5}$ Implementation Rule had the effect of reversing the presumption embodied within subpart 4 that a state should address PM_{10} precursors unless the state made a specific showing why regulation of a particular precursor is not necessary.[18]

Although the D.C. Circuit Court did not vacate the 2007 $PM_{2.5}$ Implementation Rule, in this interim period while EPA seeks to respond to the D.C. Circuit Court's directive to apply subpart 4, EPA believes it is prudent to evaluate whether an attainment plan adequately addresses precursors under subpart 4 without reliance on the precursor presumptions in 40 CFR 51.1002. The provisions of subpart 4 do not define the term ''precursor'' for purposes of PM_{10}, nor do they explicitly require the control of any specifically identified particulate matter precursor. However, section 189(e) indicates that consideration of precursors generally is necessary for attainment plans, and explicitly requires the control of the appropriate precursors from major stationary sources, unless there is a demonstration that such major stationary sources do not contribute significantly to nonattainment in the area.[19] EPA has long recognized the scientific basis for concluding that there are multiple precursors to PM_{10}, and in particular to $PM_{2.5}$.[20] $PM_{2.5}$ chemical precursors include SO_2, NO_X, VOCs, and ammonia, although in a given nonattainment area, there may be technical or analytical limitations to the effective evaluation or control of one or more of these precursors for regulatory purposes. In the case of $PM_{2.5}$, appropriate control of precursors is important because secondarily formed particles comprise the largest portion of ambient $PM_{2.5}$ concentrations in many nonattainment areas.

While subpart 4 expressly requires control of precursors from major stationary sources where direct PM from major sources is controlled unless certain conditions are met, other sources of precursors may also need to be controlled for the purposes of demonstrating attainment as expeditiously as practicable in a given area.[21] Thus, assuming no presumptions under 40 CFR 51.1002, a state should evaluate all economically and technologically feasible control measures for direct $PM_{2.5}$ emissions and $PM_{2.5}$ precursor emissions, and should adopt those measures that are deemed reasonably available, *i.e.,* those constituting RACM and RACT level emissions control for sources located in the area. EPA interprets subpart 4 to require analysis for control of precursors from all source categories in a given nonattainment area, unless there is a demonstration that controlling a precursor or precursors is not necessary for expeditious attainment of the NAAQS in the Area at issue.

In the event that the State's plan includes controls on major stationary sources for PM_{10} in order to achieve timely attainment in the area, section 189(e) requires controls on major stationary sources of all PM_{10} precursors located within the area for all precursors, unless there is a showing that such sources do not contribute significantly to violations in the area. Thus, subject to section 189(e), EPA's existing interpretation of subpart 4 requirements with respect to precursors in attainment plans for PM_{10} as set out in the General Preamble contemplates that states may develop attainment plans that regulate only those precursors that are necessary for purposes of attainment in the area in question, *i.e.,* states may determine that only certain precursors need be regulated for attainment purposes.[22] Courts have upheld this approach to the requirements of subpart 4 for PM_{10}.[23] EPA believes that application of this same approach to $PM_{2.5}$ precursors under subpart 4 is appropriate and reasonable. Indeed, EPA has already taken action upon attainment plans for the 1997 $PM_{2.5}$ NAAQS in other areas after carefully evaluating the state's conclusions regarding which $PM_{2.5}$ precursors should be regulated in the area at issue.[24]

For the reasons discussed in this section, EPA believes that Delaware's April 2008 attainment plan submission has adequately addressed $PM_{2.5}$ precursors, both for purposes of RACM and RACT controls on appropriate sources for attainment of the NAAQS, and for purposes of section 189(e) with respect to precursors from major stationary sources. In the November 2012 proposed approval of Delaware's attainment plan for the Philadelphia Area, EPA already proposed to concur with the State's approach to regulation of $PM_{2.5}$ precursors. As discussed in that NPR, the State, in accordance with EPA's existing 2007 $PM_{2.5}$ Implementation Rule, addressed regulation of direct $PM_{2.5}$, SO_2, and NO_X emissions and elected not to address VOC and ammonia emissions. Although in its SIP submission the State acknowledged that it was relying, in part, on the presumptions established

[15] *See* 2007 $PM_{2.5}$ Implementation Rule (72 FR 20586 at 20589–97, April 25, 2007).

[16] *NRDC* v. *EPA,* 706 F.3d 428, 437, n.10.

[17] *NRDC* v. *EPA,* 706 F.3d 428, 437, n.7.

[18] *Id.*

[19] EPA notes that it has already addressed the requirements of subpart 4 for precursors, specifically within the context of the requirements of section 189(e), in the General Preamble. *See* 57 FR at 13539 and 13541–2.

[20] *See, e.g.,* EPA's 2007 $PM_{2.5}$ Implementation Rule at issue in the *NRDC* v. *EPA* case in which EPA discussed the fact that emissions of SO_2, NO_X, VOCs and ammonia are factual and scientific precursors to $PM_{2.5}$, even if that does not necessarily mean that control of all of these precursors would be required for attainment plans, or needed for expeditious attainment of the NAAQS in all areas. *See* 72 FR 20586, at 20589–97.

[21] Thus, for example, states have developed and EPA has approved as meeting requirements of subpart 4, attainment plans that regulated NO_X emissions from major stationary, mobile, and area sources in an area in order to provide for expeditious attainment of the applicable NAAQS. *See, e.g.,* ''Approval and Promulgation of Implementation Plans for California—San Joaquin Valley PM_{10} Nonattainment Area; Serious Area Plan for Nonattainment of the 24-Hour and Annual PM_{10} Standards,'' (69 FR 30006, May 26, 2004) (approving a PM_{10} attainment plan that imposes controls on direct PM_{10} and NO_X emissions and did not impose controls on SO_2, VOC, or ammonia emissions).

[22] *Id.*

[23] *See, e.g., Assoc. of Irritated Residents* v. *EPA, et al.,* 423 F.3d 989 (9th Cir. 2005).

[24] *See, e.g.,* ''Approval and Promulgation of Implementation Plans; California; 2008 San Joaquin Valley $PM_{2.5}$ Plan and 2007 State Strategy,'' (76 FR 69896, November 9, 2011).

by EPA's implementation rule, the State provided additional substantive justification for its decisions not to regulate VOCs or ammonia as $PM_{2.5}$ precursors in the Delaware attainment plan for the Philadelphia Area.[25]

In light of the D.C. Circuit Court's decision in *NRDC* v. *EPA,* EPA has again reviewed Delaware's attainment plan, and EPA finds that Delaware's approach to $PM_{2.5}$ precursors is appropriate for this Area and is consistent with the requirements of subpart 4 concerning regulation of precursors without reliance on the presumptions of 40 CFR 51.1002. EPA's proposal to continue to approve the Delaware's attainment plan submission in this supplemental proposal is based on a number of considerations.

First, quality-assured monitoring data establish that the Philadelphia Area has attained and continues to attain the 1997 annual $PM_{2.5}$ NAAQS, through the approach to precursor pollutants adopted by the State in the submitted attainment plan.[26] The State's SIP thus adequately addressed the attainment problem for this NAAQS through controls of direct $PM_{2.5}$, SO_2, and NO_X. Given the Area's attainment of the 1997 annual $PM_{2.5}$ NAAQS, it logically follows that no additional controls of other $PM_{2.5}$ precursors are necessary for the Philadelphia Area to timely attain that NAAQS. Because EPA's longstanding approach to precursors under subpart 4, as explained in the General Preamble, authorizes a state to establish that it can attain the NAAQS expeditiously by focusing on some but not all precursors, EPA believes that Delaware's submitted attainment plan for the Philadelphia Area is consistent with this aspect of subpart 4.

Second, EPA believes that the facts and circumstances support the State's decision not to treat VOC and ammonia as $PM_{2.5}$ precursors for purposes of RACM and RACT for attainment of the 1997 annual $PM_{2.5}$ NAAQS in the Philadelphia Area. With respect to VOC, the State already regulates VOC emissions from a broad spectrum of sources in order to meet the ozone NAAQS. This includes control of VOC emissions from sources within the Philadelphia Area, *i.e.,* New Castle County in Delaware.[27] EPA's General Preamble guidance on precursors under subpart 4 advised that a state, in determining whether to address VOCs for purposes of PM_{10}, could take into consideration the existing regulation of VOC emissions for purposes of controlling other pollutants.[28] With respect to ammonia, Delaware's SIP submission indicates that the emissions of ammonia within New Castle County are relatively low from all source categories. The 2002 base year inventory reflects that ammonia emissions in New Castle County were estimated at only 1,384 tons per year (tpy), and this amount is relatively small compared to other precursor emissions such as SO_2 at 50,237 tpy and NO_X at 30,784 tpy. Moreover, those emissions of ammonia are distributed across various types of sources and thus are not the result of emissions from a common source or source category.[29]

Third, EPA believes that the wide margin by which the area is attaining the 1997 annual $PM_{2.5}$ NAAQS supports the conclusion that it was not necessary to treat VOCs and ammonia as $PM_{2.5}$ precursors in this area differently for purposes of these NAAQS. The current air quality design value for New Castle County is 10.7 $\mu g/m^3$ (based on 2009–2011 air quality data), which is well below the 1997 annual $PM_{2.5}$ NAAQS of 15 $\mu g/m^3$. More importantly, the current design value for the entire Philadelphia Area is 13.7 $\mu g/m^3$ (based on 2009–2011 air quality data) which is also well below the 1997 annual $PM_{2.5}$ NAAQS of 15 $\mu g/m^3$.

In addition to the general approach to precursors, EPA's evaluation of Delaware's attainment plan for the Philadelphia Area also indicates that it is consistent with the specific precursor requirements of section 189(e) for major stationary sources. In prior PM_{10} attainment plans under subpart 4, states have considered controls of PM_{10} precursors from various types of sources, including major stationary, mobile, and area sources in the area at issue, as necessary to attain the standard as expeditiously as practicable. Such consideration of potential precursor controls from all sources is relevant to the RACM and RACT and attainment demonstration components of an attainment plan under subpart 4. With respect specifically to controls of those precursors from major stationary sources, CAA section 189(e) explicitly provides that all control requirements for major stationary sources of direct PM_{10} shall also apply to all PM_{10} precursors from those sources, except where EPA determines that emissions of the relevant precursors from the major stationary sources ''do not contribute significantly to PM_{10} levels which exceed the standard in the area.''

As the State has already attained the 1997 annual $PM_{2.5}$ NAAQS without additional controls of precursors from major stationary sources, EPA believes that the current control measures within the attainment plan are sufficient for purposes of satisfying section 189(e). In EPA's General Preamble guidance for meeting subpart 4 requirements, EPA advised that evaluation of a state's compliance with section 189(e) be based upon the specific facts and circumstances of the particular area at issue.[30] EPA indicated that this determination should take into account any relevant information, including ''the significance of precursors to overall attainment.''[31]

With respect to the State's decision not to address VOCs from major stationary sources for purposes of attaining the 1997 $PM_{2.5}$ NAAQS, EPA proposes to find that conclusion sufficient for purposes of satisfying section 189(e). The State's SIP submission indicated that it has already adequately regulated VOCs for other NAAQS and this is a valid consideration. Concerning precursor regulation under section 189(e), EPA explicitly recommended in the General Preamble that existing controls of VOCs under other CAA statutory requirements may suffice to relieve a state from the need to adopt VOC controls as precursors to PM_{10} from major stationary sources under section 189(e).[32] With respect to ammonia, the State's evaluation of the Philadelphia Area indicates that there are no major stationary sources of ammonia in New Castle County. Given that no such major sources exist, section 189(e) would not require any additional controls for ammonia. Thus, based upon these facts, EPA believes that the evaluation submitted by the State adequately demonstrates that ammonia controls for major stationary sources are not needed in the Philadelphia Area for purposes of section 189(e) for the 1997 annual $PM_{2.5}$ NAAQS. In the alternative, in light of these facts and circumstances, and because the Area is currently attaining

[25] *See* Section 1.4 of the ''Delaware State Implementation Plan for Nonattainment of the $PM_{2.5}$ National Ambient Air Quality Standard,'' dated March 20, 2008, submitted to EPA and included in the docket for this action (hereafter, Delaware SIP Submission).

[26] EPA notes that with inclusion of the most recent quality assured and certified data for 2011, the design value for the Philadelphia Area is now, based upon the years 2009–2011 is 13.7 micrograms per cubic meter ($\mu g/m^3$). *See http://www.epa.gov/airtrends/values.html.*

[27] *See* Delaware SIP Submission, Section 1.4.2.

[28] *See* General Preamble, 57 FR 13358 and 13359–40.

[29] *See* Delaware SIP Submission, page 34 Table 3–1 and page 35 Table 3–2.

[30] EPA has highlighted this point specifically within the context of the requirements of section 189(e) in the General Preamble. *See* 57 FR 13541–2.

[31] *See* General Preamble, 57 FR 13539.

[32] *See* General Preamble, 57 FR 13542.

the 1997 annual $PM_{2.5}$ NAAQS, EPA proposes to find that emissions of VOC and ammonia from major stationary sources in Delaware do not contribute significantly to levels exceeding the 1997 annual $PM_{2.5}$ NAAQS at this time in the Philadelphia Area for purposes of section 189(e).

As to complying with section 189(e) for SO_2 and NO_X, EPA likewise proposes to find that Delaware has already imposed the requisite level of emissions controls on the relevant categories of major stationary sources located within the Philadelphia Area. EPA notes that it is not relying on one regulation previously approved into the Delaware SIP (Regulation 1142 Section 2.0) as part of the attainment demonstration for the 1997 $PM_{2.5}$ NAAQS because it is not necessary to demonstrate attainment in this area. Through numerous existing regulations or other state actions, which are incorporated into Delaware's SIP, Delaware has regulated and is continuing to regulate major stationary sources of SO_2 and NO_X in the Philadelphia Area. Taking into consideration the existing regulation of major stationary sources, including those listed below (with the exception of Regulation 1142 Section 2.0), and the fact that the Area has already attained the 1997 $PM_{2.5}$ NAAQS with its current approach to regulation of $PM_{2.5}$ precursors from major stationary sources, EPA believes that it is reasonable to conclude in the context of this action that there is no need to revisit the attainment control strategy with respect to emissions of SO_2 and NO_X from major stationary sources in Delaware for the 1997 annual $PM_{2.5}$ NAAQS for purposes of satisfying section 189(e). The SIP currently includes the following precursor controls on major stationary sources:

- Regulation 1146, Electric Generating Unit (EGU) Multi-Pollutant Regulation, SO_2 and NO_X emission control (effective December 2007). SIP approved on August 28, 2008 (73 FR 50723).
- Regulation 1148, Control of Stationary Combustion Turbine Electric Generating Unit Emissions, NO_X emission control (effective January 2007). SIP approved on December 10, 2008 (73 FR 66554).
- Regulation 1144, Control of Stationary Generator Emissions, SO_2, PM, VOC, and NO_X emission control (effective January 2006). SIP approved on May 29, 2008 (73 FR 23101).
- Regulation 1142, Section 1.0, Control of NO_X Emissions from Industrial Boilers, NO_X emission control (effective December 2010). SIP approved on June 4, 2010 (75 FR 31711).
- Regulation 1142, Section 2.0, Control of NO_X Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries, NO_X emission control, New Castle County (effective June 2012). SIP approved May 5, 2012 (77 FR 28489).
- Facility and Unit shutdowns (*see* Table 4–3 in the Delaware submittal—NO_X, SO_2, $PM_{2.5}$ emission reductions).
- Controls on Residential Woodstoves, 40 CFR Part 60 Subpart AAA—New Source Performance Standards (''NSPS'') for PM, VOC, and NO_X emission control.
- Regulation 1113, Open Burning Controls, PM, VOC, and NO_X emission control (effective October 2007). SIP approved on September 9, 2007 (72 FR 53686).

EPA is not relying on Regulation 1142 Section 2.0 in this evaluation because it is not necessary for the purposes of attainment in this Area. As previously discussed, the Philadelphia Area is attaining the 1997 $PM_{2.5}$ NAAQS. The current design value for the Philadelphia Area is 13.7 $\mu g/m^3$ and the 1997 $PM_{2.5}$ NAAQS is 15.0 $\mu g/m^3$ based on a 3-year average of annual mean $PM_{2.5}$ concentrations. Regulation 1142 Section 2.0 applies to NO_X emissions at petroleum refineries, but there is only one such petroleum refinery in Delaware. The source is separately subject to a Federally-enforceable Consent Decree and several Consent Decree addendums between the source and EPA which limit NO_X emissions and require NO_X control measures at several units at the refinery. In addition, the source has a Federally-enforceable permit which limits NO_X emissions at the source to 2,525 tpy of NO_X. Further, as previously mentioned, the 2002 base year inventory reflects that NO_X emissions were 30,784 tpy in New Castle County such that the source's 2,525 tpy of NO_X are relatively small in comparison and are already subject to Federally-enforceable controls.

After EPA's analysis of the source's permit limitations on NO_X emissions, Federally-enforceable Consent Decree requirements, and present NO_X emissions which are relatively small in comparison to NO_X emissions in New Castle County, EPA concludes that additional control of NO_X emissions at the source is not necessary to attainment or maintenance of the 1997 $PM_{2.5}$ NAAQS in the Philadelphia Area. Therefore, Regulation 1142 Section 2.0 is not needed for Delaware's attainment demonstration to enable the Philadelphia Area to expeditiously attain as Philadelphia Area has already attained the 1997 annual $PM_{2.5}$ NAAQS nor to show the Philadelphia Area can continue to attain the 1997 annual $PM_{2.5}$ NAAQS.

In summary, the determination whether the regulation of one or more $PM_{2.5}$ precursors is necessary for attainment of the 1997 $PM_{2.5}$ NAAQS must ultimately be evaluated based on the particular facts and circumstances of each area, and upon the emissions reductions needed for that specific NAAQS. Delaware has already addressed emissions of direct $PM_{2.5}$, SO_2, and NO_X in the Philadelphia Area and shown that the entire area has attained 1997 annual $PM_{2.5}$ NAAQS without additional regulation of VOCs or ammonia in Delaware for that purpose. Moreover, Delaware has already identified those controls of $PM_{2.5}$, SO_2, and NO_X that it relied upon for attainment of the 1997 annual $PM_{2.5}$ NAAQS, and the fact that the Area is now attaining the NAAQS indicates that these controls were sufficient for this purpose. Under these circumstances, EPA believes that no further evaluation of this issue is necessary at this time for purposes of both attainment and section 189(e) and thus is continuing to propose approval of Delaware's approach to precursors, even taking into account the provisions of subpart 4 with the exception of Regulation 1142 Section 2.0 which EPA is not relying upon because it is not necessary for attainment of the 1997 annual $PM_{2.5}$ NAAQS in this Area.

C. Emissions Inventory Requirement

Section 172(c)(3) of the CAA requires that states submit a comprehensive, accurate, current inventory of actual emissions from all sources in the nonattainment area. Subpart 4 adds no additional emissions inventory requirements. In the General Preamble, EPA stated that section 172(c)(3) applies for purposes of subpart 4, which itself contains no additional emissions inventory requirements for purposes of PM_{10}.[33]

EPA's remanded 2007 $PM_{2.5}$ Implementation Rule required states to meet emissions inventory requirements, including a statewide emissions inventory of direct $PM_{2.5}$ and of all $PM_{2.5}$ precursors, any additional emissions inventory information needed to support an attainment demonstration

[33] *See* General Preamble, 57 FR 13539. EPA notes, however, that under subpart 4 requirements states may need to submit updated emissions inventories to support later SIP submissions, such as SIP submissions to address the requirements for serious areas under section 189(b)(1), or the requirements for an extension of the serious area attainment date under section 188(e).

and RFP requirements, and a baseline (*i.e.,* base year) emissions inventory suitable for the SIP planning requirements for the area at issue.[34] As EPA explained in the preamble to the final 2007 $PM_{2.5}$ Implementation Rule, the emissions inventory requirement includes providing emissions information for direct $PM_{2.5}$, SO_2, NO_X, VOCs, and ammonia in order to provide the information necessary for SIP planning, including the need to evaluate which $PM_{2.5}$ precursors a state should regulate in a given nonattainment area.[35]

EPA's November 19, 2012 NPR already proposed approval of Delaware's submission with respect to emissions inventory requirements.[36] EPA explained in that NPR Delaware's emissions inventory information was consistent with EPA's guidance and correctly included the emissions of direct $PM_{2.5}$, SO_2, NO_X, VOCs, and ammonia.[37] EPA further explained Delaware's sources of information for emissions for stationary sources, area sources, and mobile sources and indicated that the State's approach was appropriate. Moreover, EPA has already taken separate final action to approve the base year emissions inventory submitted by Delaware as part of its attainment plan for the 1997 $PM_{2.5}$ NAAQS for the Philadelphia Area.[38]

EPA believes that the DC Circuit Court's decision in *NRDC* v. *EPA* does not affect the emissions inventory requirements for the 1997 $PM_{2.5}$ NAAQS. The DC Circuit Court's remand of the 2007 $PM_{2.5}$ Implementation Rule to EPA with instructions to repromulgate implementation regulations consistent with subpart 4 would not result in additional emissions inventory requirements under subpart 4 because none exist. The DC Circuit Court's comments on addressing $PM_{2.5}$ precursors consistent with subpart 4 requirements also would not compel a different approach with respect to emissions inventories from that which EPA required under subpart 1. EPA's prior approach under subpart 1 already obligated states to include emissions of direct $PM_{2.5}$, SO_2, NO_X, VOCs, and ammonia in such inventories, and provided no presumptions to exclude precursors from inventories. To the contrary, the emissions inventory requirement includes these precursors to assure adequate information to inform decisions about what pollutants to regulate for purposes of attaining the NAAQS in a given area.

Because the emissions inventories submitted by Delaware for the attainment plan for the 1997 $PM_{2.5}$ NAAQS already included emissions of direct $PM_{2.5}$, SO_2, NO_X, VOCs, and ammonia, EPA concludes that there is no need to reexamine the emissions inventories for the Philadelphia Area.

D. Modeling

As required, Delaware submitted modeling as part of the attainment plan for the Philadelphia Area. Delaware relied upon regional modeling that indicated the entire Philadelphia Area, including New Castle County, would attain the 1997 annual $PM_{2.5}$ NAAQS by 2010. EPA carefully evaluated the State's modeling demonstration and concluded that it adequately supported the State's conclusion that the area would attain the 1997annual $PM_{2.5}$ NAAQS by the projected attainment date.[39]

Accordingly, EPA proposed approval of the State's modeling demonstration in the November 19, 2012 NPR.[40] EPA explained that the State's modeling was consistent with EPA's guidance for such a demonstration, that the State had adequately articulated the bases for its modeling, and that the model supported the conclusion that the area would attain the 1997 annual $PM_{2.5}$ NAAQS by the attainment date. Moreover, EPA noted that the model predicted that the Philadelphia Area would attain the NAAQS comfortably, with a 2009 annual average design value predicted to be 13.3 ug/m^3, and thus well below the level of the 1997 $PM_{2.5}$ NAAQS by the attainment date of April 5, 2010. The model's predictions have proved accurate, and monitoring data showed the Philadelphia Area attained the 1997 annual $PM_{2.5}$ NAAQS by 2010, and continues to do so.[41]

EPA believes that the decision in *NRDC* v. *EPA* does not affect EPA's proposed approval of the attainment demonstration modeling submitted as part of Delaware's attainment plan for the Philadelphia Area. First, section 189(a)(1)(B) provides that for a moderate nonattainment area, a state must submit either ''a demonstration (including air quality modeling) that the plan will provide for attainment by the applicable attainment date'' or ''a demonstration that attainment by such date is impracticable.'' Though not specifically intended to meet section 189(a)(1)(B), the State's modeling demonstrated attainment by a date consistent with that applicable to a moderate nonattainment area.[42] The state supported its demonstration with modeling consistent with EPA's guidance recommendations for this purpose.

Second, the modeling relied upon by the State addressed direct $PM_{2.5}$ and $PM_{2.5}$ precursors. As explained in more detail in the November 19, 2012 NPR, the state relied upon the Community Multi-scale Air Quality Model (CMAQ) modeling conducted by the Mid-Atlantic/Northeast Visibility Union (MANE–VU), using simulations of chemical reactions, emissions of $PM_{2.5}$ and $PM_{2.5}$ precursors, and a sophisticated meteorological model to evaluate $PM_{2.5}$ concentrations over the eastern United States.[43] The MANE–VU modeling included emissions of $PM_{2.5}$, SO_2, NO_X, VOCs, and ammonia. The State also used EPA's recommended speciated modeled attainment test (''SMAT'') to evaluate ambient $PM_{2.5}$ particles, including eight types of major components of ambient particles including sulfates, nitrates, ammonium, and organic carbon. Thus, the State likewise included evaluation of particles that result from emissions of SO_2, NO_X, VOCs, and ammonia through this means. Through this modeling, the State demonstrated attainment through analyses that did not omit consideration of either VOC or ammonia emissions as part of that process.

Because the modeling submitted by Delaware addressed direct $PM_{2.5}$, SO_2, NO_X, VOCs, and ammonia, and correctly predicted that the area would attain the 1997 $PM_{2.5}$ NAAQS by 2010, EPA concludes that there is no need to reexamine the attainment plan modeling

[34] *See* 40 CFR 51.1008.

[35] *See* 2007 $PM_{2.5}$ Implementation Rule, 72 FR 20648. EPA noted that the obligation to address all of the scientific precursors of $PM_{2.5}$ was a separate requirement needed to support various regulatory purposes, including the evaluation of whether relying on the rebuttable presumptions for precursors was correct in a given area.

[36] *See* 77 FR 69399, at 69403.

[37] For further details, see the TSD document entitled ''Technical Support Document (TSD) for Emissions Inventories for the Delaware Nonattainment Area Particulate Matter ($PM_{2.5}$) State Implementation Plan (SIP) Base Year Inventory,'' dated June 16, 2012, The TSD is available in the docket online at *www.regulations.gov,* Docket Number EPA–R03–OAR–2010–0141.

[38] *See* (78 FR 10420, March 4, 2013).

[39] For further details, see the TSD document entitled ''Technical Support Document for the Modeling and Weight of Evidence Portions of the Delaware SIP for Attainment of the $PM_{2.5}$ NAAQS,'' dated June 15, 2012 (Modeling TSD). The Modeling TSD is available in the docket online at *www.regulations.gov,* Docket Number EPA–R03–OAR–2010–0141.

[40] *See* 77 FR 69399, at 69404.

[41] For this reason, EPA issued both a determination of attainment and a clean data determination for the Philadelphia Area on May 16, 2012 (77 FR 28782).

[42] As discussed in section II.H. of this notice, EPA is proposing to find that the State's plan provided for attainment by a date appropriate for a moderate nonattainment area under subpart 4 requirements, given the facts and circumstances of this area.

[43] *See* Modeling TSD at page 4.

for the Philadelphia Area. Thus, EPA does not believe that the DC Circuit Court's decision in *NRDC* v. *EPA* should have any bearing on EPA's prior proposed approval of the modeling as meeting CAA requirements in this case.

E. Reasonably Available Control Measures/Reasonably Available Control Technology

Another aspect of Delaware's submitted attainment plan potentially impacted by the *NRDC* v. *EPA* decision is whether Delaware has adequately addressed the requirement for RACM and RACT for the Philadelphia Area. EPA in this supplemental notice considers this requirement under subpart 4 as well as under subpart 1, and evaluates whether the subpart 4 requirement for RACM and RACT would affect the control measures identified as part of the Delaware attainment plan for the Philadelphia Area. For the following reasons, EPA believes that Delaware's already submitted attainment plan for the Philadelphia Area adequately meets these requirements under subpart 4 for purposes of the 1997 $PM_{2.5}$ NAAQS with the exception of CAIR as previously proposed in the November 19, 2012 NPR, Regulation 1142 Section 2.0 for NO_X emissions at petroleum refineries, and certain control measures for VOC emissions as discussed in more detail in this section.

The general SIP planning requirements for nonattainment areas under subpart 1 include section 172(c)(1), which imposes on states an obligation to provide for the implementation of all RACM. Section 172(c)(1) provides, parenthetically, that RACM also includes reductions from RACT. The terms RACM and RACT are not defined within subpart 1 or section 302. However, section 172(c) indicates that what constitutes RACM or RACT is related to what is necessary for attainment in a given area, as the provision explicitly requires that such measures must provide for attainment of the NAAQS in the area covered by the attainment plan.

EPA based its remanded 2007 $PM_{2.5}$ Implementation Rule on the general attainment plan requirement for RACM and RACT in section 172(c). EPA included requirements for the process by which states should determine and establish what control measures would constitute RACM and RACT level controls for appropriate sources in a given nonattainment area for the 1997 $PM_{2.5}$ NAAQS. Specifically, in 40 CFR 51.1010(a), EPA provided that a state should submit a demonstration that it had adopted all RACM and RACT ''necessary to demonstrate attainment as expeditiously as practicable and to meet RFP requirements.'' EPA also required states to include a ''list of the potential measures considered by the state, and information and analysis sufficient to support the state's judgment that it has adopted all RACM, including RACT.'' Moreover, in 40 CFR 51.1010(b), EPA provided that a state could determine that certain otherwise available control measures are not RACM or RACT for sources in the area if, considered cumulatively, the measures not adopted would not advance the attainment date in the area by at least one year.

The SIP planning requirements specific to PM_{10} under subpart 4 likewise impose upon states an obligation to develop attainment plans that impose RACM and RACT on sources within a nonattainment area. Section 188(a)(1)(C) requires that states with areas classified as moderate nonattainment areas must have SIP provisions to assure that RACM and RACT level controls for PM_{10} are implemented by no later than four years after designation of the area.[44] As with subpart 1, the terms RACM and RACT are not defined within subpart 4. Nor do the provisions of subpart 4 specify how states are to meet the RACM and RACT requirements. However, EPA's longstanding guidance in the General Preamble provides recommendations for appropriate considerations for determining what control measures constitute RACM and RACT for purposes of meeting the statutory requirements of subpart 4.

EPA's existing guidance for RACM and RACT under subpart 4 is comparable to the approach that EPA set forth in the 2007 $PM_{2.5}$ Implementation Rule. EPA's guidance for RACM under subpart 4 in the General Preamble includes: (1) A list of some potential measures for states to consider; (2) a statement of EPA's expectation that the state will provide a reasoned explanation for a decision not to adopt a particular control measure; (3) recognition that some control measures might be unreasonable because the emissions from the affected sources in the area are *de minimis;* (4) an emphasis on state evaluation of potential control measures for reasonableness, considering factors such as technological feasibility and the cost of control; and (5) encouragement that states evaluating potential control measures imposed upon municipal or other governmental entities also include consideration of the impacts on such entities, and the possibility of partial implementation when full implementation would be infeasible (*e.g.,* phased implementation of measures such as road paving).[45]

With respect to RACT requirements, EPA's existing guidance in the General Preamble: (1) Noted that RACT has historically been defined as ''the lowest emission limit that a source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility;'' (2) noted that RACT generally applies to stationary sources, both stack and fugitive emissions; (3) suggested that major stationary sources be the minimum starting point for a state's RACT analysis; and (4) recommended that states evaluate RACT not only for major stationary sources, but for other source categories as needed for attainment and considering the feasibility of controls.[46]

For both RACM and RACT, EPA notes that an overarching principle is that if a given control measure is not needed to attain the relevant NAAQS in a given area, then by definition that control measure would not be required as RACM or RACT because it would not be reasonable to impose controls that are not in fact needed for attainment purposes. In both the 2007 $PM_{2.5}$ Implementation Rule interpreting the subpart 1 RACM and RACT requirements and the General Preamble making recommendations for the subpart 4 RACM and RACT requirements, the focus is upon the process to identify emissions sources, to evaluate potential emissions controls, and to impose those control measures that are reasonable and that are necessary to bring the area into attainment as expeditiously as practicable, but by no later than the applicable attainment date for the area.

In its submitted attainment plan for the Philadelphia Area, Delaware addressed the RACM and RACT requirements of subpart 1 as interpreted in EPA's remanded 2007 $PM_{2.5}$ Implementation Rule. As discussed in more detail in EPA's November 19, 2012 NPR, Delaware followed EPA's recommended process for evaluating which measures would constitute RACM and RACT in the Philadelphia Area. First, Delaware ascertained that emission controls of $PM_{2.5}$, SO_2, and NO_X are necessary for attainment in this Area and that controls for ammonia or

[44] States with areas later classified as ''serious'' nonattainment areas under subpart 4 must also develop and submit later plans to meet additional requirements for serious areas, but those are not germane to this action for the reasons discussed in section II.A. of this notice.

[45] *See* General Preamble, 57 FR 13540–41.

[46] *See* General Preamble, 57 FR 13541.

additional emissions controls for VOCs are not.[47] Second, Delaware evaluated the relevant emissions sources in the area, including ''point sources'' (*i.e.,* major stationary sources), ''non-point sources'' (*i.e.,* area sources), non-road mobile sources, and on-road mobile sources. Third, Delaware identified the control measures that it considered to be RACM and RACT for these types of sources in the Philadelphia Area because they were the measures that helped to provide for attainment by the 2010 attainment date. Fourth, Delaware identified and evaluated additional potential control measures and explained why adoption of those measures would not advance the attainment date by at least one year. Through this analytical approach, Delaware's attainment plan identified a suite of control measures already in the State's SIP that helped to bring the Philadelphia Area into attainment for the 1997 $PM_{2.5}$ NAAQS by the applicable attainment date and thus constituted RACM and RACT for the 1997 $PM_{2.5}$ NAAQS for this Area.[48]

EPA has already proposed to find that the Delaware attainment plan for the Philadelphia Area meets the RACM and RACT requirements for the 1997 $PM_{2.5}$ NAAQS, with the exception of one measure that the state identified as a RACM and RACT measure, *i.e.,* CAIR. EPA proposed this approval based upon the State's compliance with the requirements of the now remanded 2007 $PM_{2.5}$ Implementation Rule, but EPA believes that the submitted attainment plan also meets the statutory RACM and RACT requirements of subpart 4 for several reasons.

EPA's longstanding guidance for the determination of RACM and RACT under the statutory requirements of subpart 4 is analogous to that of subpart 1. EPA's General Preamble patterns the process for ascertaining RACM and RACT under subpart 4 after subpart 1, including comparable analytical steps and means for identifying relevant sources and potential control measures for those sources, and for evaluating whether potential control measures are reasonable based upon factors such as technological and economic feasibility. Most importantly, under either subpart, the state is required to determine RACM and RACT measures in light of the emissions reductions needed to bring the area in question into attainment. In other words, the emissions controls necessary to bring the area into attainment are by definition RACM or RACT for such area, and additional controls or other potential combinations of controls that would not be necessary for attainment or to advance attainment are not required for purposes of meeting this component of an attainment plan under either subpart 1 or subpart 4.

As a result of the DC Circuit Court's decision in *NRDC* v. *EPA,* EPA has considered whether the control measures identified by the state as RACM and RACT measures (with the exception of certain VOC control measures, Regulation 1142 Section 2.0, and CAIR for EGUs) would meet the requirements of section 189(a)(1)(C). Given that the Philadelphia Area has attained the 1997 $PM_{2.5}$ NAAQS through the measures already identified in the SIP submission, EPA believes that no further evaluation is necessary. A core principle of the RACM and RACT requirement is that, in addition to other considerations such as the technological feasibility, economic feasibility, and scheduling feasibility of potential control measures, states and EPA should evaluate the need for those control measures in order to provide for timely attainment of the NAAQS in question. In these circumstances, EPA believes that the attainment of the NAAQS by the projected date in 2010, and the continued attainment of the NAAQS in the area, establishes that the attainment plan contains adequate RACM and RACT measures for purposes of the 1997 $PM_{2.5}$ NAAQS. There is thus no need to consider control of any additional sources, or additional controls on already controlled sources, at this time. Accordingly, the DC Circuit Court's decision in *NRDC* v. *EPA* does not alter the EPA's view of the approvability of the attainment plan with respect to this requirement.

However, EPA's review of the November 19, 2012 NPR concerning the RACM and RACT requirement does indicate the need to revise the proposal with respect to certain control measures included in the list of measures that Delaware identified as RACM and RACT measures for the 1997 $PM_{2.5}$ NAAQS in the Philadelphia Area. Delaware's attainment plan submission identified a number of control measures that are specifically intended to reduce only VOC emissions. The State noted that these measures intended for reduction of ozone ''could provide a $PM_{2.5}$ benefit.''[49] Because the State also concluded that ''Delaware is not regulating VOC emissions as $PM_{2.5}$ precursors under this SIP,'' however, EPA should not have proposed to approve those control measures that address only VOC emissions as RACM or RACT for the Philadelphia Area specifically for purposes of the 1997 $PM_{2.5}$ NAAQS. Accordingly, EPA is revising the list of measures that it is proposing to approve as RACM and RACT for the 1997 $PM_{2.5}$ NAAQS for the Philadelphia Area to remove the following measures listed in the November 19, 2012 NPR:

- Regulation 1124, Section 11.0, Mobile Equipment Repair and Refinishing, VOC emission control.
- Regulation 1124, Section 33.0, Solvent Cleaning and Drying, VOC emission control.
- Regulation 1124, Section 36.0, Stage II Vapor Recovery, VOC emission control.
- Regulation 1124, Section 46.0, Crude Oil Lightering Operations, VOC emission control.
- Regulation 1141, Section 1.0, Architectural and Industrial Maintenance Coatings, VOC emission control.
- Regulation 1141, Section 2.0, Consumer Products, VOC emission control.
- Regulation 1141, Section 3.0, Portable Fuel Containers, VOC emission control.

EPA is also proposing not to rely on Regulation 1142 Section 2.0 or CAIR for EGUs as RACM and RACT in Delaware for the 1997 $PM_{2.5}$ NAAQS but proposes to approve as RACM and RACT the other control measures, including State controls on EGUs, identified in Delaware's SIP Submittal, which were previously approved by EPA as part of the Delaware SIP (*see* 40 CFR 52.420(c)) or are otherwise Federally enforceable, because the Philadelphia Area has attained the 1997 $PM_{2.5}$ NAAQS by the attainment date.

Regulation 1142 Section 2.0 is not needed in the Philadelphia Area as RACM and RACT and therefore EPA is proposing to exclude Regulation 1142 Section 2.0 from this revised proposed approval. Regulation 1142 Section 2.0 applies only to petroleum refineries. There is only one petroleum refinery source in Delaware subject to this regulation. This source's NO_X emissions are restricted by a Federally-enforceable

[47] As discussed in section II.B. of this notice, EPA is proposing to find that the State's determination of which precursors to address was adequately supported, given the facts and circumstances of this Area.

[48] EPA notes that because the State did not need to adopt additional control measures in order to provide for timely attainment in the area, reliance on existing federally enforceable measures already in the SIP was appropriate. Thus, the State's attainment plan submission identified those control measures for $PM_{2.5}$, SO_2, and NO_X that achieved the local emissions reductions that helped the area to attain the 1997 $PM_{2.5}$ NAAQS and thus were sufficient to constitute RACM and RACT for sources in the area, with the exception of certain VOC control measures, Regulation 1142 Section 2.0 for petroleum refineries, and CAIR for EGUs.

[49] *See* Delaware SIP submission at page 15.

permit condition to 2,525 tons per year. The source is separately subject to a Federally-enforceable Consent Decree with several addendums as discussed above which independently limit NO_X emissions and require NO_X controls at the source, including units which would be subject to Regulation 1142 Section 2.0. Further, as previously mentioned, the 2002 base year inventory reflects that NO_X emissions were 30,784 tpy in New Castle County such that the source's 2,525 tpy of NO_X are relatively small in comparison and are already subject to Federally-enforceable controls. EPA has concluded that the source's NO_X emissions are insignificant to emissions within Delaware for attaining and maintaining the 1997 $PM_{2.5}$ NAAQS. Therefore, Regulation 1142 Section 2.0 is neither required nor necessary for expeditious attainment of 1997 $PM_{2.5}$ NAAQS, is not reasonably needed as a control measure, and is not required for RACM and RACT for the Philadelphia Area. EPA previously discussed in the November 19, 2012 NPR that it is not relying on CAIR for purposes of meeting RACM and RACT in Delaware for the 1997 $PM_{2.5}$ NAAQS and is not taking additional comment on that issue in this supplemental proposal. The RACM and RACT measures in Delaware for the 1997 $PM_{2.5}$ NAAQS will be the remaining measures listed in the November 19, 2012 NPR with the exception of the control measures for VOC emissions identified above, Regulation 1142 Section 2.0, and CAIR for EGUs.[50]

F. Reasonable Further Progress

Another consideration in evaluating the State's attainment plan from the perspective of the D.C. Circuit Court's decision and subpart 4 is the approach to meeting the reasonable further progress (RFP) requirements of the CAA. EPA's remanded 2007 $PM_{2.5}$ Implementation Rule included regulatory provisions for RFP based upon the subpart 1 statutory requirements of section 172(c)(2) in 40 CFR 51.1009. The regulations provide that if a state's attainment plan demonstrated attainment within five years after designation, then no separate RFP demonstration is required. In the event that a state developed a plan with an attainment date projected beyond five years from designation, however, then the regulations require a specific RFP demonstration showing how the control measures in the plan will achieve reductions at specific milestone years of 2009 and 2012, as applicable. If a specific RFP plan were required, it must show generally linear progress in reducing emissions from the base year of the plan until the projected attainment year.

Delaware's April 2008 SIP submission for the Philadelphia Area met the requirements of the 2007 $PM_{2.5}$ Implementation Rule, and EPA has already proposed to approve it for this purpose. In particular, EPA noted that the attainment plan was designed to provide for attainment of the 1997 $PM_{2.5}$ NAAQS within five years of designation and that attainment had in fact occurred. Accordingly, because the Philadelphia Area attained the 1997 $PM_{2.5}$ NAAQS, EPA proposed to determine that the submission met the RFP requirement with the control measures in the plan and that there was no need for additional reductions for purposes of meeting any RFP requirement beyond that date.

As a result of the DC Circuit Court's decision in *NRDC* v. *EPA,* EPA has considered whether Delaware's SIP submission would also meet the RFP requirements of subpart 4 in section 189(c). That section is comparable to the requirements of section 172(c)(1), in that it requires attainment plans under subpart 4 to meet a RFP requirement. However, section 189(c) also provides that an attainment plan should have ''quantitative milestones which are to be achieved every 3 years until the area is redesignated to attainment.'' EPA's General Preamble and Addendum provide guidance interpreting this statutory provision and are useful to evaluate this requirement of subpart 4.[51]

In particular, EPA's guidance recommendations with respect to section 189(c) include several salient features: (1) That the control measures comprising the RFP should be implemented and in place to meet the milestone requirement; (2) that it is reasonable for the three year periods for milestones to run from the date that the attainment plan submission is due; and (3) that the precise form quantitative milestones should take is not specified and they may take whatever form would allow progress to be quantified or measured adequately.[52]

EPA believes that Delaware's SIP submission adequately meets these requirements for this Area for the 1997 $PM_{2.5}$ NAAQS. First, although not presented as control measures that would achieve reductions by a specified three year milestone, the State's SIP submission contained control measures that were already implemented and in place and thus actually were achieving necessary emission reductions to meet RFP and milestone requirements at the appropriate point in time.

Second, regardless of whether the statutory submission date for the attainment plan were that of subpart 1 or subpart 4, Delaware's attainment plan was achieving emission reductions by the date that would have been three years from such submission date. In other words, regardless of whether the SIP submission date could have been 18 months from the April 2005 date of the designation (*i.e.,* October 2006), or 36 months from such date (*i.e.,* April 2008), the attainment plan submitted by Delaware in April 2008 included control measures that demonstrated attainment by 2009 and that were achieving emission reductions at that point in time (*i.e.,* by a date three years from when the attainment plan was due under either subpart 1 or subpart 4, or in advance of that date).[53] Because EPA has already determined that the Philadelphia Area has attained the 1997 $PM_{2.5}$ NAAQS based on ambient data from 2007, 2008, and 2009, there would have been no requirement for a second RFP milestone at a six year point.

Third, Delaware's SIP submission provided information sufficient to quantify the amount of emission reductions being achieved. Although not presented for purposes of showing the amount of reductions for a specific three year milestone requirement, the State's SIP submission nonetheless quantified the amount of emission reduction to be achieved through the attainment plan, by pollutant, by 2009.[54] Thus, the attainment plan did quantify the emission reductions that would occur at a point in time that was appropriate for a three year milestone,

[50] *See* 77 FR 69399 at 69406—07.

[51] *See* General Preamble, 57 FR 13539; Addendum, 59 FR 42015–17.

[52] Merely as examples, EPA noted some potential approaches, such as percent implementation of control strategies, percent compliance with implemented control measures, and adherence to a compliance schedule. This list was clearly not exclusive and reflected that the purpose of such milestones is merely to provide an objective way to assess that the area is making progress towards attainment by the applicable attainment date. *See* Addendum, 59 FR 42016.

[53] EPA notes that at the time of the designations and at the time states were developing their attainment plans for the 1997 $PM_{2.5}$ NAAQS, EPA and states believed that the implementation of the $PM_{2.5}$ NAAQS should proceed under subpart 1. At this juncture, EPA believes that it would be inappropriate to consider the statutory SIP submission date of subpart 4 to be the operative date retroactively. In this instance, it would make no difference with respect to the approvability of the attainment plan in any event.

[54] *See* Delaware SIP submission, page 93, Table 7–1. Comparing the 2002 (base year) and 2009 (attainment year) emissions estimates for New Castle County, the information provided by Delaware indicated reductions of $PM_{2.5}$ (415 tpy or 12.1%,), SO_2 (36,102 tpy or 71.9%), and NO_X (8,941 tpy or 29.1%).

regardless of what the statutory SIP submission date was under either subpart 1 or subpart 4.

Finally, EPA notes that statutory RFP and milestone requirements of section 189(c) are intended to assure reasonable progress towards attainment. Once an area has already attained the NAAQS, as is the case with the Philadelphia Area for the 1997 $PM_{2.5}$ NAAQS, the intended purpose for emissions reductions to meet an RFP or milestone requirement is no longer relevant. EPA thus believes that the RFP and milestone requirements are functionally moot once the area has attained the NAAQS. Accordingly, the DC Circuit Court's decision in *NRDC* v. *EPA* does not alter the EPA's view of the approvability of the attainment plan with respect to the RFP and milestone requirements of subpart 4.

G. Contingency Measures

In its SIP submission, Delaware addressed the contingency measure requirements for the Philadelphia Area and EPA has proposed to approve the State's attainment plan with respect to these requirements. The DC Circuit Court's decision in *NRDC* v. *EPA* should have no impacts on the contingency measure requirements for purposes of the $PM_{2.5}$ NAAQS. Section 172(c)(9) imposes the contingency measure requirement for attainment plans and it applies to both subpart 1 and subpart 4. The contingency measure requirement is not superseded or subsumed by subpart 4, and thus there would be no change in this requirement as a result of the *NRDC* v. *EPA* decision. In addition, EPA notes that it has already determined that the Philadelphia Area has attained the 1997 $PM_{2.5}$ NAAQS and thus the continued need for contingency measures for failure to meet RFP or to attain by the attainment date is moot at this juncture.

H. Attainment Date

In its SIP submission, Delaware provided a demonstration of attainment of the 1997 $PM_{2.5}$ NAAQS in the Philadelphia Area by 2010. Based upon current ambient air quality monitoring data, the Philadelphia Area in fact attained the 1997 $PM_{2.5}$ NAAQS by 2010 and continues to be in attainment of those NAAQS.[55]

Under either subpart 1 or subpart 4 requirements, a state is required to develop an attainment plan that provides for attainment ''as expeditiously as practicable.'' Under section 172(a)(2)(A), however, subpart 1 requirements impose somewhat different requirements, providing that the area must attain as expeditiously as practicable, but not later than 5 years from the date of designation, with the possibility of extensions of up to 10 years from the date of designation under specified conditions. Under subpart 4, however, Congress created different attainment date requirements for areas classified as ''moderate'' or ''serious'' nonattainment areas. Most relevant for this proposal, however, under Section 188(c)(1), a state with a moderate nonattainment area must provide for attainment as expeditiously as practicable, but not later than the end of the sixth calendar year after the date of designation.

In the case of Delaware's attainment plan for the Philadelphia Area, EPA believes that the State has met not only the generally applicable attainment date requirements of subpart 1, but also met the requirements specific to particulate matter in subpart 4. EPA's designations for the 1997 $PM_{2.5}$ NAAQS were effective on April 5, 2005. In the remanded 2007 $PM_{2.5}$ Implementation Rule, EPA indicated that states should develop attainment plans that provided for attainment as expeditiously as practicable, but not later than 5 years after designation, unless an extension of the attainment date was warranted. The State developed an attainment plan that demonstrated attainment of the NAAQS by 2010 and the Area in fact attained by the targeted date. Under section 188(c)(1), a state with a moderate area could, so long as it showed expeditious attainment of the NAAQS, demonstrate attainment up until the end of the sixth calendar year following the designation of the area, *i.e.,* until the end of 2011. Thus, the demonstration that Delaware made here that the Area would attain the 1997 $PM_{2.5}$ NAAQS by the end of 2010 would constitute a demonstration that the Area attained as expeditiously as practicable, but not later than the end of 2011 as required by subpart 4.

Based upon the foregoing reasoning, EPA proposes to find that Delaware's attainment plan SIP submission for the Philadelphia Area factually and functionally meets the attainment date requirements for nonattainment areas under subpart 4, in addition to the requirements under subpart 1. EPA does not believe that the D.C. Circuit Court's decision in *NRDC* v. *EPA* should have any bearing on EPA's prior proposed approval of the attainment date supported by the attainment plan submission as meeting CAA requirements.

III. Motor Vehicle Emissions Budgets

EPA's November 19, 2012 NPR also proposed approval of Delaware's MVEBs for the Philadelphia Area (*i.e.,* New Castle County in Delaware). However, in the TSD associated with the November 19, 2012 NPR, MVEBs for 2012 were inadvertently used instead of 2009. The correct MVEBs for 2009 are shown in Table 1. Delaware's April 25, 2012 SIP submittal also included Delaware's 2012 MVEBs which were the numbers used in the TSD associated with the November 19, 2012 NPR for 2009. The corrected MVEBs for 2012 are shown in Table 2.

TABLE 1—DELAWARE'S 2009 MOTOR VEHICLE EMISSIONS BUDGET FOR THE 1997 $PM_{2.5}$ NAAQS ATTAINMENT PLAN IN TONS PER YEAR

Plan Submittal	Milestone Year	$PM_{2.5}$	NO_X
Attainment Plan	2009	257	8,448

TABLE 2. DELAWARE'S 2012 MOTOR VEHICLE EMISSIONS BUDGET FOR THE 1997 $PM_{2.5}$ NAAQS ATTAINMENT PLAN IN TONS PER YEAR

Plan Submittal	Out Year	$PM_{2.5}$	NO_X
Attainment Plan	2012	199	6,273

[55] The most recent design value for the Philadelphia Area, based upon the years 2009–2011, is 13.7 μg/m³. *See http://www.epa.gov/airtrends/values.html.*

In this supplemental proposal, EPA proposes to approve Delaware's MVEBs for 2009 (Table 1) and also proposes to approve Delaware's MVEBs for 2012 (Table 2) which Delaware had requested EPA to approve in its April 25, 2012 SIP submission. A supplemental TSD, dated August 26, 2013, discusses EPA's analysis and support for this proposal approving Delaware's MVEBs for 2009 and 2012 and is available on line at *www.regulations.gov*, Docket No. EPA–R03–OAR–2010–0141.

Accordingly, EPA continues to believe that the MVEBs for 2009 meet applicable requirements for such budgets for purposes of the 1997 annual $PM_{2.5}$ NAAQS and asserts the MVEBs for 2012 likewise meet applicable requirements for budgets for transportation conformity purposes for New Castle County in Delaware. As a result of EPA's finding, New Castle County must use the MVEBs from the April 25, 2012 SIP submittal for future conformity determinations for the 1997 annual $PM_{2.5}$ NAAQS.

IV. Summary of Reproposal

Based on the foregoing reasons, EPA proposes to approve the Delaware attainment plan submitted for the Philadelphia Area. EPA believes that the attainment plan submitted by Delaware for the Philadelphia Area, though not expressed in terms of subpart 4 requirements, substantively meets the requirements of that subpart for purposes of approval under section 110(k). EPA is also updating information related to EPA's proposed approval of the MVEBs for New Castle County, Delaware, solely for purposes of transportation conformity for this Area.

EPA solicits comments on this supplemental proposal, but only with respect to the specific issues raised in this rulemaking action. EPA is not seeking comment on any other aspect of the November 19, 2012 NPR as those issues have already been adequately addressed. The purpose of this supplemental proposal is limited to review of the attainment plan submitted by Delaware for the Philadelphia Area in light of the D.C. Circuit Court's decision in *NRDC* v. *EPA,* EPA's further evaluation of Delaware's submitted attainment plan, and EPA's desire for public input into how it should proceed in light of the *NRDC* v. *EPA* decision when acting on the pending attainment plan for this Area for the 1997 $PM_{2.5}$ NAAQS.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

In addition, this supplemental proposed rule pertaining to the Delaware 1997 annual $PM_{2.5}$ attainment plan for the Philadelphia Area, 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, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: September 12, 2013.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2013–22829 Filed 9–18–13; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 380, 383, and 384

[FMCSA–2007–27748]

RIN 2126–AB06

Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of withdrawal.

SUMMARY: FMCSA withdraws its December 26, 2007, notice of proposed rulemaking (NPRM) that proposed new entry-level driver training standards for individuals applying for a commercial driver's license (CDL) to operate commercial motor vehicles (CMVs) in interstate commerce. The Agency withdraws the 2007 proposal because commenters to the NPRM, and participants in the Agency's public listening sessions in 2013, raised substantive issues which have led the Agency to conclude that it would be inappropriate to move forward with a final rule based on the proposal. In addition, since the NPRM was published, FMCSA received statutory direction on the issue of entry level driver training (ELDT) from Congress via the Moving Ahead for Progress in the 21st Century Act (MAP–21) reauthorization legislation. Finally, the Agency tasked its Motor Carrier Safety Advisory Committee (MCSAC) to provide ideas the Agency should consider in implementing the MAP–21 requirements. In consideration of the above, the Agency has concluded that a new rulemaking should be initiated in lieu of completing the 2007 rulemaking.

DATES: The NPRM ''Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators,'' RIN 2126–AB06, published on

December 26, 2007 (72 FR 73226), is withdrawn on September 19, 2013.

FOR FURTHER INFORMATION CONTACT: If you have questions on this Notice of withdrawal, contact Mr. Richard Clemente, Transportation Specialist, FMCSA, Bus and Truck Standards and Operations, (202) 366–4325, *MCPSD@dot.gov*.

SUPPLEMENTARY INFORMATION:

Background/General Issues Raised During Comment Period and Listening Sessions

After the D.C. Circuit Court of Appeals remanded the May 21, 2004 final rule, titled ''Minimum Training Requirements for Entry Level Commercial Motor Vehicle Operators'' (69 FR 29384), to the Agency for further consideration, FMCSA published an NPRM on December 26, 2007, entitled ''Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators'' (72 FR 73226). The Agency received more than 700 comments to its proposal. Additionally, on January 7, 2013, and March 22, 2013, FMCSA held listening sessions on ELDT. While most commenters expressed support for the ELDT ''concept,'' they had divergent views on several of the proposed rule's key provisions.

Hours-Based vs. Performance-Based Driver Training

Several industry organizations expressed opposition to the proposed mandate of a specific minimum number of training hours. Instead, these commenters support a performance-based approach to training that would allow an individual to move through the training program at his/her own pace. Essentially, a driver who demonstrated mastery of one skill would be able to move to the next skill. The driver would not have to repeat continually or practice a skill for a prescribed amount of time—2 hours, for example—if the driver could master the skill in 20 minutes.

Other commenters, however, did support a minimum hours-based approach to training. They stated that FMCSA must specify the minimum number of instructional hours in order to be consistent with the original Model Curriculum of the 1980s.[1] Additionally, some supporters of an hours-based training approach believed that the Agency's proposal did not involve sufficient hours (particularly behind-the-wheel hours) to train a driver adequately. Finally, other commenters suggested a hybrid of the hours-based and performance-based approaches.

Several commenters asserted that by establishing a minimum number of hours required for training, the Agency would create a Federal standard that would eliminate certain Federal loan options otherwise available to students enrolled in driver training programs. They claimed that the U.S. Department of Education (ED) would refuse to authorize Federal Family Education Loan (FFEL) or Direct Loan funding to programs more than 50 percent longer than the minimum 120- or 90-hour programs for Class A and B/C CDL applicants proposed by the FMCSA. However, commenters contended further that if courses were to be capped at 180 or 135 hours—50 percent longer than the Agency's proposed Class A or B/C programs—to comply with one aspect of ED's regulations, they would then fail to meet the 300-hour minimum required to be eligible for FFEL and Direct Loan funding. One individual at a listening session disputed this claim. He said it was a misconception that training schools would not offer longer courses if drivers could not qualify for Title IV student funding.

Accreditation

The NPRM proposed to require that all commercial driver-training schools be accredited by an agency recognized by either ED or the Council on Higher Education Accreditation. Most commenters opposed the accreditation process because they claimed it is a long and costly process that would not necessarily result in better training of the students because the accreditation is not ''program specific.'' In other words, the training institution may obtain accreditation, but the accreditation would not be specific to the driver training program's course content. They argued that accreditation might restrict the number of schools where drivers could receive training.

Alternatives suggested included allowing training institutions to self-certify, subject to Federal or other oversight, or voluntarily to obtain 3rd party certification or accreditation. However, other commenters believed that even stricter control of training schools should be exercised by the Federal and/or State governments.

Passenger Driver Training

Commenters from the motorcoach industry stated that they were an ''afterthought'' in the NPRM. Specifically, they stated that there was no mention of the Model Motorcoach Driver Training Curriculum in the proposed rule. One motorcoach company asserted that its in-house training program is much more rigorous than the Agency proposal and that it continually tests and re-trains its drivers. Others believed that the proposed training program would have particularly adverse consequences for the motorcoach industry as few institutions offer training specific to that segment of the industry. Additionally, concerns were expressed that existing company training programs for entry-level drivers would cease as they would no longer be able to hire the entry-level drivers they train.

The school bus industry, in particular, questioned its inclusion in the proposed rule. Commenters asserted that the safety record of school buses shows that the industry's own driver training, based on State requirements, is effective. Implementing the NPRM would increase the costs significantly for school bus operators with no demonstrable increase in safety. Furthermore, the proposed rule might exacerbate the school bus driver shortage.

Post-CDL Training

Some NPRM commenters and others who participated in the ELDT listening sessions suggested that the Agency consider regulatory actions beyond what was proposed in the 2007 NPRM. For example, several individuals and organizations believe the Agency should assess the merits of implementing a graduated commercial driver's license (GCDL) system approach. This concept would involve placing limits on the operations of new CDL holders for certain periods of time until the drivers obtain enough experience to operate as solo drivers, without restrictions or limitation. For example, the GCDL approach would require that the new CDL holder work under the supervision of an experienced driver or mentor as part of a team operation before being allowed to drive solo. Other commenters stressed that their companies are doing continuous training/testing and that re-training of individuals should be required. As proposed, the 2007 NPRM would have required training before an individual obtained a CDL; the ''finishing training'' advocated by some commenters was not discussed.

Participants in the listening sessions held earlier this year also raised concerns about the trainer/trainee relationship. Several stated that behind-the-wheel training, either pre- or post-CDL, requires that the trainer be in the passenger seat of the cab providing actual ''hands-on'' instruction. Commenters cited specific instances of

[1] In 1985, FHWA issued the ''Model Curriculum for Training Tractor-Trailer Drivers'' (1985, GPO Stock No. 050–001–00293–1).

new CDL holders being paired with an experienced driver, but on many occasions the experienced driver was resting in the sleeper-berth rather than training/mentoring the new driver. They believe that new CDL drivers should receive a minimum of 6 months of on-the-job, behind the wheel training, with the trainer required to ride in the passenger seat and provide coaching and mentoring rather than resting in the sleeper berth. In addition, commenters stated that trainers should meet minimum experience and knowledge requirements before being eligible to train CDL applicants.

MAP–21 Requirements

The Moving Ahead for Progress in the 21st Century Act (MAP–21) Section 32304, ''Commercial motor vehicle operator training,'' amends 49 U.S.C. 31305 to require the Agency to issue regulations to establish minimum entry-level training requirements for all prospective CDL holders. Section 32304 specifically mandates that the training regulations (1) Address the knowledge and skills needed for safe operation of a CMV, (2) address the specific training needs of those seeking hazardous materials and passenger endorsements, (3) create a means of certifying that an applicant for a CDL meets Federal requirements, and (4) require training providers to demonstrate that their training meets uniform Federal standards. The 2007 NPRM did not address endorsement-related training or the entry-level training of new intrastate CDL applicants that is now mandated by MAP–21; these additions would be a significant change of direction.

After Congress enacted MAP–21, FMCSA requested that its Motor Carrier Safety Advisory Committee (MCSAC) consider the history of the ELDT issue, including legislative, regulatory and research background, and identify ideas the Agency should consider in moving forward with a rulemaking to implement the MAP–21 requirements. MCSAC issued its letter report in June 2013, which is available on the MCSAC Web site: *http://mcsac.fmcsa.dot.gov*.

Other Actions

Currently, FMCSA is conducting two research projects to gather supporting information on the effectiveness of ELDT. Study 1 will randomly sample CDL holders who received their license in the last three years and were identified as recently employed as a CMV driver. This will be done using information from the Motor Carrier Management Information System and the Commercial Driver License Information System. The drivers' safety performance data from these two systems will be analyzed against the type and amount of training they received. Study 2 will gather information from various sources to identify the relationship of training to safety performance. The sources include: Carriers; CDL training schools; and State Driver's License Agency records for recently issued CDLs. This study will also examine the safety performance of drivers in two States that have regulations dealing with different aspects of CDL driver training.

FMCSA Decision To Withdraw the NPRM

After reviewing the MAP–21 requirements, comments to the 2007 NPRM, participants' statements during the Agency's public listening sessions held earlier this year, and the MCSAC's June 2013 letter report, FMCSA has determined that it would be inappropriate to continue with the rulemaking initiated in 2007. The Agency believes a new rulemaking would provide the most effective starting point for implementing the MAP–21 requirements. A new rulemaking would provide the Agency and all interested parties the opportunity to move forward with a proposal that focuses on the MAP–21 mandate and makes the best use of the wealth of information provided by stakeholders since the publication of the 2007 NPRM.

In consideration of the above, the Agency withdraws the December 26, 2007, NPRM. However, the rulemaking to carry out the MAP–21 entry-level training requirement will solicit comments from all interested parties, including those who may wish to reiterate their previous remarks. That new rulemaking will be based on the results of the studies referenced above, public comments responsive to the statutory mandate, and the specific requirements of § 32304 of MAP–21.

Issued under the authority of delegation in 49 CFR 1.87.

Dated: August 27, 2013.

Anne S. Ferro,

Administrator.

[FR Doc. 2013–22772 Filed 9–18–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 771

Federal Transit Administration

49 CFR Part 622

[Docket No. FHWA–2013–0049]

FHWA RIN 2125–AF59; FTA RIN 2132–AB14

Environmental Impact and Related Procedures—Programmatic Agreements and Additional Categorical Exclusions

AGENCY: Federal Highway Administration, Federal Transit Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking (NPRM) provides interested parties with the opportunity to comment on proposed changes to the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) joint procedures that implement the National Environmental Policy Act (NEPA). The revisions are prompted by enactment of the Moving Ahead for Progress in the 21st Century Act (MAP–21). This NPRM proposes to: add new categorical exclusions (CE) for FHWA and FTA, allow a State department of transportation (State DOT) to process certain CEs without FHWA's detailed project-by-project review and approval (as long as the action meets specified constraints), and allow Programmatic Agreements between FHWA and States that would permit States to apply FHWA CEs on FHWA's behalf. The FHWA and FTA seek comments on the proposals contained in this notice.

DATES: Comments must be received on or before November 18, 2013.

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE., West Building Ground Floor Room W12–140, Washington, DC 20590–0001;
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE., between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329;

• *Instructions:* You must include the agency name and docket number or the Regulatory Identification Number (RIN) for the rulemaking at the beginning of your comments. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: For the Federal Highway Administration: Owen Lindauer, Ph.D., Office of Project Delivery and Environmental Review (HEPE), (202) 366–2655, or Jomar Maldonado, Office of the Chief Counsel (HCC), (202) 366–1373, Federal Highway Administration, 1200 New Jersey Ave. SE., Washington, DC 20590–0001. For the Federal Transit Administration: Megan Blum, Office of Planning and Environment (TPE), (202) 366–0463, or Dana Nifosi, Office of Chief Counsel (TCC), (202) 366–4011. Office hours are from 8:00 a.m. to 4:30 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

General Background

On July 6, 2012, President Obama signed into law MAP–21 (Pub. L. 112–141, 126 Stat. 405). The MAP–21 contains new requirements that the Secretary of Transportation must meet in complying with NEPA (42 U.S.C. 4321 *et seq.*), as well as several requirements for rulemaking to change 23 CFR part 771, which contains the regulations that implement NEPA for FHWA and FTA. Part 771 includes authority to categorically exclude certain categories of actions from the NEPA requirements to prepare an environmental assessment (EA) or environmental impact statement (EIS).

Sections 771.117(c) and 771.118(c) establish specific lists of categories of actions that FHWA and FTA have determined are normally categorically excluded from further NEPA review. Sections 771.117(d) and 771.118(d) provide FHWA and FTA with the authority to categorically exclude any action that meets the criteria of a CE in the Council on Environmental Quality (CEQ) regulations (40 CFR 1508.4) and provides examples of categories of actions that can be approved under that authority. The FHWA or FTA approval of a CE under section 771.117(d) or 771.118(d) is based on a review of the project's documentation demonstrating that the specific conditions or criteria for the CE are satisfied and that there will not be significant environmental effects.

Section 1318 of MAP–21 requires the Secretary to: (1) Survey and publish the results of the use of CEs for transportation projects since 2005 and solicit requests for new CEs; (2) publish an NPRM to propose new CEs received by the Secretary to the extent that the CEs meet the criteria for a CE under 40 CFR 1508.4 and 23 CFR part 771; and (3) issue an NPRM to move three actions found in 23 CFR 771.117(d)(1)–(3) to paragraph (c) to the extent that such movement complies with the criteria for a CE under 40 CFR 1508.4. In addition, section 1318(d) directs the Secretary to seek opportunities to enter into programmatic agreements, including agreements that would allow a State to determine, on behalf of FHWA, whether a project is categorically excluded.

Since MAP–21's enactment, FTA has established 23 CFR 771.118, a new section that contains FTA's CEs. Due to the timing of the publication of the final rule and MAP–21's enactment, FTA is applying section 1318 to 23 CFR 771.118. The FHWA and FTA, hereafter referred to as ''the Agencies,'' are carrying out this rulemaking on behalf of the Secretary.

I. The Agencies' NEPA Procedures

The CEQ regulations, 40 CFR parts 1500–1508, establish procedural requirements for complying with NEPA and instruct Federal agencies to establish CEs in their NEPA implementing procedures for those categories of actions that do not individually or cumulatively have a significant effect on the human environment and therefore do not require the preparation of an EA or an EIS. The Federal agency procedures must provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect (40 CFR 1508.4).

Joint procedures at 23 CFR part 771 (Agencies' NEPA Procedures) describe how the Agencies comply with NEPA and the CEQ regulations. Specifically, sections 771.117 and 771.118 contain the CEs that the Agencies have established, including the requirement for considering unusual circumstances, which is how the Agencies consider extraordinary circumstances in accordance with the CEQ NEPA regulations. Examples of the Agencies' unusual circumstances include: substantial controversy on environmental grounds, significant impacts on properties protected by section 4(f) of the U.S. Department of Transportation (DOT) Act (23 U.S.C. 138/49 U.S.C. 303) or section 106 of the National Historic Preservation Act (NHPA), or inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action (23 CFR 771.117(b); 23 CFR 771.118(b)).

The Agencies first issued their NEPA Procedures in 1980 (45 FR 71968, Oct. 30, 1980). Although the rules have been the subject of subsequent revisions, the Agencies issued the 1987 revisions (52 FR 3264, Aug. 28, 1987) as part of a departmentwide effort to streamline rules within the Department. The 1987 revisions are important to this NPRM because they resulted in the split of the Agencies' CEs into two groups.

The first group, referred to as ''(c)-list CEs,'' lists those actions that almost never involve significant impacts and, therefore, do not require detailed review by the Agencies. The project description typically contains all of the information necessary to determine if the action fits the description of the CE and that no unusual circumstances exist that would require further environmental studies.

The second group, referred to as ''(d)-list CEs,'' includes any action that meets the criteria for CEs in 40 CFR 1508.4 and sections 771.117(a) for FHWA actions or 771.118(a) for FTA actions. The Agencies' criteria are actions that do not normally: induce significant impacts to planned growth or land use for the area; require the relocation of significant numbers of people; have a significant impact on any natural, cultural, recreational, historic, or other resource; involve significant air, noise, or water quality impacts; have significant impacts on travel patterns; or otherwise, either individually or cumulatively, have any significant environmental impacts. Applicants for FHWA or FTA assistance must submit documentation for approval that demonstrates that the specific conditions or criteria for the CE are satisfied and that the action will not result in significant environmental effects (23 CFR 771.117(d); 23 CFR 771.118(d)). The Agencies use a list of examples to illustrate the types of actions covered by the (d)-list criteria. The Agencies take into account context and site location to determine if an action meets the CE criteria or would warrant further NEPA analyses. The Agencies took this approach instead of developing a comprehensive list ''so that specific actions not previously listed by an agency could be considered for CE status on a case-by-case basis'' (52 FR 32651, Aug. 28, 1987). In the Agencies' experience, the availability of the (d)-list CE authority expedites administrative and NEPA processing by encouraging grant applicants to design proposed projects so that significant impacts will not normally occur.

Regardless of classification as a (c)-list or (d)-list CE, actions qualifying for CEs

must also comply with NEPA requirements relating to connected actions and segmentation (*see, e.g.,* 40 CFR 1508.25, and 23 CFR 771.111(f)). The action must have independent utility and connect logical termini when applicable (*i.e.,* linear facilities). In addition, even though an action may qualify for a CE, thereby satisfying NEPA requirements, all other requirements applicable to the activity under other Federal and State laws and regulations still apply, such as the CWA, CAA, NHPA, General Bridge Act of 1946, and ESA. Some of these requirements may require the collection and analysis of information, or coordination and consultation efforts that are independent of the Agencies' NEPA CE determination. Also, some of these requirements may involve actions by other Federal agencies (*e.g.,* approvals or issuance of permits) that could trigger a different level of NEPA analysis for those Federal agencies. These requirements must be met before the action begins, regardless of the availability of a CE for the transportation project under 23 CFR part 771.

The CEQ regulations direct Federal agencies to update their NEPA implementing procedures as necessary, including amending lists of CEs from time to time to reflect changes in their missions and programs, and to reflect experience that has been gained since the adoption of their lists (40 CFR 1507.3(a)). The CEQ's guidance, *Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act* (75 FR 75628, Dec. 6, 2010) (CEQ CE Guidance), makes recommendations on reviewing existing lists and establishing new CEs. Prior to the enactment of MAP–21, the Agencies initiated a rulemaking to revise the CE list in 23 CFR part 771 in accordance with the CEQ guidance. The new rule became final on February 7, 2013 (78 FR 8964) and, among other improvements, established 10 new CEs in section 771.118(c) that specifically apply to actions by FTA. The CE provisions in section 771.117 now specifically apply to actions by FHWA.

II. The Agencies' Joint Rulemaking Approach

The Agencies are issuing this NPRM jointly to facilitate public and agency comment and to remain consistent with the joint rulemaking approach taken for previous proposed changes to the list of actions categorically excluded under 23 CFR part 771 (*see, e.g.,* 78 FR 11593, Feb. 19, 2013, implementing section 1315 of MAP–21; and 78 FR 13609, Feb. 28, 2013, proposing a rule to implement sections 1316 and 1317 of MAP–21). The Agencies collaborated in the preparation of a survey on CE use in transportation projects pursuant to section 1318(a) of MAP–21. The survey included a questionnaire that asked State DOTs, transit authorities, metropolitan planning organizations (MPOs), and other government agencies to provide information on their use of CEs for transportation projects and to solicit requests for new CEs.

The Secretary issued the survey on September 5, 2012, and received 117 responses that proposed 269 actions as new CEs. The Agencies collaboratively reviewed the survey results and made those results public in the *U.S. Department of Transportation National Environmental Policy Act Categorical Exclusion Survey Review* (*http://www.fhwa.dot.gov/map21/reports/sec1318report.cfm*). The Agencies coordinated to take advantage of their collective experience, to promote consistency, and to clarify differences between the Agencies with the development of the proposed CEs contained in this NPRM.

Although this is a joint NPRM, the Agencies note that the development of the proposed CEs for each Agency and the approach taken to implement section 1318 of MAP–21 is based on each Agency's particular mission and programs, unique experiences, and lists of CEs. The FTA recently completed a retrospective review of its CEs, and the result is already reflected in section 771.118. In contrast, the CE list in section 771.117 has not undergone a complete retrospective analysis since its last major revision in 1987. (The Agencies published an NPRM proposing major revisions to this regulation on May 25, 2000, but never issued a final rule.) Therefore, FHWA is taking the opportunity presented by MAP–21 to engage in a retrospective review of its list of CEs as required by 40 CFR 1507.3(a) (''Agencies shall continue to review their policies and procedures and in consultation with [CEQ] to revise them as necessary to ensure full compliance with the purposes and provisions of [NEPA]''), and re-emphasized by the recent CEQ CE Guidance.

The FHWA's development and implementation of programmatic agreements for the use of CEs (also known as PCE agreements) is also distinct from FTA's program, which lacks the statutory authority to allow for PCE agreements. The PCE agreements enable FHWA Division Offices and State DOTs to develop protocols that allow State DOTs to certify to FHWA whether a project qualifies for a CE. (*FHWA Memorandum—Categorical Exclusion (CE) Documentation and Approval,* Mar. 30, 1989, *http://environment.fhwa.dot.gov/projdev/docuceda.asp*) (hereinafter ''FHWA's 1989 PCE Memorandum''). Section 1318(d) of MAP–21 encourages the use of PCE agreements. The FHWA has drawn from its experience with these agreements to comply with section 1318 of MAP–21.

III. FHWA's Approach to MAP–21's Section 1318 Requirements

The FHWA is issuing this proposal to meet the rulemaking requirements in section 1318(b) and 1318(c). The FHWA is also utilizing this NPRM as an opportunity to propose general criteria for all PCE agreements in furtherance of section 1318(d). As a result, this NPRM contains the following proposed changes with respect to 23 CFR 771.117: (1) The addition of four new CEs derived from the survey and requests for new CEs as mandated by section 1318(a); (2) moving three FHWA (d)-list CE examples to FHWA's (c)-list (to the extent that such movement complies with the criteria for a CE under 40 CFR 1508.4) as required under section 1318(b); and (3) the addition of general criteria that would apply to all FHWA PCE agreements. Sections III.A., III.B., and III.C. provide background for each of these changes, while the *FHWA Section-by-Section Discussion of the Proposal* provides a more detailed discussion of the proposals.

A. CE Survey and New CEs

The FHWA evaluated the results of the CE survey to determine which requested actions would be appropriate as CEs according to the criteria for a CE under 40 CFR 1508.4 and 23 CFR 771.117(a). The FHWA did not pursue requests for new CEs for actions that would duplicate already existing CEs, requests for new CEs that would not involve a FHWA action (*e.g.,* projects ineligible for FHWA funding assistance), requests that would not meet the criteria for a CE under 40 CFR 1508.4 and 23 CFR 771.117(a), or requests for new CEs for actions that would not have independent utility. The FHWA also eliminated proposed new CEs that would be covered by a statutorily mandated CE rulemaking under other MAP–21 provisions (*e.g.,* emergency actions (section 1315), operational right-of-way actions (section 1316), limited Federal assistance actions (section 1317), and the revision mandated by section 1318(c) for moving modernization of highways actions, highway safety actions, and bridge

rehabilitation, reconstruction, or replacement actions from the (d)-list to the (c)-list)). The FHWA evaluated the remaining actions proposed as CEs to eliminate those that did not meet the 40 CFR 1508.4 definition and those that were so broad that they could include actions with significant environmental effects.

The FHWA categorized the actions proposed as CEs into 22 groups. The groups identified were: (1) Safety and operations; (2) maintenance and preservation actions; (3) bridges; (4) activities within existing right-of-way or urban areas; (5) railroads; (6) transit; (7) rehabilitation and reconstruction; (8) environmental mitigation; (9) bicycle and pedestrian facilities; (10) utilities, lighting, and signage; (11) actions consistent with existing plans or land use and those approved by other agencies; (12) culverts and waterways; (13) acquisitions; (14) excess right-of-way; (15) activities with limited Federal involvement/funding; (16) activities under a certain size/cost threshold; (17) alternative energy; (18) parking; (19) geotechnical work; (20) aesthetic treatments; (21) ferries; and (22) other.

The FHWA determined that most of the requests for new CEs were for actions either already covered by the existing list of CEs (81 requests) or for actions that would qualify for CEs associated with other statutorily mandated MAP–21 CE rulemakings (102 requests). For example, FHWA received requests to include roundabouts and traffic circle projects as a new CE. The FHWA considers roundabouts and traffic circle projects to be a highway safety or traffic operations improvement projects and would process this type of action as a CE under paragraph 771.117(d)(2) when the action does not add capacity and requires only minor amounts of new right-of-way. As discussed below, FHWA proposes to move this category to paragraph (c).

The FHWA did not pursue 86 requests for the following reasons: 38 requests were for overly broad actions that would include elements that may result in significant impacts; 16 requests were for actions that are not subject to NEPA because there is no Federal action; 13 requests were for actions already covered by the (d)-list which FHWA determined did not warrant a move to the (c)-list; and 6 requests were for actions that were inappropriately segmented from a larger action. The FHWA determined that the remaining 13 requests were appropriate for consideration. These 13 requests were grouped into 5 CEs. Four of the CEs are proposed in this NPRM as new CEs for the list in 23 CFR 771.117(c).

The fifth CE, not pursued in this NPRM, would have covered early acquisition actions (*e.g.,* advanced acquisitions for minor amounts of abandoned railroad right-of-way and minimal right-of-way). Section 1302 of MAP–21 amended 23 U.S.C. 108 to allow for FHWA-funded early acquisitions of real property interests prior to completion of the NEPA review process for the transportation project that could use the real property interests. The FHWA elected not to propose the requested CE in this NPRM because FHWA has not completed procedures to implement section 108. The FHWA notes, however, that similar to acquisition projects for hardship and protective purposes, early acquisition projects using Federal funds that meet the statutory conditions in section 108(d) may be processed as a (d)-listed CE, so long as unusual circumstances do not exist that would lead FHWA to require the preparation of an EA or EIS.

B. Moving FHWA (d)-List CEs to the (c)-List

The FHWA also considered MAP–21's requirement to move particular (d)-list CEs to the (c)-list to the extent that such movement complies with the criteria for CE under 40 CFR 1508.4. The (d)-list CEs are those for (1) Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (including parking, weaving, turning, and climbing); (2) highway safety or traffic operations improvement projects, including installation of ramp metering control devices and lighting; and (3) bridge rehabilitation, reconstruction, or replacement or construction of grade separation to replace existing at-grade railroad crossings.

Section 1508.4 of title 40, Code of Federal Regulations, provides that a ''categorical exclusion means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have such effect in procedures adopted by a [F]ederal agency in implementation of these regulations and for which, therefore, neither an environmental assessment nor an environmental impact statement is required.'' This CEQ regulatory definition of a CE does not acknowledge the distinction in part 771 between two types of CEs (*i.e.,* the (c)-list and (d)-list). Therefore, the particular agency's NEPA procedures are the appropriate place for establishing any distinctions for the agency's CEs. *See* CEQ CE Guidance, 75 FR 75635–75636 (establishing that each Federal agency should decide—and update its NEPA implementing procedures and guidance to indicate—whether any of its CEs warrant preparation of additional documentation).

The FHWA has determined that, for its programs, moving the CE language from section 771.117(d)(1)–(3) to 771.117(c) is appropriate and consistent with 40 CFR 1508.4, if: (1) The action normally would not have significant impacts, and (2) FHWA's experience supports eliminating FHWA's detailed review process for this select group of categorical exclusions. In FHWA's experience, actions in section 771.117(c) represent actions that normally do not have significant impacts. This interpretation is consistent with FHWA's experience with PCE agreements. Some FHWA PCE agreements eliminate the need for FHWA's detailed project-by-project review for actions that qualify for a (d)-list CE, and meet certain conditions that reduce their potential to cause significant impacts. The intent of this approach is to identify those actions that currently qualify for (d)-list CEs, but would not normally have significant impacts and therefore could be placed on the (c)-list. The interpretation is also consistent with FHWA's practice since the creation of the (c)-list, as evidenced in the preamble for the 1987 final rule (52 FR 32651, Aug. 28, 1987). In applying this test to the particular (d)-list actions identified in MAP–21 section 1318, FHWA considered recommendations in the CEQ CE Guidance to consider ''limiting or removing activities included in the categorical exclusion'' and ''placing additional constraints on the categorical exclusion's applicability'' when appropriate (75 FR 75632, Dec. 6, 2010).

After reviewing its experience with these actions, FHWA has decided not to propose an unconditional move of the identified (d)-list CEs to the (c)-list. Many actions that qualify for these (d)-list CEs require consideration of the surrounding environment in which the action will occur (such as their setting, site location, and surrounding land use) and their particular context (*e.g.,* no effect, or minor to moderate environmental effects). This is typically accomplished through FHWA's review of project documentation, and the movement from the (d)-list to the (c)-list is not supported without any limitations. However, FHWA's experience with PCE agreements indicates that FHWA could move a subset of these actions—those that meet a proposed a set of constraints similar to those used in PCE agreements—because the constraints would limit the

actions to those that normally would not have significant impacts.

C. The FHWA PCE Agreements

This rulemaking also is intended to address section 1318(d) of MAP–21, which authorizes FHWA to enter into programmatic agreements. The FHWA proposes changes to 23 CFR 771 to codify PCE agreements in regulation and to establish general criteria for all PCE agreements. Existing PCE agreements will need to be reviewed and amended to conform to the new criteria proposed in this NPRM. Existing PCE agreements would continue to operate until revised, but would need to be revised no later than 5 years after publication of the rule if it becomes final.

The FHWA established PCE agreements in 1989 as a tool to expedite the NEPA review processes (*see* FHWA's 1989 PCE Memorandum). Under these PCE agreements, FHWA and the State DOT enter into an agreement that identifies classes of (d)-list CEs that the State DOT may process without FHWA's detailed project-by-project review and approval as long as the action meets specified conditions that limit their potential environmental impacts. These agreements also provide for the processing of (c)-list CEs by the State DOT. Typically, PCE agreements allow a State DOT to certify to FHWA that a particular action (or group of actions) meet the conditions established in the agreement and provide FHWA an opportunity to agree or reclassify the action before the State DOT begins the project. The FHWA has promoted these instruments through its Every Day Counts initiative. See *http://www.fhwa.dot.gov/everydaycounts/* for more information about this initiative.

The PCE agreements increase efficiency in the processing of CE actions under FHWA's existing regulatory framework. The PCE agreements provide a process where State DOTs can certify to FHWA that a project qualifies for a CE based on conditions that take into account each State's unique resources, context, and considerations. The FHWA legally remains responsible for the final CE determination and remains responsible for compliance with other environmental review requirements, such as compliance with section 106 of NHPA, section 7 of ESA, CAA conformity, and section 4(f) of the DOT Act.

Section 1318(d)(2) of MAP–21 introduces a new authority that allows State DOTs to make CE determinations on FHWA's behalf. The FHWA interprets the provision in section 1318(d)(2) to allow a State DOT to make determinations on FHWA's behalf without the need for certification and FHWA's NEPA approval as required under 23 CFR 771.117. The FHWA interprets section 1318(d)(3) as limiting this expanded authority to actions listed in regulation (*i.e.,* all (c)-list CEs and the examples provided in the (d)-list) and any other CE that is added through a process consistent with the requirements of 40 CFR 1508.4. This new opportunity would avoid the need for State DOT certification and FHWA review before the start of a project for those CEs identified in the agreement. This NPRM proposes criteria to standardize all PCE agreements, including those authorized under section 1318(d)(2).

The FHWA does not provide detailed project-by-project review for the State DOT's use of a CE if the action is provided for in the PCE agreement, the action meets stipulated conditions for avoiding adverse environmental impacts, and the State DOT follows the stipulated processing and documentation requirements. However, the PCE agreements recognize that some actions qualifying for (d)-list CEs deserve detailed project-by-project review by FHWA due to their context and project scope, while others may not require such detailed project-by-project review if specific environmentally adverse impact considerations are avoided, and the State DOT agrees and provides appropriate administrative controls (*i.e.,* resources and oversight).

The FHWA's oversight would ensure that CE determinations are appropriate and that State DOTs comply with all environmental requirements. The result of oversight is the identification of best practices and the implementation of corrective actions. The FHWA Division Offices undertake periodic monitoring as well as informal reviews of the State DOTs' procedures and documentation to ensure that all potential environmental impacts are considered and compliance with all other environmental requirements is properly documented.

The FHWA's 1989 PCE Memorandum originally recommended 14 base conditions that, if met, would eliminate the need for FHWA's detailed project-by-project review for those actions. Over time, experience in applying these conditions has led to State-by-State PCE agreement revisions to account for each State's unique environmental context.

The PCE agreements developed from the 1989 PCE Memorandum vary from State to State in a number of respects due to the absence of standards for national consistency. Agreements differ in how FHWA accomplishes oversight and monitoring, how States process and document CEs, and how States report CE certifications to FHWA. Some agreements have specific stipulations regarding quality control and quality assurance, the term of the agreement and provisions for termination, and public availability of the PCE agreement itself. This rulemaking proposes to rectify this consistency issue.

The FHWA has two additional programs that allow for State assumption of certain NEPA responsibilities. The PCE agreements are different than the arrangements established by 23 U.S.C. 326 (State Assumption of Responsibility for Categorical Exclusion actions) and 23 U.S.C. 327 (Surface Transportation Project Delivery Program). First, as mentioned above, the PCE agreements relate to the processing of the CE under NEPA and do not extend to compliance with other environmental requirements. In contrast, sections 326 and 327 specifically authorize the assignment of other environmental review, consultation, and decisionmaking responsibilities to States (except responsibilities for government-to-government consultation with federally recognized Indian tribes under section 327, responsibility for planning pursuant to 23 U.S.C. 134 and 135 or 49 U.S.C. 5303 and 5304, and any conformity determination required under section 176 of the CAA) that will assume the NEPA responsibilities. Second, PCE agreements do not remove FHWA's legal responsibility for individual CE determinations. As a result, FHWA retains the authority to overturn any CE determination made by the State DOT under the PCE agreement at any time. The FHWA may also decide to terminate or invalidate the PCE agreement at-will without prior notice and with immediate effect. In contrast, under sections 326 and 327, the State becomes solely responsible and liable for complying with and carrying out NEPA, and FHWA has no such responsibility or liability. The FHWA does not retain veto authority over NEPA decisions for individual projects after the CE assignment through a Memoranda of Understanding (MOU) has been made. In addition, sections 326 and 327 provide for notice and an opportunity to cure where the FHWA proposes to terminate a State's participation in the programs. Finally, FHWA retains legal responsibility, including primary responsibility for defending litigation, for CE determinations under PCE agreements. Under sections 326 and 327, the State has primary responsibility for defending determinations made under the

assignments if they are challenged in court.

IV. FTA's Approach to MAP–21's Section 1318 Requirements

A. CE Survey and New CEs

After the public comment period closed for the section 1318 CE Survey Review, FTA considered all CE proposals received (269), whether they were proposed by State DOTs, transit authorities, MPOs, or other government agencies. The FTA determined that the majority of the actions proposed as CEs (120) were covered by the CEs created under section 771.118 and published as a final rule on February 7, 2013. Further analysis revealed that 86 of the actions proposed as CEs would fall under CEs that either have been or may be created pursuant to other MAP–21 provisions, or through a combination of existing CEs at section 771.118 and through other MAP–21 provisions. As those actions are categorically excluded through existing CEs or through CEs otherwise created, they were not considered further for this rulemaking.

The FTA also removed 50 proposed actions from further consideration as CEs for the following reasons: the action was not applicable to FTA (*e.g.,* control and removal of outdoor advertising), the action was too broad or lacked sufficient detail to allow it to qualify as a CE under the CEQ and FTA regulations (*e.g.,* all projects in an urbanized area on the theory that most of the areas are already disturbed), the action would lack independent utility (*e.g.,* project staging and storage areas), or FTA lacks the basis for substantiation to show that the activity qualifies as a CE under the CEQ and FTA regulations (*e.g.,* stimulus or fast track projects).

Of the 13 remaining proposed CEs, FTA refined and combined the language suggested by survey respondents, resulting in 5 CE proposals (3 for section 771.118(c) and 2 proposed examples for section 771.118(d)). Per CEQ's CE Guidance and as alluded to above, FTA based its proposal on a determination of ''whether a proposed activity is one that, on the basis of past experience, normally does not require further environmental review'' (75 FR 75631, Dec. 6, 2010). To do this, FTA surveyed its records for documented CEs and Findings of No Significant Impact (FONSIs), as well as the CEs for other Federal agencies of similar nature, scope, and intensity. The FTA was able to support the three section 771.118(c) CEs through substantiation. The CEQ's CE guidance qualifies substantiation by stating that the ''amount of information required to substantiate a CE depends on the type of activities included in the proposed category of actions'' (75 FR at 75633). Given the direction that documentation should match the nature of the CE and the proposed CEs for section 771.118(c), FTA anticipates little environmental impact—and normally no significant impact—associated with the proposed CEs; therefore, FTA is proposing the CEs despite not having extensive documentation for some of the proposals. Through this rulemaking, FTA specifically seeks public comment and requests any supporting information to substantiate the potential environmental impacts of its CE proposals.

The FTA also proposes two new examples under section 771.118(d). The additions to section 771.118(d) would be examples of actions that may be categorically excluded only with the required site specific documentation. When a project sponsor submits documentation to support an action under section 771.118(d), the grantee is substantiating the appropriate use of the CE at that time. All five CE proposals are presented in this NPRM for public review and comment.

B. Moving FTA (d)-List CEs to the (c)-List

Regarding the MAP–21 Section 1318(c) mandate to move the actions at section 771.117(d)(1)–(3) to section 771.117(c) ''to the extent that such movement complies with the criteria for a categorical exclusion'' in the CEQ regulation, FTA complied with section 1318(c) through the final rule published on February 7, 2013 (78 FR 8964). When FTA created the new list of CEs at section 771.118, it considered the actions found in section 771.117(d) and moved those activities applicable to FTA's program and for which FTA had supporting documentation to section 771.118(c), which corresponds with FHWA's section 771.117(c). Although FTA complied with section 1318(c) through the final rule issued on February 7, 2013, FTA will consider comments on this proposal and will examine any supporting substantiation/data/documentation submitted by members of the public. The FTA is particularly interested in hearing from past sponsors of transit projects and members of the public affected by those projects. Details regarding FTA's proposal regarding section 1318(c) are found in the ''FTA Section-by-Section Analysis'' section.

General Discussion of the Proposals

This NPRM proposes to add four new CEs to FHWA's list of CEs in section 771.117(c); move FHWA CEs in section 771.117(d)(1)–(3) to paragraph (c) subject to a list of constraints; establish the constraints for the moved (d)-list CEs in section 771.117(e); renumber existing paragraph (e) in section 771.117 to (f); add new section 771.117(g) on PCE agreements; make conforming amendments to section 771.117(d); add three new CEs to FTA's list of CEs in section 771.118(c); and provide two new CE examples in FTA's list of CE examples in section 771.118(d).

The CE lists in part 771 are the subject of current rulemaking proceedings (*see, e.g.,* 78 FR 13609, Feb. 28, 2013, implementing sections 1316 and 1317 of MAP–21). Any final rule resulting from this NPRM will adopt revised references as appropriate to reflect the final results of the other MAP–21 rulemaking proceedings.

FHWA Section-by-Section Discussion of the Proposals

Section 771.117(c)

The FHWA proposes to amend section 771.117(c) by adding four new CEs based on the CE Survey Review and moving the first three FHWA CEs in paragraph (d) to paragraph (c). In FHWA's experience, actions that meet the criteria of these proposed CEs do not normally have significant environmental impacts. The FHWA has developed a substantiation record summary to support the inclusion of the CEs, which is provided in the docket for this rulemaking.

The FHWA proposes to amend section 771.117(c) by adding a new paragraph (c)(24) for ''[l]ocalized geotechnical and other investigations to provide information for preliminary design and for environmental analyses and permitting purposes, such as drilling test bores for soil sampling; archeological investigations for archeology resources assessment or similar survey; and wetland surveys.'' This proposed addition is in direct response to requests for new CEs received through the CE Survey Review. The CE would include a variety of investigations that inform preliminary engineering for highway projects. Geotechnical or other subsurface investigation, including drilling of test bores/soil sampling, provides information for preliminary design and for environmental analyses and permitting purposes and is found normally not to have the potential to significantly impact the environment. The CE also would cover other site characterization actions such as archeological surveying and testing to determine eligibility for the National Register of Historic Places, and wetland

surveys for purposes of delineation and/or jurisdictional determinations. The California Department of Transportation (Caltrans) has provided substantiation for including these types of preliminary engineering actions in Appendix A of the MOU that assigns CE responsibilities to the State of California (*http://www.dot.ca.gov/ser/downloads/MOUs/23usc326_ce_assignment_mou.pdf*).

The FHWA proposes adding paragraph (c)(25) to create a new (c)-list CE for ''[e]nvironmental restoration and pollution abatement actions to minimize or mitigate the impacts of any existing transportation facility (including retrofitting and construction of stormwater treatment systems to meet Federal and State requirements under sections 401 and 402 of the Federal Water Pollution Control Act (33 U.S.C. 1341; 1342)) carried out to address water pollution or environmental degradation.'' This CE includes a range of environmental mitigations that became eligible for FHWA funding as a project with independent utility in the *Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users* (Pub. L. 109–59). Section 328 of title 23, United States Code, makes certain stand-alone environmental mitigation projects eligible for title 23 assistance. ''Environmental restoration,'' as defined by FHWA in guidance (*Guidance on 23 U.S.C. 328 Environmental Restoration and Pollution Abatement,* Aug. 17, 2006, *http://www.fhwa.dot.gov/hep/guidance/envrestore.cfm*), is a process involving returning the habitat, ecosystem, or landscape to a productive condition that supports natural ecological functions. Since these natural systems are diverse and dynamic, the process of recreating or duplicating their natural, or pre-settlement state is virtually impossible, but the goal of the restoration should be to re-establish the basic structure and function associated with natural, productive conditions. Wetlands are part of the hydrological cycle and are associated with the environmental restoration process. The FHWA has existing guidance for wetland and natural habitat restoration and mitigation measures, such as wetland and habitat banks or statewide and regional conservation measures.

In the *Guidance on 23 U.S.C. 328 Environmental Restoration and Pollution Abatement,* ''pollution abatement project'' is defined as ''practices or control measures designed to retrofit existing facilities or minimize stormwater quality impacts from highway projects.'' Examples of projects for environmental restoration and pollution abatement actions include:

- Establishing buffers or areas to protect riparian habitat along drainage ways and stream corridors;
- Installing stormwater quality retrofit and mitigation measures (creation of detention, infiltration, and pervious pavements, and establishment of native plant species for abatement of storm water runoff); and
- Restoring wetlands and natural habitat (*e.g.,* revegetation of disturbed areas with native plant species, stream or river bank vegetation, and restoration or creation of wetlands, including creation of wetland mitigation banks).

The FHWA's experience with environmental restoration and pollution abatement projects is most extensive in California, where these actions were added in Appendix A to the MOU that assigned Federal responsibilities for CEs to Caltrans pursuant to 23 U.S.C. 326. Additional substantiation for these actions includes projects from Washington State, Texas, Alabama, and Alaska. As noted in the FHWA CE substantiation summary included in the docket for this NPRM, projects involving environmental restoration and pollution abatement have not resulted in significant impacts in FHWA's experience. It is important to note, however, that the decision to apply the CE must still take into account unusual circumstances. This means, for example, that a pollution abatement project that involves clear cutting a forest to build a detention pond may involve unusual circumstances that would potentially require the preparation of an environmental assessment or environmental impact statement.

The FHWA proposes a new paragraph (c)(29) to create a new (c)-list CE for the ''[p]urchase, construction, replacement, or rehabilitation of ferry vessels (including improvements to ferry vessel safety, navigation, and security systems) that would not require a change in the function of the ferry terminals and can be accommodated by existing facilities or by new facilities which themselves are within a CE.'' This is one of two CEs FHWA proposes related to ferry transportation projects. The Agencies did not identify ferry boats in the Agencies' NEPA Procedures when they finalized the Procedures in 1980 and revised them in 1987, but ferry boats became a recognized vehicle in both transit and highway projects beginning with the *Ferry Boat Discretionary Program* in the *Intermodal Surface Transportation Efficiency Act of 1991* (Pub. L. 102–240). Under MAP–21, this program is now titled the *Construction of Ferry Boats and Ferry Terminal Facilities* and is no longer a discretionary program. The FHWA proposes two new CEs to recognize ferry transportation actions. The purchase, replacement, construction, or rehabilitation of ferry boats with Federal-aid highway funds is similar to the acquisition, installation, rehabilitation, replacement, and maintenance of ferry boats with funds under chapter 53 of title 49, United States Code. The environmental impacts of these actions are comparable. For these reasons, FHWA used language from FTA's CE in 23 CFR 771.118(c)(7) to inform this proposed CE.

The FHWA is proposing two constraints for this proposed CE that are modeled after constraints in FTA's CE: (1) No change in function of the ferry terminals; and (2) that the ferries be accommodated by existing facilities. The FHWA has modified the second constraint to allow for situations where a new facility is needed and its construction would qualify for an existing CE. This proposed modification is modeled after FHWA's CE for the purchase of vehicles in section 771.117(c)(17), which allows for the purchase of vehicles where the use of the vehicles can be accommodated by new facilities which themselves are within a CE.

The FHWA proposes paragraph (c)(30) to create a new (c)-listed CE for ''[r]ehabilitation or reconstruction of existing ferry facilities that occupy substantially the same geographic footprint, do not result in a change in their functional use, and do not result in a substantial increase in users. Example actions include work on pedestrian and vehicle transfer structures and associated utilities, buildings, and terminals.'' The environmental impacts of rehabilitation or reconstruction actions of existing ferry facilities are similar to the environmental impacts of rehabilitation or reconstruction actions of rail and bus buildings and ancillary facilities. Rehabilitation and reconstruction of bus and rail buildings qualify for an existing FHWA CE under section 771.117(d)(9). Additionally, the environmental impacts of rehabilitation or reconstruction actions of existing ferry facilities using Federal-aid highway funds are similar to the environmental impacts of actions to rehabilitate and reconstruct ferry facilities using funds under chapter 53 of title 49, United States Code, which qualify for a FTA CE under section 771.118(c)(8).

The FHWA proposes to include constraints on paragraph (c)(30) modeled after FTA's section 771.118(c)(8) constraints (*i.e.,* that the

projects occupy substantially the same geographic footprint and do not result in a change in their functional use). The FHWA is proposing the additional constraint—that the project does not result in a substantial increase in users—to be consistent with the existing constraint in FHWA's CE for the rehabilitation or reconstruction of rail and bus buildings. Example actions that this CE would cover include work on pedestrian and vehicle transfer structures and associated utilities, buildings, and terminals.

The FHWA considered the addition of two new CEs for bridge removal projects and preventive maintenance modeled after the proposed FTA CEs for sections 771.118(c)(14) and (15) (*see FTA Section-by-Section Analysis* for *Section 771.118(c)*). The FHWA decided not to propose these CEs at this time. The FHWA does not have sufficient experience with projects involving only bridge removal to warrant the creation of a new CE. Typically, for FHWA, a bridge removal action is associated with a bridge replacement project that is already listed as a CE. For preventive maintenance actions, FHWA found that the majority of actions that would be eligible as preventive maintenance under title 23 would qualify for other CEs in section 771.117 and therefore, no new FHWA CE was needed at this time.

The FHWA proposes to move the first three listed examples in section 771.117(d)(1)–(3) to section 771.117(c)(26)–(28). The proposal is to move paragraph (d)(1) ''[m]odernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (including parking, weaving, turning, and climbing)'' to paragraph (c)(26); paragraph (d)(2) ''[h]ighway safety or traffic operations improvement projects, including the installation of ramp metering control devices and lighting'' to paragraph (c)(27); and paragraph (d)(3) ''[b]ridge rehabilitation, reconstruction, or replacement or the construction of grade separation to replace existing at-grade railroad crossings'') to paragraph (c)(28). Each of the moved paragraphs will contain a reference to constraints developed to support the move. The proposed constraints are discussed below in the *Section-by-Section* discussion of new paragraph (e).

The FHWA proposes paragraph (c)(26) to create a new (c)-list CE for actions involving the ''[m]odernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (including parking, weaving, turning, and climbing) if the action meets the conditions in paragraph (e).'' A version of this CE has existed since the initial publication of the Agencies' NEPA Procedures in 1980. The 1980 version, which did not divide the CEs into two groups, as is the case in the current regulations, included ''widening less than a single lane width'' and ''correcting substandard curves and intersections'' as additional examples of what actions the CE covered. The 1980 version contained constraints that prohibited the application of the CE if the proposed project required ''acquisition of more than minor amounts of right-of-way or substantial changes in access control.'' The FHWA removed these constraints as part of the 1987 amendments that placed this action in the (d)-list CE. This restriction was not needed for the processing of these actions as (d)-list CEs. In FHWA's experience, actions that did not meet the prescriptive limitations (*e.g.,* minor amounts of right-of-way, substantial change in access control) could still meet FHWA's criteria for CE classification after FHWA's project-by-project evaluation of their context under paragraph (d)(1). The FHWA proposes to restore these constraints as part of the list of constraints in paragraph (e) to ensure that these actions, when processed as (c)-list CEs, would normally not cause significant effects.

The FHWA proposes paragraph (c)(27) to create a new (c)-list CE for actions associated with ''[h]ighway safety or traffic operations improvement projects, including the installation of ramp metering control devices and lighting if the project meets the conditions in paragraph (e).'' A version of this CE has existed since the initial publication of the Agencies' NEPA Procedures in 1980. The 1980 version of this CE included examples such as ''correction or improvement of high hazard locations; elimination of roadside obstacles; highway signing; pavement markings; traffic control devices; railroad warning devices; and lighting.'' The 1980 version also contained constraints that prohibited the application of the CE if the proposed project required ''acquisition of more than minor amounts of right-of-way or substantial changes in access control.''

In 1983, FHWA proposed that CE language for safety and traffic operation projects be added to the (d)-list examples requiring FHWA detailed review. The FHWA received public comments objecting to the inclusion of ''traffic control devices'' in the (d)-list. In response, FHWA decided to split those activities into two CEs: ''traffic signals'' was added to the (c)-list, whereas ''ramp metering controls'' was placed in the (d)-list. The FHWA also removed the constraints against ''acquisition of more than minor amounts of right-of-way or substantial changes in access control'' in the 1987 amendments because the Agency moved the CE text to the (d)-list and the detailed review would assist in determining the context of these impacts. The FHWA proposes to restore these constraints as part of the list of constraints in paragraph (e) to ensure that these actions, when processed as (c)-list CEs, would have no effects or almost never cause significant effects.

As discussed in the *General Background* section of this NPRM, paragraph (c)(27) would cover roundabouts and traffic circle projects because these are considered highway safety or traffic operations improvement projects as long as they meet the constraints provided in paragraph (e). Roundabouts and traffic circle projects that do not meet the constraints provided in paragraph (e) may continue to be processed as (d)-list CE if they meet the conditions for the CE use.

The FHWA proposes paragraph (c)(28) to create a new (c)-list CE for actions involving ''[b]ridge rehabilitation, reconstruction, or replacement or the construction of grade separation to replace existing at-grade railroad crossings if the actions meet the conditions of paragraph (e).'' A version of this CE has existed since the initial publication of the Agencies' NEPA Procedures in 1980 before the split of the CEs into two groups. The original CE language provided for the ''[r]econstruction or modification of an existing bridge structure on essentially the same alignment or location (*e.g.,* widening less than a single travel lane, adding shoulders or safety lanes, walkways, bikeways, or pipelines) except for bridges on or eligible for inclusion in the National Register or bridges providing access to barrier islands. Reconstruction or modifications of an existing one lane bridge structure, presently serviced by a two lane road and used for two lane traffic, to a two lane bridge on essentially the same alignment or location, except bridges on or eligible for inclusion in the National Register or bridges providing access to barrier islands.'' In addition to placing the CE in the (d)-list examples, the 1987 amendments removed the restrictions prohibiting the use of the CE for modifications of bridges that are on or eligible for inclusion in the National Register of Historic Places or bridges that provide access to barrier islands. The FHWA reasoned that the evaluation of unusual circumstances, coupled with the detailed review and documentation

expectations for the (d)-list CE, assisted in identifying those situations where modifications of historic or barrier island bridges might need a higher level of NEPA analysis (*i.e.,* an EA or EIS). As discussed below, the FHWA is proposing to include a version of these conditions in paragraph (e). This CE would cover all actions associated with the bridge rehabilitation or replacement project, including the creation of temporary roads and bridges. It is important to note that temporary work that raises unusual circumstances (*e.g.,* taking place in endangered species habitat) may trigger the need for a higher level of NEPA review for the entire project. Some temporary work such as the construction of a detour road or bridge may require a higher level of scrutiny to ensure adequate consideration of unusual circumstances.

Section 771.117(d)

The FHWA proposes to make several amendments to section 771.117(d) to account for the proposed move of the (d)-list CEs in paragraphs (1), (2), and (3). First, FHWA proposes to remove and reserve paragraphs (d)(1), (d)(2), and (d)(3). Second, FHWA proposes to add a new paragraph (d)(13) for ''[a]ctions described in paragraphs (c)(26), (c)(27), and (c)(28) that do not meet the constraints in paragraph (e) of this section.'' The purpose of this language is to preserve the use of the (d)-list CE for those projects that could be covered by the moved language but do not meet the constraints proposed. The FHWA would make a CE determination based on documentation that demonstrates no significant environmental impacts would result.

In addition, FHWA proposes minor changes to the introductory sentence in paragraph (d) to account for the authority provided in section 1318(d) of MAP–21 and the proposed new paragraph (g). The FHWA proposes to change the first sentence to ''[a]dditional actions which meet the criteria for a CE in the CEQ regulations (40 CFR 1508.4) and paragraph (a) of this section may be designated as CEs only after Administration approval *unless otherwise authorized under an executed agreement pursuant to paragraph (g) of this section''* (emphasis added). This amendment makes it clear that FHWA NEPA approval is not expected on a case-by-case basis in situations where a PCE agreement covers the action and the State is processing the CE on behalf of FHWA.

Section 771.117(e)

The FHWA proposes to renumber current paragraph (e) as paragraph (f). The FHWA proposes new language for paragraph (e) describing the constraints applicable to the proposed CEs under paragraphs (c)(26), (c)(27), and (c)(28). These constraints are needed to ensure the actions falling under paragraphs (c)(26), (c)(27), or (c)(28) do not significantly affect the environment and, therefore, can be processed under the (c)-list without FHWA detailed project-by-project review. The FHWA believes that listing these proposed constraints in new paragraph (e) will encourage project proponents to design their projects in a way that avoids the need for FHWA detailed project-by-project review. Projects that cannot meet these constraints would still be eligible for a (d)-listed CE, if the projects meet CE criteria established in paragraph (d).

The FHWA relied on its experience in the implementation of PCE agreements for the development of the constraints. The FHWA has promoted PCE agreements since 1989 recognizing that some actions qualifying for (d)-list CEs deserve careful consideration and approval by FHWA due to their context, while others may not require such a detailed individual project-by-project review as long as specific environmental adverse impact constraints are followed, and the State DOT agrees and provides appropriate administrative controls (*i.e.,* resources and oversight). The FHWA's 1989 PCE Memorandum recommended 14 nationwide conditions that, if met, could allow the processing of (d)-list CEs without the need for FHWA detailed project-by-project review. The FHWA's use of conditions in PCE agreements has the same effect as the proposal for moving the (d)-list CEs to the (c)-list while applying conditions—to define a subset of actions that would otherwise fit under paragraphs (d)(1), (d)(2), and (d)(3) CEs but do not merit FHWA detailed project-by-project review based on a project's impacts. The FHWA notes that establishing such constraints is supported by the CEQ CE Guidance, which expands on 40 CFR 1508.4 (75 FR 75632, Dec. 6, 2010). After an evaluation of the original 14 conditions in the 1989 memorandum and consideration of its field staff experience, FHWA is proposing 6 constraints be listed in paragraph (e).

First Proposed Constraint

The first proposed constraint would establish that a proposed action fitting the language under paragraphs (c)(26), (c)(27), or (c)(28) may not involve ''an acquisition of more than a minor amount of right-of-way or that would result in any commercial or residential displacements.'' This constraint is similar to the condition that appeared in the 1980 version of the CEs for modernization of highways and for highway safety or traffic operation improvement projects. The proposed constraint is based on a condition described in FHWA's 1989 PCE Memorandum indicating that the action must not involve ''[t]he acquisition of more than minor amounts of temporary or permanent strips of right-of-way for construction of such items as clear vision corner and grading. Such acquisitions will not require any commercial or residential displacements.'' The FHWA proposes to simplify the language. Typical examples of ''minor amounts of . . . right-of-way'' include low cost, strip acquisitions, and corner acquisitions. The intent of the limitation is to distinguish between projects involving minor use of additional land (*e.g.,* rehabilitation, renovation) from projects involving substantial land use changes and the associated potential for adverse impacts. The FHWA reviewed existing PCE agreements and found that FHWA Divisions and State DOTs limit the amount of new land that triggers FHWA NEPA approval using acres (with ranges between zero and up to 10 acres depending on the State) or percentages (*e.g.,* more than 10 percent of parcels under 10 acres in size). The FHWA proposes to leave the definition of ''minor'' up to the discretion of FHWA and each State DOT to account for each State's unique characteristics and considerations.

Second Proposed Constraint

The second proposed constraint would establish that a proposed action fitting the language under paragraphs (c)(26), (c)(27), or (c)(28) may not involve ''[a]n action that needs a bridge permit from the U.S. Coast Guard, or an action that does not meet the terms and conditions of a U.S. Army Corps of Engineers nationwide or general permit under section 404 of the Clean Water Act and/or section 10 of the Rivers and Harbors Act of 1899.'' This proposal is an updated version of the condition in FHWA's 1989 PCE Memorandum that excluded actions involving ''any U.S. Coast Guard construction permits or any U.S. Army Corps of Engineers section 404 permits.'' Section 144(h) of title 23, United States Code, and 23 CFR 650—subpart H establish procedures for determining which bridge actions need a bridge permit from the U.S. Coast Guard. These include bridges that cross waters that are (1) tidal and used by recreational boating, fishing, and other small vessels 21 feet or greater in length; or (2) used or susceptible to use in their natural condition or by reasonable

improvement as a means to transport interstate or foreign commerce. Construction of these types of bridges require coordination with the U.S. Coast Guard and detailed information to determine their environmental impacts, including impacts on navigation. For wetlands, the proposal establishes as a threshold the terms and condtions for U.S. Army Corps of Engineers (USACE) nationwide or general permits. Actions requiring USACE nationwide or general permits may be processed as (c)-list CEs. The FHWA's experience with PCE agreements is that actions having minor impacts on ''waters of the United States'' (such as wetlands), which only require nationwide or other general permits under section 404 of the CWA or section 10 of the Rivers and Harbors Act, do not warrant a detailed FHWA project-by-project review because they normally do not have the potential for significant impacts. An initial finding that the action could meet the terms and conditions of a nationwide or general permit may be made by FHWA or a State DOT using the project information available at the time of the proposal. An official determination from USACE is not required for the CE determination. The FHWA notes, however, that this initial finding does not bind the USACE in making its official determination, and a USACE determination that the project does not qualify for a nationwide or general permit and requires an individual permit under either section 404 of the CWA or section 10 of the Rivers and Harbor Act would constitute new information that could trigger a re-evaluation of the CE determination under 23 CFR 771.129.

Third Proposed Constraint

The third proposed constraint would establish that a proposed action fitting the language under paragraphs (c)(26), (c)(27), or (c)(28) may not involve ''[a] finding of adverse effect to historic properties under the National Historic Preservation Act, use of a resource protected under 23 U.S.C. 138 or 49 U.S.C. 303 (section 4(f)) except for actions resulting in *de minimis* impacts, or likely to adversely affect threatened or endangered species or critical habitat under the Endangered Species Act.''

This proposal consolidates three conditions discussed in FHWA's 1989 PCE Memorandum. The first excluded actions that involved ''[a] determination of adverse effect by the State Historic Preservation Officer.'' The Advisory Council on Historic Preservation's (ACHP) regulations implementing section 106 of NHPA establish that an ''adverse effect'' occurs when the Federal agency finds, in consultation with the State Historic Preservation Officer or Tribal Historic Preservation (and when applicable the ACHP), that ''an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association'' (36 CFR 800.5(a)(1)). Not all actions, labeled ''undertakings'' under section 106 procedures, affecting historic properties result in an adverse effect finding. The FHWA's experience with PCE agreements is that the ''adverse effect'' threshold appropriately delineates when FHWA should engage in detailed FHWA project-by-project review.

The second condition excluded actions that involved the ''use of properties protected by Section 4(f) of the Department of Transportation Act.'' Section 138 of title 23, United States Code, and 49 U.S.C. 303 (originally section ''4(f)'' of the DOT Act) prohibit the approval of any program or project that requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance, or any land from an historic site of national, State, or local significance, unless there is no feasible and prudent alternative to the use of such land and all possible planning to minimize the harm is included. These sections were amended by SAFETEA–LU to provide for the use of such resources without the need for this finding if the use would result in *de minimis* impacts. The Agencies developed regulations to implement the procedures of section 4(f) and its *de minimis* impact allowance in 23 CFR part 774. The FHWA has determined that actions that result in the use of resources protected by section 4(f) but result in *de minimis* impacts do not warrant detailed FHWA project-by-project review because the impacts to these resources are considered to be minor and not potentially significant.

Finally, the third condition excluded actions that ''occur in an area where there are no federally listed endangered or threatened species or critical habitat.'' This proposal revises the language from this 1989 condition by focusing on the impact of the project on these protected resources instead of the location of the project. This constraint recognizes that projects may be located in an area with listed species or within critical habitat areas, but would result in minor impacts to these resources such that FHWA would issue a ''no effect'' finding or a ''not likely to adversely affect'' finding with concurrence from the applicable Federal resource agency (*i.e.,* U.S. Fish and Wildlife Service or National Marine Fisheries Service). This constraint would require some level of consideration or analysis to identify potential effects to listed species or critical habitat and might require coordination with the applicable Federal resource agency. However, the coordination could be applied to a program of projects. For example, the FHWA Division or the State DOT may agree with the Federal resource agency on conditions, terms, or pre-approved mitigation that would avoid or reduce impacts that a project could have on the protected resources, in a manner that would result in streamlined ''no effect'' or ''not likely to adversely affect'' determinations. Thus, projects meeting, or designed to meet, these measures could meet this constraint and avoid the need for detailed FHWA project-by-project review.

Fourth Proposed Constraint

The fourth proposed constraint would establish that a proposed action fitting the language under paragraphs (c)(26), (c)(27), or (c)(28) may not involve ''[c]onstruction of temporary access, or the closure of an existing road, bridge, or ramps, that would result in major traffic disruptions or substantial environmental impacts.'' The FHWA 1989 PCE Memorandum provided a condition for ''[t]he use of a temporary road, detour, or ramp closure unless the use of such facilities satisfy the following conditions:

- Provisions are made for access by local traffic and so posted.
- Through-traffic dependent business will not be adversely affected.
- The detour or ramp closure, to the extent possible, will not interfere with any local special event or festival.
- The temporary road, detour or ramp closure does not substantially change the environmental consequences of the action.
- There is no substantial controversy associated with the temporary road, detour, or ramp closure.''

The FHWA recognized that some temporary road, bridge, detour, or ramp closures deserved a higher level of scrutiny and detailed FHWA project-by-project review. The proposed constraint simplifies the 1989 condition, focusing on the elements that are of particular concern for these temporary detours—mainly traffic and other adverse environmental impacts. Consideration of the impacts on local users' transportation patterns, including businesses and community members, as

well as the impacts on special events would be taken into account in evaluating whether the temporary measure would have major traffic disruptions in a manner that would warrant a detailed FHWA project-by-project review. Consideration of adverse environmental impacts would include consideration of the temporary, but acute, environmental impacts on natural and cultural resources, as well as other human environment considerations (*e.g.,* community cohesion, and emergency response times).

Fifth Proposed Constraint

The fifth proposed constraint would establish that a proposed action fitting the language under paragraphs (c)(26), (c)(27), or (c)(28) may not involve ''[c]hanges in access control.'' This constraint is similar to the constraint that appeared in the 1980 version of the CEs for modernization of highways and for highway safety or traffic operation improvement projects, and is similar to a condition on access control changes in the FHWA 1989 PCE Memorandum. Such changes normally require consideration of local traffic patterns and possible indirect impacts from development. However, not all changes in access are alike. Some changes may raise minor concerns regarding their environmental effects and safety and operational performance, while others may raise concerns regarding their environmental effects and safety and operational performance that deserve further evaluation. After taking into account these considerations and the original language, FHWA has determined that the constraint should retain the original language of the 1989 condition but acknowledges that State DOTs and FHWA Division Offices may establish programmatic approaches to process access control changes based on their impacts.

Sixth Proposed Constraint

The sixth and last proposed constraint would establish that a proposed action fitting the language under paragraphs (c)(26), (c)(27), or (c)(28) may not involve ''[a] floodplain encroachment other than for functionally dependent uses (*e.g.,* bridges, wetlands) or actions that facilitate open space use (*e.g.,* recreational trails, bicycle and pedestrian paths); or construction activities in, across or adjacent to a river component designated or proposed for inclusion in the National System of Wild and Scenic Rivers.'' This proposed constraint consolidates two conditions in the FHWA 1989 PCE Memorandum. The first excluded actions that involved ''any work encroaching on a regulatory floodway or any work affecting the base floodplain (100-year flood) elevations of a water course or lake.'' It is FHWA's policy to prevent uneconomic, hazardous, or incompatible use and development of the Nation's floodplains (23 CFR 650.103). An action taking place within the base floodplain would trigger the decisionmaking process required by Executive Order 11988, *Floodplain Management,* and established in 23 CFR part 650 subpart A, which requires evaluation of practicable alternatives and assessment of impacts.

The FHWA is proposing changes to the 1989 condition by simplifying the language and adding some clarifications. Section 650.105(e) of 23, Code of Federal Regulations, defines encroachment as ''an action within the limits of the base floodplain.'' Regulatory floodways are located within base floodplains. Retaining both the phrase ''encroaching on a regulatory floodway'' and the phrase ''any work affecting the base floodplain'' would be redundant under current regulatory definitions. Retaining the scope of the condition for all work affecting floodplains would have eliminated most if not all bridge rehabilitation, reconstruction, and replacement projects. To avoid this unintended result, FHWA is proposing to allow the use of the proposed CEs for work in floodplains if the action is for a functionally dependent use or an action that facilitates open space use. In developing this language, FHWA considered the Federal Emergency Management Agency's (FEMA) regulations since that agency regularly works with surface transportation actions within the floodplain and provides advice to other Federal agencies on floodplain management issues (*see* 44 CFR 9.11(d)(1) (establishing that the only FEMA-funded construction actions permissible within regulatory floodways are functionally dependent uses or actions that facilitate open space use); 44 CFR 60.6(a)(7) (allowing communities to consider variances in their local floodplain management ordinances for functionally dependent uses)). The term ''functionally dependent use'' is intended to follow FEMA's definition in 44 CFR 59.1, which is ''a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water.'' Examples provided in the proposal for clarity include bridges and wetland mitigation projects. These are just two examples of actions that have to be located close to water to serve their purpose. The term ''facilitate open space use'' is intended to capture projects that do not lead to additional base floodplain development and are compatible with the restoration and preservation of natural and beneficial floodplain values. Examples include recreational trails, and bicycle and pedestrian paths.

A second condition from the FHWA 1989 PCE Memorandum consolidated into this proposal would exclude actions involving ''[c]onstruction in, across or adjacent to a river designated as a component or proposed for inclusion in the National System of Wild and Scenic Rivers published by the U.S. Department of the Interior/U.S. Department of Agriculture.'' Such projects require consultation and documentation of any possible impacts, although may still be processed as a CE. The original condition language has been simplified in this proposal.

Finally, there were several conditions discussed in the FHWA 1989 PCE Memorandum that FHWA considered, but did not pursue in this proposal. These included conditions related to work in wetlands, actions involving any known hazardous materials sites, conformity with the Air Quality Implementation Plan, and consistency with a State's Coastal Zone Management Plan. The FHWA believes that the proposed constraint related to individual permits under section 404 of the CWA, together with FHWA's regulations at 23 CFR part 777 (implementing Executive Order 11990, *Protection of Wetlands,* and authorizing expenditure of Federal-aid highway funds for wetland impact mitigation) would address concerns regarding potential impacts to wetlands. The FHWA believes that the existing statutory and regulatory framework for appropriate environmental liability inquiries, including the U.S. Environmental Protection Agency's ''all appropriate inquiries'' rule at 40 CFR part 312, reduce the potential for acquiring unwanted clean-up liability. In addition, FHWA believes that conditions related to air quality conformity under the section 176 of the CAA and consistency determinations with State coastal uses under the Coastal Zone Management Act are unnecessary since the actions must meet these requirements regardless of whether the project qualifies for the (c)- or (d)-list CE. Although these conditions have not been included as constraints in this proposal, FHWA notes that these considerations would continue to be taken into account in the evaluation of unusual circumstances.

Section 771.117(g)

The FHWA proposes to add paragraph (g) to 23 CFR 771.117 to establish requirements for developing PCE agreements, including agreements that would allow State DOTs to make CE determinations on FHWA's behalf. The proposed language in this NPRM would require that the PCE agreements include the process for making CE determinations. The process includes defining roles and responsibilities, appropriate quality control, and expected documentation for each determination. The FHWA proposes that the PCE agreements provide for a monitoring and oversight process by FHWA and for State DOTs to take any corrective action that is identified and needed as a result of this oversight. The proposal would direct the State DOT to establish in the PCE agreements how the agreement can be renewed and improved based on performance by the State DOT. The proposal would require PCE agreements to provide for voluntary and involuntary termination of the agreement. The proposal would require public availability of the PCE agreements, which could be met through publication on the State DOT Web site and making the document available in hard copy when requested. The proposal would establish a five-year renewal process to ensure FHWA retains appropriate oversight of processing outcomes by the State DOT. This timeframe is consistent with recently issued PCE agreements. Finally, the proposal would require FHWA legal sufficiency and Headquarters review of the draft programmatic agreement prior to FHWA approval to ensure consistency of the agreements nationwide. This is critical given FHWA's retention of legal liability for individual CE determinations by State DOTs.

If the proposal becomes final, then FHWA would review all existing PCE agreements as part of the implementation of section 1318(d) and ensure consistency with the new criteria specified in the proposed paragraph (g). Existing PCE agreements would continue to operate until revised, but would need to be revised no later than 5 years after publication of the rule.

FTA Section-by-Section Analysis

Section 771.118

The FTA proposes to add three new CEs to section 771.118(c) and two new CE examples to section 771.118(d). The proposed CEs are based on responses to the CE Survey Review, as well as FTA's substantiation efforts described above. The CEs proposed in this NPRM are listed and explained below along with a substantiation summary for the CEs proposed for section 771.118(c). A summary of the documentation used for substantiation of these CEs (''FTA Section 1318 Substantiation'') is available in the NPRM docket on Regulations.gov.

Section 771.118(c)

''(14) Bridge removal and related activities, such as in-channel work, disposal of materials and debris in accordance with applicable regulations, and transportation facility realignment.'' This proposed CE expands the example at section 771.118(d)(2)(bridge replacement or rail grade separation) to include bridge removal, specifically, and would be located on the c-list at 23 CFR 771.118(c). Although a bridge is removed or taken out of service during a bridge replacement project, this CE expands the activity to include those actions that remove a bridge permanently, which would affect the associated transportation network, and allows the approval through the c-list at 23 CFR 771.118(c). In addition to the bridge removal action itself, it is likely that the transportation facility to and from the bridge would need to be realigned, materials and debris would need to be disposed of in an approved manner per applicable regulations, and in-channel work performed to remove piers or reduce pier height for safer in-water navigation when conducting a complete bridge removal. The additional activity (*i.e.,* bridge removal and related activities) is not inconsistent with other activities categorically excluded under existing FTA regulations, and is a logical extension of those activities currently categorically excluded (*see* ''FTA Section 1318 Substantiation'').

''(15) Preventative maintenance, including safety treatments, to culverts and channels within and adjacent to transportation right-of-way to prevent damage to the transportation facility and adjoining property, plus any necessary channel work, such as restoring, replacing, reconstructing, and rehabilitating culverts and drainage pipes; and, expanding existing culverts.'' This CE expands the exclusion found at section 771.118(c)(3) (environmental mitigation or stewardship activity) and section 771.118(c)(8) (maintenance, rehab, and reconstruction of facilities) to include preventative maintenance activities for culverts and channels, specifically. The proposed CE is limited to culvert and channel maintenance within or adjacent to the transportation right-of-way in order to preserve the functionality of the culverts and channels, and to prevent damage to the transportation facility and adjoining property. Actions falling under this CE would be performed on an on-going, but as-needed basis to maintain the continued operation of the structure. The additional activity (*i.e.,* preventative maintenance activities for culverts and channels) is not inconsistent with other activities categorically excluded under existing FTA regulations, and is a logical extension of those activities currently categorically excluded (*see* ''FTA Section 1318 Substantiation'').

''(16) Localized geotechnical and other investigations to provide information for preliminary design and for environmental analyses and permitting purposes, such as drilling test bores for soil sampling; archeological investigations for archeology resources assessment or similar survey; and wetland surveys.'' This CE focuses on geotechnical and other subsurface investigations that inform preliminary engineering, environmental analyses, and permitting. The CE expands the CEs found at section 771.118(c)(3) (environmental mitigation or stewardship activity) and section 771.118(c)(4) (planning and administrative activity) to include geotechnical and other investigation activities. The additional activity (*i.e.,* geotechnical and other investigation activities) is not inconsistent with other activities categorically excluded under existing FTA regulations, and is a logical extension of those activities currently categorically excluded (*see* ''FTA Section 1318 Substantiation''). In fact, FTA received several requests to include geotechnical activities in section 771.118(c)(4) in response to the March 2012 NPRM (77 FR 15310, Mar. 15, 2012), but FTA made a distinction between geotechnical activities in that final rule based on its substantiation work completed at that time. Limited geotechnical work (such as the use of ground penetrating radar) could be approved under section 771.118(c)(4) as long as it did not involve construction or lead directly to construction. The CE proposed in this NPRM, however, would allow for more substantial geotechnical work based on further substantiation work done since the issuance of the final rule on February 7, 2013.

The MAP–21 Section 1318(c) requires the Secretary to move the actions at section 771.117(d)(1)–(3) to section 771.117(c) ''to the extent that such movement complies with the criteria for a categorical exclusion'' in the CEQ regulation. The FTA met this requirement through the NEPA

rulemaking published in February 2013 (*see* 78 FR 8964, Feb. 7, 2013).

When FTA issued the NEPA rulemaking noted above, it presented section 771.118(d)(1) (which corresponds with FHWA section 771.117(d)(1)), and section 771.118(d)(2) (which is a modified version of FHWA section 771.117(d)(3)), in the list of examples under section 771.118(d). The FTA retained the section 771.117(d)(1) language as is when FTA created section 771.118(d)(1) due to its limited applicability to transit actions and FTA's need to review documentation associated with actions falling under this example in order to verify the action would not have significant impact on the environment. Section 771.117(d)(2) was covered, as the example applies to FTA, in section 771.118(c)(4). The FTA moved part of the actions covered under section 771.117(d)(3) to section 771.118(c)(8), and kept the larger aspects of section 771.117(d)(3) in FTA's d-list at section 771.118(d)(2). The modifications to the language for the examples in sections 771.118(d)(1)–(3) were based on FTA's substantiation effort and applicability to FTA's program.

Pursuant to MAP–21 section 1318(c), FTA revisited sections 771.118(d)(1) and (2), but did not locate additional supporting data or documentation that would enable FTA to move those examples to section 771.118(c). Without supporting data or documentation, FTA cannot move the examples located at section 771.118(d)(1) and (2) to section 771.118(c) and be consistent with CEQ's regulations, which require a showing that categorical exclusions ''do not individually or cumulatively have significant effect on the human environment'' (40 CFR 1508.4). Through this NPRM, however, FTA requests public comment on FTA's proposal to retain paragraphs (1) and (2) in section 771.118(d). Additionally, FTA requests the public, such as past sponsors for transit projects, provide supporting data or documentation when possible. The FTA will consider any substantiation or supporting data/documentation submitted to the docket for this NPRM for the types of projects found at section 771.118(d)(1) and (2) that resulted in documented CEs or FONSIs. After the close of the public comment period, FTA will review the proposals and supporting data/documentation in determining whether it is possible to move further portions of paragraphs (1) and (2) under section 771.118(d) to section 771.118(c) in a final rule.

Section 771.118(d)

''(7) Minor transportation facility realignment for rail safety reasons, such as improving vertical and horizontal alignment of railroad crossings, and improving sight distance at railroad crossings.'' This CE example would focus on those transportation facility realignments needed in order to improve rail safety for the grantee and the public. This action is proposed for inclusion in Section 771.118(d) because FTA would require documentation regarding the action in order to ensure no significant impacts would be incurred as part of the proposed action.

''(8) Modernization or minor expansions of transit structures and facilities outside existing right-of-way, such as bridges, stations or rail yards.'' This CE example would focus on modernizing or providing minor expansions of transit structures and facilities outside the existing right-of-way since activities occurring within the existing transportation right-of-way could fall under the CE created pursuant to section 1316 of MAP–21. The FTA would require documentation for actions falling under this example in order to ensure no significant impacts would be incurred as part of the proposed action.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the Agencies will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material. The Agencies may publish a final rule at any time after close of the comment period.

Executive Orders 12866 and 13563 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). The Agencies have determined preliminarily that this action would not be a significant regulatory action under section 3(f) of Executive Order 12866 nor would it be significant within the meaning of DOT regulatory policies and procedures (44 FR 11032).

This NPRM proposes to add new CEs as sections 771.117(c)(24), (c)(25), (c)(26), (c)(27), (c)(28), (c)(29), and (c)(30) and sections 771.118(c)(14), (c)(15), (c)(16), (d)(7), and (d)(8), pursuant to section 1318 of MAP–21. By definition these actions normally do not result in individual or cumulative significant environmental impacts. These actions are subject to the unusual circumstances provision in 23 CFR 771.117(b) and 771.118(b), which screens out those rare cases where the action may result in significant impacts. This NPRM also proposes to establish criteria for Programmatic CE Agreements between State DOTs and FHWA. These agreements further expedite NEPA environmental review for highway projects.

These proposed changes would not adversely affect, in any material way, any sector of the economy. In addition, these changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required. The Agencies anticipate that the changes in this proposal would enable projects to move more expeditiously through the Federal review process and would reduce the preparation of extraneous environmental documentation and analysis not needed for compliance with NEPA and for ensuring that projects are built in an environmentally responsible manner. The vast majority of FHWA actions presently are determined to be CEs. In a recent survey conducted on CE usage, carried out pursuant to MAP–21 section 1318, responding State DOTs reported that 90 percent to 99 percent of their projects qualified for CE determinations. Approximately 90 percent of FTA's actions are within the scope of existing CEs. The Agencies anticipate the percentages may increase with the promulgation of the proposed CEs. The Agencies are not able to quantify the economic effects of these changes, because the types of projects that will be proposed for FHWA and FTA funding and their potential impacts are unknown at this time, particularly given changes to the programs in MAP–21. The Agencies request comment, including data and information on the experiences of project sponsors, on the

likely effects of the changes being proposed.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the Agencies have evaluated the effects of this proposed rule on small entities and anticipate that this action would not have a significant economic impact on a substantial number of small entities. The proposed revision could expedite environmental review and thus would be less than any current impact on small business entities.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48). This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $148.8 million or more in any one year (2 U.S.C. 1532). Further, in compliance with the Unfunded Mandates Reform Act of 1995, the Agencies will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and tribal governments and the private sector.

Executive Order 13132 (Federalism Assessment)

Executive Order 13132 requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may 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. This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the Agencies have determined that this proposed action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The Agencies have also determined that this proposed action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions. The Agencies invite State and local governments with an interest in this rulemaking to comment on the effect that adoption of specific proposals may have on State or local governments.

Executive Order 13175 (Tribal Consultation)

The Agencies have analyzed this action under Executive Order 13175, and believe that it would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

The Agencies have analyzed this action under Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.* The Agencies have determined that this action is not a significant energy action under that order because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Executive Order 12372 (Intergovernmental Review)

The DOT's regulations implementing Executive Order 12372 (49 CFR part 17) apply to this program. Accordingly, the Agencies solicit comments on this issue.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor, or require through regulations. The Agencies have determined that this proposal does not contain collection of information requirements for the purposes of the PRA.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 12898 (Environmental Justice)

Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,* and DOT Order 5610.2(a), 91 FR 27534 (May 10, 2012) (available online at *www.fhwa.dot.gov/environment/environmental_justice/ej_at_dot/order_56102a/index.cfm*), require DOT agencies to achieve environmental justice (EJ) as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority populations and low-income populations in the United States. The DOT Order requires DOT agencies to address compliance with the Executive Order and the DOT Order in all rulemaking activities. In addition, both Agencies have issued additional documents relating to administration of the Executive Order and the DOT Order. On June 14, 2012, the FHWA issued an update to its EJ order, FHWA Order 6640.23A, *FHWA Actions to Address Environmental Justice in Minority Populations and Low Income Populations* (available online at *www.fhwa.dot.gov/legsregs/directives/orders/664023a.htm*). The FTA also issued an update to its EJ policy, *FTA Policy Guidance for Federal Transit Recipients,* 77 FR 42077 (July 17, 2012) (available online at *www.fta.dot.gov/legislation_law/12349_14740.html*).

The Agencies have evaluated this proposed rule under the Executive Order, the DOT Order, the FHWA Order, and the FTA Circular. The Agencies have determined that the proposed new CEs, if finalized, would not cause disproportionately high and adverse human health and environmental effects on minority or low income populations. This action proposes to add a provision to the Agencies' NEPA procedures under which they may decide in the future that a project or program does not require the preparation of an EA or EIS. The proposed rule itself has no potential for effects until it is applied to a proposed action requiring approval by the FHWA or FTA.

At the time the Agencies apply a CE proposed by this rulemaking, the Agencies would have an independent obligation to conduct an evaluation of the proposed action under the applicable EJ orders and guidance to determine whether the proposed action has the potential for EJ effects. The rule would not affect the scope or outcome of that EJ evaluation. In any instance where there are potential EJ effects and the Agencies were to consider applying one of the CEs proposed by this rulemaking, public outreach under the applicable EJ orders and guidance would provide affected populations with the opportunity to raise any concerns about those potential EJ effects. *See* DOT Order 5610.2(a), FHWA Order 6640.23A, and FTA Policy Guidance for Transit Recipients (available at links above). Indeed,

outreach to ensure the effective involvement of minority and low income populations where there is potential for EJ effects is a core aspect of the EJ orders and guidance. For these reasons, the Agencies also have determined that no further EJ analysis is needed and no mitigation is required in connection with the designation of the proposed CEs.

Executive Order 13045 (Protection of Children)

The Agencies have analyzed this action under Executive Order 13045, *Protection of Children from Environmental Health Risks and Safety Risks.* The Agencies certify that this action would not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

The Agencies do not anticipate that this action would affect a taking of private property or otherwise have taking implications under Executive Order 12630, *Governmental Actions and Interference with Constitutionally Protected Property Rights.*

National Environmental Policy Act

Agencies are required to adopt implementing procedures for NEPA that establish specific criteria for, and identification of, three classes of actions: Those that normally require preparation of an EIS; those that normally require preparation of an EA; and those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). The CEQ regulations do not direct agencies to prepare a NEPA analysis or document before establishing Agency procedures (such as this regulation) that supplement the CEQ regulations for implementing NEPA. The CEs are one part of those agency procedures, and therefore establishing CEs does not require preparation of a NEPA analysis or document. Agency NEPA procedures are generally procedural guidance to assist agencies in the fulfillment of agency responsibilities under NEPA, but are not the agency's final determination of what level of NEPA analysis is required for a particular proposed action. The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3. The determination that establishing CEs does not require NEPA analysis and documentation was upheld in *Heartwood, Inc.* v. *U.S. Forest Service,* 73 F. Supp. 2d 962, 972–73 (S.D. Ill. 1999), *aff'd,* 230 F.3d 947, 954–55 (7th Cir. 2000).

Regulation Identification Number

A RIN is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

23 CFR Part 771

Environmental protection, Grant programs—transportation, Highways and roads, Historic preservation, Public lands, Recreation areas, Reporting and recordkeeping requirements.

49 CFR Part 622

Environmental impact statements, Grant programs—transportation, Public transit, Recreation areas, Reporting and record keeping requirements.

In consideration of the foregoing, the Agencies propose to amend title 23, Code of Federal Regulations part 771, and title 49, Code of Federal Regulations part 622, as follows:

Title 23—Highways

PART 771—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES.

■ 1. The authority citation for part 771 is revised to read as follows:

Authority: 42 U.S.C. 4321 *et seq.;* 23 U.S.C. 106, 109, 128, 138, 139, 315, 325, 326, and 327; 49 U.S.C. 303; 40 CFR Parts 1500–1508; 49 CFR 1.81, 1.85; Pub. L. 109–59, 119 Stat. 1144, sections 6002 and 6010; Pub. L. 112–141, 126 Stat. 405, sections 1315, 1316, 1317, and 1318.

§ 771.117 [Amended]

■ 2. Amend § 771.117 by:
■ a. Adding new paragraphs (c)(24) thru (c)(30).
■ b. Revising the first sentence in paragraph (d); removing and reserving paragraphs (d)(1), (d)(2), and (d)(3); and adding a new paragraph (d)(13).
■ c. Redesignating paragraph (e) as paragraph (f) and adding new paragraph (e).
■ d. Adding a new paragraph (g).

The additions and revisions read as follows:

§ 771.117 FHWA categorical exclusions.

* * * * *

(c) * * *

(24) Localized geotechnical and other investigation to provide information for preliminary design and for environmental analyses and permitting purposes, such as drilling test bores for soil sampling; archeological investigations for archeology resources assessment or similar survey; and wetland surveys.

(25) Environmental restoration and pollution abatement actions to minimize or mitigate the impacts of any existing transportation facility (including retrofitting and construction of stormwater treatment systems to meet Federal and State requirements under sections 401 and 402 of the Federal Water Pollution Control Act (33 U.S.C. 1341; 1342)) carried out to address water pollution or environmental degradation.

(26) Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (including parking, weaving, turning, and climbing) if it the action meets the conditions in paragraph (e) of this section.

(27) Highway safety or traffic operations improvement projects, including the installation of ramp metering control devices and lighting, if the project meets the conditions in paragraph (e) of this section.

(28) Bridge rehabilitation, reconstruction, or replacement or the construction of grade separation to replace existing at-grade railroad crossings, if the actions meet the conditions in paragraph (e) of this section.

(29) Purchase, construction, replacement, or rehabilitation of ferry vessels (including improvements to ferry vessel safety, navigation, and security systems) that would not require a change in the function of the ferry terminals and can be accommodated by existing facilities or by new facilities which themselves are within a CE.

(30) Rehabilitation or reconstruction of existing ferry facilities that occupy substantially the same geographic footprint, do not result in a change in their functional use, and do not result in a substantial increase in users. Example actions include work on pedestrian and vehicle transfer structures and associated utilities, buildings, and terminals.

(d) Additional actions which meet the criteria for a CE in the CEQ regulations (40 CFR 1508.4) and paragraph (a) of this section may be designated as CEs only after Administration approval unless otherwise authorized under an executed agreement pursuant to paragraph (g) of this section. * * *

(1) [Reserved]
(2) [Reserved]
(3) [Reserved]

* * * * *

(13) Actions described in paragraphs (c)(26), (c)(27), and (c)(28) that do not meet the constraints in paragraph (e) of this section.

(e) Actions described in (c)(26), (c)(27), and (c)(28) may not be processed as CEs under paragraph (c) of this section if they involve:

(1) An acquisition of more than a minor amount of right-of-way or that would result in any commercial or residential displacements;

(2) An action that needs a bridge permit from the U.S. Coast Guard, or an action that does not meet the terms and conditions of a USACE nationwide or general permit under section 404 of the Clean Water Act and/or section 10 of the Rivers and Harbors Act of 1899;

(3) A finding of ''adverse effect'' to historic properties under the NHPA, use of a resource protected under 23 U.S.C. 138 or 49 U.S.C. 303 (section 4(f)) except for actions resulting in *de minimis* impacts, or likely to adversely affect threatened or endangered species or critical habitat under the Endangered Species Act;

(4) Construction of temporary access, or the closure of an existing road, bridge, or ramps, that would result in major traffic disruptions or substantial environmental impacts;

(5) Changes in access control; or

(6) A floodplain encroachment other than functionally dependent uses (*e.g.,* bridges, wetlands) or actions that facilitate open space use (*e.g.,* recreational trails, bicycle and pedestrian paths); or construction activities in, across or adjacent to a river component designated or proposed for inclusion in the National System of Wild and Scenic Rivers.

* * * * *

(g) Notwithstanding paragraph (d) of this section, FHWA may enter into programmatic agreements with a State to allow a State DOT to make a NEPA CE certification or determination and approval on FHWA's behalf. Such agreements must be subject to the following conditions:

(1) The agreement must set forth the State DOT's responsibilities for making CE determinations, documenting the determinations, and achieving acceptable quality control and quality assurance;

(2) The agreement may not have a term of more than five years, but may be renewed;

(3) The agreement must provide for FHWA's monitoring of the State DOT's compliance with the terms of the agreement and for the State DOT's execution of any needed corrective action. The FHWA must take into account the State DOT's performance when considering renewal of the programmatic CE agreement;

(4) The agreement must include stipulations for amendment, termination, and public availability of the agreement once it has been executed; and

(5) Legal sufficiency and FHWA Headquarters review is required prior to FHWA's approval of the agreement.

■ 3. Amend § 771.118 by adding new paragraphs (c)(14) thru (c)(16), (d)(7), and (d)(8) to read as follows:

§ 771.118 FTA categorical exclusions.

* * * * *

(c) * * *

(14) Bridge removal and bridge removal related activities, such as in-channel work, disposal of materials and debris in accordance with applicable regulations, and transportation facility realignment.

(15) Preventative maintenance, including safety treatments, to culverts and channels within and adjacent to transportation right-of-way to prevent damage to the transportation facility and adjoining property, plus any necessary channel work, such as restoring, replacing, reconstructing, and rehabilitating culverts and drainage pipes; and, expanding existing culverts.

(16) Localized geotechnical and other investigations to provide information for preliminary design and for environmental analyses and permitting purposes, such as drilling test bores for soil sampling; archeological investigations for archeology resources assessment or similar survey; and wetland surveys.

(d) * * *

(7) Minor transportation facility realignment for rail safety reasons, such as improving vertical and horizontal alignment of railroad crossings, and improving sight distance at railroad crossings.

(8) Modernization or minor expansions of transit structures and facilities outside existing right-of-way, such as bridges, stations or rail yards.

* * * * *

Title 49—Transportation

PART 622—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

Subpart A—Environmental Procedures

■ 4. The authority citation for subpart A of part 622 is revised to read as follows:

Authority: 42 U.S.C. 4321 *et seq.;* 49 U.S.C. 303 and 5323; 23 U.S.C. 139 and 326; Pub. L. 109–59, 119 Stat. 1144, sections 6002 and 6010; 40 CFR parts 1500–1508; 49 CFR 1.81; and Pub. L. 112–141, 126 Stat. 405, sections 1315, 1316, 1317, and 1318.

Issued on: September 12, 2013.

Victor M. Mendez,

Administrator, Federal Highway Administration.

Peter Rogoff,

Administrator, Federal Transit Administration.

[FR Doc. 2013–22675 Filed 9–18–13; 8:45 am]

BILLING CODE 4910–22–P

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 821

[Docket No. NTSB–GC–2011–0001]

Rules of Practice in Air Safety Proceedings

AGENCY: National Transportation Safety Board (NTSB or Board).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The NTSB proposes amending one of its rules of practice that is applicable to cases proceeding on an emergency timeline. This proposed amendment will require the Federal Aviation Administration (FAA) to provide releasable portions of its enforcement investigative report (EIR) to each respondent in emergency cases.

DATES: Comments must be submitted by October 21, 2013.

ADDRESSES: A copy of this NPRM, published in the **Federal Register** (FR), is available for inspection and copying in the NTSB's public reading room, located at 490 L'Enfant Plaza SW., Washington, DC 20594–2003. Alternatively, a copy is available on the government-wide Web site on regulations at *http://www.regulations.gov* (Docket ID Number NTSB–GC–2011–0001).

FOR FURTHER INFORMATION CONTACT: David Tochen, General Counsel, (202) 314–6080.

SUPPLEMENTARY INFORMATION: Elsewhere in today's **Federal Register**, the NTSB published a Final Rule, finalizing changes to various sections of 49 CFR part 821, as a result of the Pilot's Bill of Rights. In the final rule, the NTSB, among other things, updated language in § 821.19(d), which requires disclosure of the FAA's EIR in non-emergency cases. Because the Pilot's Bill of Rights was immediately effective upon enactment on August 3, 2012, the NTSB published an interim final rule to implement the new legislation's requirements, 77 FR 63242 (Oct. 16, 2012).

In this NPRM, the NTSB proposes incorporating a similar requirement at

paragraph (d) of § 821.55, regarding the release of the EIR in emergency cases proceeding under subpart I of the NTSB's rules of practice. In view of the exigencies presented to certificate holders against whom the Administrator issues emergency orders and the expedited timeframes the Board must observe in adjudicating aviation safety emergency cases, § 821.55(d) will permit relief if the FAA does not provide a copy of the EIR to the respondent in an emergency proceeding by the time the certificate order, as opposed to the complaint, is served on the respondent. This language is set forth in the proposed regulatory text of this rule.

Although in the Pilot's Bill of Rights, Congress required the NTSB to apply the Federal Rules of Civil Procedure and Federal Rules of Evidence to cases within the NTSB's jurisdiction ''to the extent practicable,'' it did not specifically address in the legislation whether the EIR requirement applies to NTSB emergency cases. The NTSB believes such application is appropriate. First, the structurally similar NTSB rules for both emergency and non-emergency proceedings will ensure consistency, which is beneficial for parties and the NTSB's administrative law judges. Parties will benefit from having clear expectations concerning the availability of information at the beginning of each case. In addition, the FAA's compliance with the requirement to provide the EIR at the commencement of each case will not be changed if a respondent waives the applicability of the emergency rules of subpart I.

Applying this disclosure requirement to § 821.55(d) will also require an amendment to § 821.55(c), which currently prohibits motions to dismiss the complaint or motions for a more definite statement of the complaint's allegations. Instead, § 821.55(c) provides ''the substance [of such motions] may be stated in the respondent's answer.'' This preclusion of motions in the early stages of a case is the result of the time constraints applicable to emergency cases. However, given our proposal to apply the EIR disclosure requirement to emergency cases in § 821.55(d), we also propose amending § 821.55(c) as set forth in the regulatory text of this rule.

The NTSB specifically invites comments concerning § 821.55(c) and (d). The interim final rule, although it included within § 821.19(d) the availability of dismissal on motion in the event the FAA did not timely release the EIR, did not address whether the requirement applied to emergency cases. As a result, the NTSB believes it necessary to allow for comments on the inclusion of this requirement in § 821.55. The NTSB will accept comments for 30 days from the date of publication of this NPRM.

Regulatory Analysis

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of the potential costs and benefits under section 6(a)(3) of that Order. As such, the Office of Management and Budget has not reviewed this rule under Executive Order 12866. Likewise, this rule does not require an analysis under the Unfunded Mandates Reform Act, 2 U.S.C. 1501–1571, or the National Environmental Policy Act, 42 U.S.C. 4321–4347.

In addition, the NTSB has considered whether this rule would have a significant economic impact on a substantial number of small entities, under the Regulatory Flexibility Act (5 U.S.C. 601–612). The NTSB certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. Moreover, in accordance with 5 U.S.C. 605(b), the NTSB will submit this certification to the Chief Counsel for Advocacy at the Small Business Administration.

The NTSB does not anticipate this rule will have a substantial, direct effect on state or local governments or will preempt state law; as such, this rule does not have implications for federalism under Executive Order 13132, Federalism. This rule also complies with all applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. In addition, the NTSB has evaluated this rule under: Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights; Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks; Executive Order 13175, Consultation and Coordination with Indian Tribal Governments; Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use; and the National Technology Transfer and Advancement Act, 15 U.S.C. 272 note. The NTSB has concluded that this rule does not contravene any of the requirements set forth in these Executive Orders or statutes, nor does this rule prompt further consideration with regard to such requirements.

List of Subjects for 49 CFR Part 821

Administrative practice and procedure, Airmen, Aviation safety.

For the reasons discussed in the preamble, the NTSB proposes to amend 49 CFR part 821 as follows:

PART 821—RULES OF PRACTICE IN AIR SAFETY PROCEEDINGS

■ 1. The authority citation for 49 CFR part 821 continues to read as follows:

Authority: 49 U.S.C. 1101—1155, 44701–44723, 46301, Pub. L. 112–153, unless otherwise noted.

■ 2. In § 821.55, revise paragraphs (c) and (d) to read as follows:

§ 821.55 Complaint, answer to complaint, motions and discovery.

* * * * *

(c) *Motion to dismiss and motion for more definite statement.* In proceedings governed by this subpart, except as provided in paragraph (d) of this section, no motion to dismiss the complaint or for a more definite statement of the complaint's allegations shall be made, but the substance thereof may be stated in the respondent's answer. The law judge may permit or require a more definite statement or other amendment to any pleading at the hearing, upon good cause shown and upon just and reasonable terms.

(d) *Failure to provide copy of releasable portion of Enforcement Investigative Report (EIR).* (1) In proceedings governed by this subpart, where the Administrator fails to provide the releasable portion of the EIR to the respondent by the time it serves an emergency or other immediately effective order on the respondent, the respondent may move to dismiss the complaint or for other relief and, unless the Administrator establishes good cause for that failure, the law judge shall order such relief as he or she deems appropriate, after considering the parties' arguments.

(2) The releasable portion of the EIR shall include all information in the EIR, except for the following:

(i) Information that is privileged;

(ii) Information that constitutes work product or reflects internal deliberative process;

(iii) Information that would disclose the identity of a confidential source;

(iv) Information of which applicable law prohibits disclosure;

(v) Information about which the law judge grants leave to withhold as not relevant to the subject matter of the proceeding or otherwise, for good cause shown; or

(vi) Sensitive security information, as defined at 49 U.S.C. 40119 and 49 CFR 15.5.

(3) Nothing in this section shall be interpreted as preventing the Administrator from releasing to the respondent information in addition to that which is contained in the releasable portion of the EIR. Likewise, nothing in this section shall be interpreted as preventing the Administrator from releasing to the respondent a copy of the EIR prior to the issuance of the Administrator's complaint.

Deborah A.P. Hersman,

Acting Chairman.

[FR Doc. 2013–22633 Filed 9–18–13; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket Nos. FWS–R6–ES–2011–0111; FWS–R6–ES–2012–0108; 4500030114]

RIN 1018–AZ20; RIN 1018–AX71

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Gunnison Sage-Grouse and Proposed Designation of Critical Habitat for Gunnison Sage-Grouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period; announcement of public hearings; notice of availability of supplementary documents.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment periods on our January 11, 2013, proposed rules to list the Gunnison sage-grouse (*Centrocercus minimus*) as endangered and to designate critical habitat for the species under the Endangered Species Act of 1973, as amended (Act). For the proposed designation of critical habitat for the Gunnison sage-grouse, we also announce the availability of a draft economic analysis (DEA), a draft environmental assessment (EA), and an amended required determinations section. In addition, we announce two public informational sessions and public hearings for both the proposed listing and proposed critical habitat, and we provide information on several conservation efforts that may be considered in our final determinations. We are reopening the comment periods to allow all interested parties an additional opportunity to comment on the proposed listing and the proposed designation of critical habitat, and to comment on the proposed critical habitat's associated DEA, draft EA, and amended required determinations section. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rules.

DATES: *Comment submission:* We will consider comments received or postmarked on or before October 19, 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.

Public informational sessions and public hearings: We will hold two public informational sessions followed by public hearings on the following dates:

- October 7, 2013, from 4:00–9:00 p.m., including an information session from 4:00–5:00 p.m., a break, and a public hearing from 6:00–9:00 p.m.; and
- October 8, 2013, from 4:00–9:00 p.m., including an information session from 4:00–5:00 p.m., a break, and a public hearing from 6:00–9:00 p.m..

See the **ADDRESSES** section, below, for information on where these public informational sessions and public hearings will be held.

ADDRESSES:

Document availability: You may obtain copies of the January 11, 2013, proposed rules on the Internet at *http://www.regulations.gov* at Docket No. FWS–R6–ES–2012–0108 for the proposed listing and at Docket No. FWS–R6–ES–2011–0111 for the proposed designation of critical habitat. You may obtain a copy of the draft economic analysis and the draft environmental assessment at Docket No. FWS–R6–ES–2011–0111. Alternately, you may obtain a copy of either proposed rule, the draft economic analysis, or the draft environmental assessment by mail from the Western Colorado Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Comment submission: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Submit comments on the listing proposal to Docket No. FWS–R6–ES–2012–0108, and submit comments on the critical habitat proposal and associated draft economic analysis and draft environmental assessment to Docket No. FWS–R6–ES–2011–0111.

(2) *By hard copy:* Submit comments on the listing proposal by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R6–ES–2012–0108; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203. Submit comments on the critical habitat proposal, draft economic analysis, and draft environmental assessment by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R6–ES–2011–0111; 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).

Public informational sessions and public hearings: The October 7, 2013, public informational session and public hearing will be held at Western State Colorado University, University Center, 600 N. Adams Street in Gunnison, Colorado.

The October 8, 2013, public informational session and public hearing will be held at Monticello High School Auditorium, 164 South 200 West in Monticello, Utah.

People needing reasonable accommodations in order to attend and participate in the public hearing should contact Patty Gelatt, Western Colorado Supervisor, Western Colorado Field Office, as soon as possible (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Patty Gelatt, Western Colorado Supervisor, U.S. Fish and Wildlife Service, Western Colorado Field Office, 764 Horizon Drive, Building B, Grand Junction, CO 81506–3946; by telephone (970–243–2778); or by facsimile (970–245–6933). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this comment period on: (1) Our proposed listing determination for the Gunnison sage-grouse that published in the **Federal Register** on January 11, 2013 (78 FR 2486); (2) our proposed designation of critical habitat for the Gunnison sage-grouse that published in the **Federal Register** on January 11, 2013 (78 FR

2540); (3) our DEA of the proposed critical habitat designation; (4) our draft EA of the proposed critical habitat designation; (5) the amended required determinations provided in this document for the proposed critical habitat designation; and (6) the issues raised in our July 19, 2013, **Federal Register** publication (78 FR 43123) regarding scientific disagreement about the species. We will consider information and recommendations from all interested parties.

We request that you provide comments specifically on our listing determination under Docket No. FWS–R6–ES–2012–0108.

We request that you provide comments specifically on the critical habitat determination and related DEA and draft EA under Docket No. FWS–R6–ES–2011–0111.

We are particularly interested in comments concerning:

(1) The 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, its habitat, or both.

(2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species.

(4) Existing regulations that may be addressing threats to this species.

(5) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.

(6) Any information on the biological or ecological requirements of the species and ongoing conservation measures for the species and its habitat.

(7) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act, including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threats outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(8) With respect to the proposed designation of critical habitat, specific information on:

(a) The amount and distribution of Gunnison sage-grouse habitat;

(b) What may constitute ''physical or biological features essential to the conservation of the species'' within the geographical range currently occupied by the species;

(c) Where these features are currently found;

(d) Whether any of these features may require special management considerations or protection;

(e) What areas, that were occupied at the time of listing (or, in this case, are currently occupied) and that contain features essential to the conservation of the species, should be included in the designation and why; and

(f) What areas not occupied at the time of listing (or, in this case, the present time) are essential for the conservation of the species and why.

(9) Land use designations and current or planned activities in the areas occupied by the species or proposed to be designated as critical habitat, and possible impacts of these activities on this species and proposed critical habitat.

(10) Information on the projected and reasonably likely impacts of climate change on the Gunnison sage-grouse and proposed critical habitat.

(11) With respect to the proposed designation of critical habitat, any foreseeable economic, national security, or other relevant impacts that may result from designating any areas 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.

(12) 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 particularly whether the benefits of potentially excluding any specific area outweigh the benefits of including that area as set forth in section 4(b)(2) of the Act. For instance, should the proposed designation exclude properties currently enrolled in the Gunnison sage-grouse candidate conservation agreement with assurances, properties under conservation easement, or properties held by conservation organizations, and why?

(13) 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.

(14) Information on the extent to which the description of economic impacts in the DEA is complete and accurate.

(15) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the DEA, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

We are also interested in comments concerning the topics raised in our July 19, 2013, **Federal Register** notice (78 FR 43123) announcing the extension of the timeline for issuing final determinations on the listing and critical habitat for the Gunnison sage-grouse due to scientific disagreement, which include:

(1) Whether we have appropriately interpreted the scientific studies cited in the proposed rule, and whether there is additional scientific information we may have overlooked;

(2) Gunnison sage-grouse population trends in each population area;

(3) The scope and effectiveness of regulatory mechanisms enacted by Gunnison County to address threats to the Gunnison sage-grouse;

(4) Projections for future residential development and human population growth within the Gunnison sage-grouse's range in the Gunnison Basin, including portions of Gunnison and Saguache Counties; and

(5) What constitutes historical habitat and important current habitat for the species.

If you submitted comments or information on the proposed listing rule (78 FR 2486) or proposed designation of critical habitat (78 FR 2540) during their initial comment period from January 11, 2013, to April 2, 2013, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final determinations. Similarly, if you already submitted comments or information on either proposed rule in response to the July 19, 2013, announcement of extension of the timeline for making final determinations due to scientific disagreement (78 FR 43123), please do not resubmit them. We will incorporate them into the

public record as part of this comment period, and we will fully consider them in the preparation of our final determinations. Our final determinations concerning listing and critical habitat will take into consideration all written comments and any additional information we receive during all comment periods. On the basis of public comments, we may, during the development of our final determination, revise our proposed listing and/or find that areas proposed as critical habitat are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning the proposed rules, DEA, draft EA, or amended required determinations section by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment 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.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rules, DEA, draft EA, an amended required determinations section will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R6–ES–2012–0108 and Docket No. FWS–R6–ES–2011–0111, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Western Colorado Field Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed listing rule on the Internet at *http://www.regulations.gov* at Docket Number FWS–R6–ES–2012–0108, and the proposed designation of critical habitat, DEA, and draft EA on the Internet at *http://www.regulations.gov* at Docket No. FWS–R6–ES–2011–0111. Alternately, you may obtain a copy of either proposed rule, the draft economic analysis, or the draft environmental assessment by mail from the Western Colorado Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat for the Gunnison sage-grouse and several ongoing conservation efforts for the Gunnison sage-grouse in the remainder of this document. For more information on the Gunnison sage-grouse and its habitat, or additional information on previous Federal actions concerning the Gunnison sage-grouse prior to January 11, 2013, refer to the proposed listing rule published in the **Federal Register** on January 11, 2013 (78 FR 2486), which is available online at *http://www.regulations.gov* (at Docket Number FWS–R6–ES–2012–0108) or from the Western Colorado Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

On January 11, 2013, we published a proposed rule to list the Gunnison sage-grouse as endangered (78 FR 2486) and a proposed rule to designate critical habitat for the Gunnison sage-grouse (78 FR 2540). We proposed to designate as critical habitat approximately 1,704,227 acres (689,675 hectares) in seven units located in Chaffee, Delta, Dolores, Gunnison, Hinsdale, Mesa, Montrose, Ouray, Saguache, and San Miguel Counties in Colorado, and in Grand and San Juan Counties in Utah. Those proposals initially had a 60-day comment period, ending March 12, 2013, but we extended the comment period by an additional 21 days, through April 2, 2013 (78 FR 15925, March 13, 2013). On July 19, 2013, we published a document announcing that we were extending the timeline for making final determinations on both proposed rules by 6 months due to scientific disagreement, and we reopened the public comment period to seek additional information to clarify the issues in question (78 FR 43123). In accordance with that July 19, 2013, publication, we will submit for publication in the **Federal Register** a final listing determination and a final critical habitat designation for Gunnison sage-grouse on or before March 31, 2014.

Critical Habitat

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule to designate critical habitat for the Gunnison sage-grouse is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, unless we determine, based on the best scientific and commercial data available, that the failure to designate such areas as critical habitat will result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of mapping areas containing essential features that aid in the recovery of the listed species, and any benefits that may result from designation due to State or Federal laws that may apply to critical habitat. In the case of the Gunnison sage-grouse, the benefits of critical habitat include public awareness of the presence of the species and the importance of habitat protection, and, where a Federal action will occur, increased habitat protection for the Gunnison sage-grouse due to protection from adverse modification or destruction of critical habitat. In practice, Federal actions typically occur primarily on Federal lands or for projects undertaken by Federal agencies.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan.

We have not proposed to exclude any areas from critical habitat. However, the final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a draft economic analysis (DEA) concerning the proposed critical habitat designation, which is available for review and comment (see **ADDRESSES**).

Draft Economic Analysis

The purpose of the DEA is to identify and analyze the potential economic impacts associated with the proposed critical habitat designation for the Gunnison sage-grouse. The DEA describes the economic impacts of all potential conservation efforts for the Gunnison sage-grouse; some of these costs will likely be incurred regardless of whether we designate critical habitat. The economic impact of the proposed critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.'' The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections already in place or proposed for the species (e.g., under the proposed Federal listing and other existing Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs.

Most courts have held that the Service only needs to consider the incremental impacts imposed by the critical habitat designation over and above those impacts imposed as a result of listing the species. For example, the Ninth Circuit Court of Appeals reached this conclusion twice within the last few years, and the U.S. Supreme Court declined to hear any further appeal from those rulings. (*See Ariz. Cattle Growers' Ass'n.* v. *Salazar,* 606 F.3d 116, (9th Cir. 2010) *cert. denied,* 179 L. Ed. 2d 300, 2011 U.S. LEXIS 1362, 79 U.S.L.W. 3475 (2011); *Home Builders Ass'n of N. Cal.* v. *United States Fish & Wildlife Serv.,* 616 F. 3rd 983 (9th Cir. 2010) *cert. denied,* 179 L. Ed. 2d 300, 2011 U.S. LEXIS 1362, 79 U.S.L.W. 3475 (2011).)

However, the prevailing court decisions in the Tenth Circuit Court of Appeals do not allow the incremental analysis approach. Instead, the Tenth Circuit requires that the Service consider both the baseline economic impacts imposed due to listing the species and the additional incremental economic impacts imposed by designating critical habitat. (*See New Mexico Cattle Growers Ass'n* v. *FWS,* 248 F.3d 1277 (10th Cir. 2001).) .The basis for the Tenth Circuit's *New Mexico Cattle Growers* decision in 2001 was its conclusion that the regulatory definitions of ''jeopardy'' and ''adverse modification'' were virtually identical, with the result, according to the court, that doing only an incremental analysis rendered meaningless the requirement to consider the impacts of critical habitat designation, as there were no incremental impacts to consider (*New Mexico Cattle Growers Ass'n* v. *FWS,* 248 F.3d 1283–85). Subsequently, the Service adopted a different definition of ''adverse modification,'' which has led the Ninth Circuit to conclude that the premise underlying the Tenth Circuit's *New Mexico Cattle Growers* decision is no longer valid and that the Service may employ incremental analysis in determining the economic impacts of a critical habitat designation (*Ariz. Cattle Growers Ass'n* v. *Salazar,* 606 F.3d 1160, 1173 (9th Cir. 2010). Consistent with this view, on August 24, 2012, the Service proposed revisions to its regulations for impact analyses of critical habitat that clarify that it is appropriate to consider the impacts of designation on an incremental basis notwithstanding the *New Mexico Cattle Growers* decision (77 FR 51503). However, the proposed rule incorporating the incremental impact approach has not been finalized as of the date of the DEA or this notice. Therefore, this DEA analysis looks at baseline impacts incurred due to the listing of the species, and forecasts both baseline and incremental impacts likely to occur if we finalize the proposed critical habitat designation. For a further description of the methodology of the analysis, see Chapter 2, ''FRAMEWORK FOR THE ANALYSIS,'' of the DEA.

The DEA provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for the Gunnison sage-grouse over the next 20 years, which was determined to be the appropriate period for analysis because limited planning information is available for most activities to forecast activity levels for projects beyond a 20-year timeframe. It identifies potential incremental costs as a result of the proposed critical habitat designation; these are those costs attributed to critical habitat over and above those baseline costs attributed to listing.

The DEA quantifies economic impacts of Gunnison sage-grouse conservation efforts associated with the following categories of activity: (1) Livestock grazing; (2) agriculture and water management; (3) mineral and fossil fuel extraction; (4) residential and related development; (5) renewable energy development; (6) recreation; and (7) transportation activities.

The DEA summarizes the total impacts likely to occur if all of the units proposed are designated as critical habitat. Absent the designation of critical habitat, conservation efforts benefitting the sage-grouse and its habitat would be undertaken due to the listing under the Act (if finalized) and existing management strategies. We forecast baseline impacts of $9.7 million (in present value terms over 20 years), assuming a discount rate of 7 percent. If we assume the social rate of time preference is 3 percent, forecast baseline impacts are $12 million (in present value terms over 20 years). Quantified incremental impacts anticipated to result solely from this proposed critical habitat designation are $3.8 million (present value over 20 years), assuming a 7 percent discount rate, or $4.7 million (present value over 20 years), assuming a discount rate of 3 percent. The Service believes that impacts forecasted in the DEA are based on several conservative assumptions, more likely to overstate than understate actual impacts, and that the more likely result would be lower impacts.

The DEA presents baseline (Table 1) and incremental (Table 2) results across proposed critical habitat units. The largest share of baseline impacts are attributed to the Crawford and Gunnison Basin units, while the largest share of incremental costs is attributed to the Monticello-Dove Creek unit. In the baseline, the largest category of impacts is associated with transportation projects (forecast to be $6.1 million in present value over 20 years, discounted at 7 percent). These costs are borne by Federal and State agencies, and include the cost of species monitoring and management as well as administrative impacts of consultation. The largest share of incremental impacts is also associated with transportation activities (forecast to be $1.6 million in present value over 20 years, discounted at 7 percent), followed by livestock grazing (forecast to be $1.2 million in present value over 20 years, discounted

at 7 percent) and mineral and fossil fuel extraction (forecast to be $1.1 million in present value over 20 years, discounted at 7 percent). Incremental transportation impacts consist solely of administrative costs, and are associated with consideration of adverse modification in programmatic consultations for Federal agencies and informal consultations for Colorado and Utah State Department of Transportation projects on non-Federal lands. Impacts associated with livestock grazing consist primarily of potential restrictions on grazing activities on federal lands in unoccupied habitat. These costs would be borne by private ranchers. We believe overall these costs represent a conservative estimate of potential impacts, more likely to overstate than understate costs, and that actual impacts are likely to be less. Impacts associated with mineral and fossil fuel extraction consist entirely of administrative impacts associated with section 7 consultations for future well pad construction in unoccupied habitat. The analysis considers potential impacts to all proposed areas including Tribal lands. See the DEA for a more detailed discussion of these results.

TABLE 1—FORECAST BASELINE IMPACTS BY UNIT, 2013–2032

[2012$, 7% Discount rate]

Unit	Present value	Annualized
Monticello-Dove Creek	$1,800,000	$160,000
Piñon Mesa	1,700,000	150,000
San Miguel Basin	770,000	68,000
Cerro Summit-Cimarron-Sims Mesa	320,000	29,000
Crawford	2,300,000	200,000
Gunnison Basin	2,200,000	190,000
Poncha Pass	630,000	55,000
Total	9,700,000	850,000

Note: Entries may not sum to totals reported due to rounding. Estimates are rounded to two significant digits.

TABLE 2—FORECAST INCREMENTAL IMPACTS BY UNIT, 2013–2032

[2012$, 7% Discount rate]

Unit	Present value	Annualized
Monticello-Dove Creek	$1,700,000	$150,000
Piñon Mesa	610,000	53,000
San Miguel Basin	480,000	42,000
Cerro Summit-Cimarron-Sims Mesa	120,000	10,000
Crawford	710,000	63,000
Gunnison Basin	170,000	15,000
Poncha Pass	29,000	2,500
Total	3,800,000	340,000

Note: Entries may not sum to totals reported due to rounding. Estimates are rounded to two significant digits.

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as all aspects of the proposed rules, the draft EA, and our amended required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Ongoing, Landscape-Level Conservation Efforts

Since the January 11, 2013, publication of the proposed rule to list the Gunnison sage-grouse as endangered (78 FR 2486) and the proposed rule to designate critical habitat for the Gunnison sage-grouse (78 FR 2540), several ongoing, landscape-level conservation efforts have been finalized or are under development for the species. We anticipate completion of several of these conservation efforts prior to the final determinations on whether to list the Gunnison sage-grouse and designate critical habitat. If completed, these efforts will be considered in the Service's final determination on whether to list the Gunnison sage-grouse under the Act. Each of these efforts is expected to provide benefits to Gunnison sage-grouse and its habitat, and provide greater certainty regarding future regulation for the participating stakeholders. The primary conservation efforts that have been finalized or are occurring at this time include:

(1) Gunnison Basin candidate conservation agreement (CCA) between the Service and the Bureau of Land Management (BLM), U.S. Forest Service, and National Park Service. Pursuant to section 7 of the Act, conferencing for the CCA was completed on July 30, 2013;

(2) Design of private land conservation programs and practices administered by the Natural Resources Conservation Service (NRCS) to benefit Gunnison sage-grouse. Pursuant to section 7 of the Act, a conference for this action is ongoing with NRCS;

(3) The Service and Farm Service Agency are coordinating to identify funding and programs on private lands that might benefit Gunnison sage-grouse and its habitat. For example, FSA administers the Conservation Reserve Program (CRP) on private lands to re-establish valuable land cover to help improve water quality, prevent soil erosion, and reduce loss of wildlife habitat. A conference pursuant to section 7 of the Act for FSA actions in Gunnison sage-grouse range is pending;

(4) Coordination with the BLM regarding resource management plans and interim management for Gunnison sage-grouse conservation. The BLM issued an Instruction Memorandum for

Gunnison sage-grouse habitat management on July 16, 2013;

(5) County-level agreements, planning, and coordination. All of the Counties within the range of the Gunnison sage-grouse have entered into a Conservation Agreement for the species;

(6) Conservation planning and coordination with the Ute Mountain Ute Tribe for lands owned by the Tribe in the Gunnison Basin; and

(7) Continued enrollment of private lands in the candidate conservation agreement with assurances (CCAA) program for Gunnison sage-grouse. The CCAA pertains to non-Federal lands in Colorado that are occupied by Gunnison sage-grouse, and lands that provide potential habitat that may be occupied by the species in the future.

Required Determinations—Amended

In our January 11, 2013, proposed critical habitat rule (78 FR 2540), we indicated that we would defer our determination of compliance with several statutes and executive orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA data to make these determinations. In this document, we affirm the information in our proposed rule concerning Executive Orders (E.O.s) 12866 and 13563 (Regulatory Planning and Review), E.O. 12630 (Takings), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), and the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). However, based on the DEA data, we are amending our required determinations concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), E.O. 13211 (Energy, Supply, Distribution, and Use), and the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951).

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 (i.e., 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. Based on our DEA of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of our final rulemaking.

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 manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered 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.

To determine if the proposed designation of critical habitat for the Gunnison sage-grouse would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as livestock grazing, agriculture and water management, mineral and fossil fuel extraction, residential and related development, and renewable energy development. In order to determine whether it is appropriate for our agency to certify that this proposed rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. If we finalize the proposed listing for the Gunnison sage-grouse, in areas where the species is present, Federal agencies will already be required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize this proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In the DEA, we evaluated the potential economic effects on small entities resulting from implementation of conservation actions related to the proposed designation of critical habitat for the Gunnison sage-grouse. This analysis of impacts relies on the estimated incremental impacts resulting from the proposed critical habitat designation. The incremental impacts of the rulemaking are most relevant for this analysis because they reflect costs that may be avoided or reduced based on decisions regarding the composition of the Final Rule. We anticipate that at most 63 small entities could be affected by livestock grazing consultations at an average cost of $7,500 each, representing approximately 1.8 percent of average annual revenues. One small entity could be affected by agriculture and water management consultations at a cost of $880 within a single year, representing an unknown percentage of annual revenues. Five to nine small entities could be affected by oil and gas extraction consultations per year, at a cost of $2,600 each in unoccupied habitat, representing approximately 0.04 percent of annual revenues, or a cost of $880 each in occupied habitat, representing 0.01 percent of annual revenues. In addition, one small entity could be affected by a consultation for exploratory potash extraction in a single year at a cost of $2,600, representing 0.5 percent of annual revenues. Up to three small entities per year could be affected by consultations for residential and related development, at a cost of $11,000 in unoccupied habitat, representing less than 0.3 percent of annual revenues, or a cost of $880 in occupied habitat, representing less than

0.1 percent of annual revenues. One small entity could be affected by renewable energy development consultation, at a cost of $880 within a single year, representing an unknown percentage of annual revenues. Please refer to the DEA of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

The Service's current understanding of recent case law is that Federal agencies are only required to evaluate the potential impacts of rulemaking on those entities directly regulated by the rulemaking; therefore, they are not required to evaluate the potential impacts to those entities not directly regulated. The designation of critical habitat for an endangered or threatened species only has a regulatory effect where a Federal action agency is involved in a particular action that may affect the designated critical habitat. Under these circumstances, only the Federal action agency is directly regulated by the designation, and, therefore, consistent with the Service's current interpretation of RFA and recent case law, the Service may limit its evaluation of the potential impacts to those identified for Federal action agencies. Under this interpretation, there is no requirement under the RFA to evaluate potential impacts to entities not directly regulated, such as small businesses. However, Executive Orders 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consequently, it is the current practice of the Service to assess to the extent practicable these potential impacts, if sufficient data are available, whether or not this analysis is believed by the Service to be strictly required by the RFA. In other words, while the effects analysis required under the RFA is limited to entities directly regulated by the rulemaking, the effects analysis under the Act, consistent with the E.O. regulatory analysis requirements, can take into consideration impacts to both directly and indirectly impacted entities, where practicable and reasonable.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and the Service. We have identified 72 to 78 small entities that may be impacted by the proposed critical habitat designation. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

When the range of a species includes states within the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, pursuant to that court's ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service,* 75 F .3d 1429 (10th Cir. 1996), we complete an analysis on proposed critical habitat designations pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA). The range of Gunnison sage-grouse is entirely within the States of Colorado and Utah, which are within the Tenth Circuit. Accordingly, we have prepared a draft environmental assessment to identify and disclose the environmental consequences resulting from the proposed designation of critical habitat for the Gunnison sage-grouse.

The draft EA presents the purpose of and need for critical habitat designation, the proposed action and alternatives, and an evaluation of the direct, indirect, and cumulative effects of the alternatives under the requirements of NEPA as implemented by the Council on Environmental Quality regulations (40 CFR 1500 *et seq.*) and according to the Department of the Interior's NEPA procedures.

The draft EA will be used by the Service to decide whether or not critical habitat will be designated as proposed; if the proposed action requires refinement, or if another alternative is appropriate; or if further analyses are needed through preparation of an environmental impact statement. If the proposed action is selected as described (or is changed minimally) and no further environmental analyses are needed, then a finding of no significant impact (FONSI) would be the appropriate conclusion of this process. A FONSI would then be prepared for the environmental assessment. We are seeking data and comments from the public on the draft EA, which is available at *http://www.regulations.gov* at Docket No. FWS–R6–ES–2011–0111 and at *http://www.fws.gov/mountain-prairie/species/birds/gunnisonsagegrouse/.*

Executive Order 13211 (Energy, Supply, Distribution, and Use)

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. Gunnison sage-grouse occur in areas with oil and gas activity. These areas are primarily limited to the Monticello-Dove Creek and San Miguel populations. Well pads and their existing infrastructure are within proposed critical habitat units. On Federal lands, entities conducting oil and gas related activities as well as power companies would need to consult within areas designated as critical habitat. However, we do not anticipate additional conservation efforts related to oil and gas beyond those requested to avoid jeopardy to the species. Incremental effects of the proposed critical habitat designation are assumed to occur for energy projects in unoccupied sage-grouse habitat. Approximately 31 producing or newly permitted wells are located within unoccupied portions of the proposed designation. The number of wells within the proposed designation represents less than 1 percent of wells in the State of Colorado. We do not anticipate that the designation of critical habitat would result in significant impacts to the energy industry on a national scale. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

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.

Although no Tribal lands occur within the proposed critical habitat designation, Pine Crest Ranch (approximately 12,000 acres) occurs in the Gunnison Basin Unit (Unit 6) of

proposed critical habitat. Pine Crest Ranch is owned by the Ute Mountain Ute Tribe under restricted fee status. The majority of the property is occupied by Gunnison sage-grouse, and four leks occur on the property. In our January 11, 2013, proposed rule to designate critical habitat (78 FR 2540), we considered the Pine Crest Ranch to be private property.

Since February of 2013, the Service has been in communication with the Ute Mountain Ute Tribe. The Service attended a Tribal Council Meeting on March 26, 2013, to discuss the proposed critical habitat designation and proposed listing of Gunnison sage-grouse. The Tribe has expressed an interest in developing a conservation plan for Gunnison sage-grouse on this property and has requested exclusion of the Pine Crest Ranch from the critical habitat designation. We understand that the Tribe's legal department is in the process of developing a conservation plan for their property.

To pursue options for developing a conservation plan, the Service has evaluated conservation funding and opportunities for Pine Crest Ranch through its Partners for Fish and Wildlife Program. We have also coordinated with the Natural Resources Conservation Service (NRCS) to discuss options for enrollment in conservation programs for Gunnison sage-grouse. Depending on the outcome of that discussion, an ongoing section 7 conference with the NRCS for conservation programs and practices in Gunnison sage-grouse range could include Pine Crest Ranch.

We will conduct government-to-government consultation with the Ute Mountain Ute Tribe throughout the development of the final designation of critical habitat. We will consider the Pine Crest Ranch for exclusion from final critical habitat designation consistent with the requirements of section 4(b)(2) of the Act.

Authors

The primary authors of this notice are the staff members of the Regional Office and Western Colorado Field Office, Mountain-Prairie Region, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 12, 2013.

Rachel Jacobsen,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–22706 Filed 9–18–13; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 130626570–3570–01]

RIN 0648–XC742

Endangered and Threatened Wildlife; 90-Day Finding on a Petition To List Alabama Shad as Threatened or Endangered Under the Endangered Species Act

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

ACTION: Notice of 90-day petition finding, request for information.

SUMMARY: We (NMFS) announce a 90-day finding on a petition to list Alabama shad (*Alosa alabamae*) as threatened or endangered under the Endangered Species Act (ESA) and to designate critical habitat concurrent with the listing. We find that the information in our files presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We will conduct a status review of the species to determine if the petitioned action is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information regarding this species (see below).

DATES: Information and comments on the subject action must be received by November 18, 2013.

ADDRESSES: You may submit information, identified by the code NOAA–NMFS_2013–0142, addressed to: Kelly Shotts, Ecologist, by any of the following methods:

- *Electronic Submissions:* Submit all electronic information via the Federal eRulemaking Portal. *Go to http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0142, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.*
- *Facsimile (fax):* 727–824–5309.
- *Mail:* NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.
- *Hand delivery:* You may hand deliver written information to our office during normal business hours at the street address given above.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are part of the public record and may be posted to *http://www.regulations.gov* without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. We 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: Kelly Shotts, NMFS, Southeast Region, 727–824–5312; or Marta Nammack, NMFS, Office of Protected Resources, 301–427–8469.

SUPPLEMENTARY INFORMATION:

Background

In 1997, we added Alabama shad to our Candidate Species List (62 FR 37562; July 14, 1997). At that time, a candidate species was defined as any species being considered by the Secretary of Commerce (Secretary) for listing as an endangered or a threatened species, but not yet the subject of a proposed rule (49 FR 38900; October 1, 1984). In 2004, we created the Species of Concern list (69 FR 19975; April 15, 2004) to encompass species for which we have some concerns regarding their status and threats, but for which insufficient information is available to indicate a need to list the species under the ESA. Twenty-five candidate species, including the Alabama shad, were transferred to the Species of Concern list at that time because they were not being considered for ESA listing and were better suited for Species of Concern status due to some concerns and uncertainty regarding their biological status and threats. The Species of Concern status does not carry any procedural or substantive protections under the ESA.

On April 20, 2010, the Center for Biological Diversity (CBD), Alabama Rivers Alliance, Clinch Coalition, Dogwood Alliance, Gulf Restoration Network, Tennessee Forests Council, and the West Virginia Highlands Conservancy (petitioners) submitted a petition to the Secretaries of Interior and Commerce, as well as to the Regional Director of the Southeast Region of the

U.S. Fish and Wildlife Service (USFWS), to list 404 aquatic, riparian, and wetland species from the southeastern United States as threatened or endangered under the ESA. The petitioners also requested that critical habitat be designated for all petitioned species. We notified the USFWS' Southeast Region by letter dated May 3, 2010, that the Alabama shad, one of the 404 petitioned species, would fall under NMFS' jurisdiction based on the August 1974 Memorandum of Understanding regarding jurisdictional responsibilities and listing procedures between the two agencies. We proposed to USFWS that NMFS evaluate the petition, for the Alabama shad only, for the purpose of the 90-day finding and any required subsequent listing action. On May 14, 2010, we sent the petitioners confirmation we would be evaluating the petition for Alabama shad. On February 17, 2011, we published a negative 90-day finding in the **Federal Register** (76 FR 9320) stating that the petition did not present substantial scientific or commercial information indicating that the requested listing of Alabama shad may be warranted.

On April 28, 2011, in response to the negative 90-day finding, CBD filed a notice of intent to sue DOC and NMFS for alleged violations of the ESA in making its finding. CBD filed the lawsuit in the U.S. District Court for the District of Columbia on January 18, 2012. On June 21, 2013, CBD and DOC/NMFS settled the lawsuit, and we agreed to reevaluate the original listing petition and publish a new 90-day finding. Here we reevaluate the information provided in the 2010 petition, as well as information in our files, including some additional information since the 90-day finding published on February 17, 2011.

ESA Statutory and Regulatory Provisions and Evaluation Framework

Section 4(b)(3)(A) of the ESA of 1973, as amended (U.S.C. 1531 *et seq.*), requires, to the maximum extent practicable, that within 90 days of receipt of a petition to list a species as threatened or endangered, the Secretary make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, and to promptly publish such finding in the **Federal Register** (16 U.S.C. 1533(b)(3)(A)). When we find that substantial scientific or commercial information indicates that the petitioned action may be warranted (a ''positive 90-day finding''), we are required to promptly commence a review of the status of the species concerned during which we will conduct a comprehensive review of the best available scientific and commercial information. In such cases, we are to conclude the review with a finding as to whether, in fact, the petitioned action is warranted within 12 months of receipt of the petition. Because the finding at the 12-month stage is based on a more thorough review of the available information, as compared to the narrow scope of review at the 90-day stage, a ''may be warranted'' finding does not prejudge the outcome of the status review.

Under the ESA, a listing determination may address a ''species,'' which is defined to also include subspecies and, for any vertebrate species, any distinct population segment (DPS) that interbreeds when mature (16 U.S.C. 1532(16)). A joint NOAA and USFWS policy clarifies the agencies' interpretation of the phrase ''distinct population segment'' for the purposes of listing, delisting, and reclassifying a species under the ESA (''DPS Policy''; 61 FR 4722; February 7, 1996). A species, subspecies, or DPS is ''endangered'' if it is in danger of extinction throughout all or a significant portion of its range, and ''threatened'' if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (ESA sections 3(6) and 3(20), respectively; 16 U.S.C. 1532(6) and (20)). Pursuant to the ESA and our implementing regulations, we determine whether species are threatened or endangered because of any one or a combination of the five factors found in section 4(a)(1): (A) The present or threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or, (E) any other natural or manmade factors affecting the species' existence (16 U.S.C. 1533(a)(1), 50 CFR 424.11(c)).

ESA-implementing regulations issued jointly by NMFS and USFWS (50 CFR 424.14(b)) define ''substantial information'' in the context of reviewing a petition to list, delist, or reclassify a species as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. In evaluating whether substantial information is contained in a petition, the Secretary must consider whether the petition: (1) Clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; (2) contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species; (3) provides information regarding the status of the species over all or a significant portion of its range; and, (4) is accompanied by the appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps (50 CFR 424.14(b)(2)).

We evaluate the petitioner's request based upon the information in the petition including its references, and the information readily available in our files. We will accept the petitioner's sources and characterizations of the information presented if they appear to be based on accepted scientific principles, unless we have specific information in our files that indicates that the petition's information is incorrect, unreliable, obsolete, or otherwise irrelevant to the requested action. Information that is susceptible to more than one interpretation or that is contradicted by other available information will not be dismissed at the 90-day finding stage, so long as it is reliable and a reasonable person would conclude it supports the petitioner's assertions. In other words, conclusive information indicating the species may meet the ESA's requirements for listing is not required to make a positive 90-day finding. We will not conclude that a lack of specific information alone negates a positive 90-day finding, if a reasonable person would conclude that the unknown information itself suggests an extinction risk of concern for the species at issue.

To make a 90-day finding on a petition to list a species, we evaluate whether the petition or information readily available in our files presents substantial scientific or commercial information indicating the subject species may be either threatened or endangered, as defined by the ESA. First, we evaluate whether the information presented in the petition, along with the information readily available in our files, indicates that the petitioned entity constitutes a ''species'' eligible for listing under the ESA. Next, we evaluate whether the information indicates that the species at issue faces extinction risk that is cause for concern; this may be indicated in information expressly discussing the species' status and trends, or in information describing impacts and threats to the species. We evaluate any information on specific demographic factors pertinent to evaluating extinction risk for the species at issue (e.g., population abundance and

trends, productivity, spatial structure, age structure, sex ratio, diversity, current and historical range, habitat integrity or fragmentation), and the potential contribution of identified demographic risks to extinction risk for the species. We then evaluate the potential links between these demographic risks and the causative impacts and threats identified in section 4(a)(1). We do not conduct additional research, and we do not solicit information from parties outside the agency to help us in evaluating the petition.

Court decisions clarify the appropriate scope and limitations of the Services' review of petitions at the 90-day finding stage, in making a determination whether a petitioned action ''may be'' warranted. As a general matter, these decisions hold that a petition need not establish a ''strong likelihood'' or a ''high probability'' that a species is either threatened or endangered to support a positive 90-day finding.

Information available on impacts or threats should be specific to the species and should reasonably suggest that one or more of these factors may be operative threats that act or have acted on the species to the point that it may warrant protection under the ESA. Broad statements about generalized threats to the species, or identification of factors that could negatively impact a species, do not constitute substantial information that listing may be warranted. We look for information indicating that not only is the particular species exposed to a factor, but that the species may be responding in a negative fashion; then we assess the potential significance of that negative response.

Many petitions identify risk classifications made by other organizations or agencies, such as the International Union on the Conservation of Nature (IUCN), the American Fisheries Society (AFS), or NatureServe, as evidence of extinction risk for a species. Risk classifications by other organizations or made under other Federal or state statutes may be informative, but the classification alone may not provide the rationale for a positive 90-day finding under the ESA. For example, as explained by NatureServe, their assessments of a species' conservation status do ''not constitute a recommendation by NatureServe for listing under the U.S. Endangered Species Act'' because NatureServe assessments ''have different criteria, evidence requirements, purposes, and taxonomic coverage than government lists of endangered and threatened species, and therefore these two types of lists should not be expected to coincide'' (*http://www.natureserve.org/prodServices/statusAssessment.jsp*). Thus, when a petition cites such classifications, we will evaluate the source information that the classification is based upon, in light of the standards on extinction risk and impacts or threats discussed above.

Alabama Shad Species Description

The Alabama shad (*Alosa alabamae*) is a euryhaline (adapted to a wide range of salinities), anadromous species that spawns in medium to large flowing rivers from the Mississippi River drainage to the Suwannee River, Florida. Alabama shad belong to the family Clupeidae and are closely related to, as well as similar in appearance and life history to, the American shad (*A. sapidissima*). They also resemble the skipjack herring (*A. chrysochloris*), which occurs in the same areas as Alabama shad. Defining characteristics of the Alabama shad are an upper jaw with a distinct median notch, and the number of gill rakers (41 to 48) on the lower limb of the anterior gill arch. Alabama shad differ morphologically from other *Alosa* species that occur in the same area by a lower jaw that does not protrude beyond the upper jaw, black spots along the length of the lower jaw, and a dorsal fin that lacks an elongated filament.

Alabama shad are a schooling fish; many individuals swim at the same speed and in the same direction. Research in the Pascagoula River system indicates that Alabama shad move between different riverine habitats seasonally during their first year of life (age 0). In early summer (June to mid-July) small juveniles were found to use sandbar habitats, then move to open channel and steep bank habitats containing large woody debris in late summer and fall (Mickle, 2006). Within these habitat types, Alabama shad tend to select cooler water temperatures (Mickle, 2006). While little is known of the Alabama shad's thermal tolerance, alosines in general are known to be highly sensitive to thermal stress (McCauley and Binkowski, 1982; Beitinger *et al.,* 2000). Juvenile growth rate is about 1.2 inches (30 millimeters [mm]) per month from July to September and then 0.4 inches (10 mm) per month until December. Juveniles remain in fresh water for the first 6 to 8 months of their lives, feeding on small fishes and invertebrates (Ross, 2001) and move into the marine environment between September and December (Mickle *et al.,* 2010) when they are about 2 to 5 inches total length (TL; 50 to 130 mm). There are almost no data describing the marine life stage of Alabama shad (Mettee and O'Neil, 2003; Mickle *et al.,* 2010).

Alabama shad move back into freshwater to spawn. Males appear to enter the river at earlier dates and lower water temperatures than females (Laurence and Yerger, 1966). Arrival at upstream spawning sites also varies by age (Mettee and O'Neil, 2003). Adults broadcast spawn in the spring or early summer over coarse sand and gravel sediments with moderate currents when river temperatures are between 66–72°F (19–22°C; Mettee and O'Neil, 2003). Adults are thought to feed on small fish, though they likely do not feed during the spawning run (Laurence and Yerger, 1967). Females become larger than males, reaching a little over 18 inches TL (467 mm), while males reach 16.5 inches TL (418 mm; Mettee and O'Neil, 2003). Age-2 and -3 adults are the most prevalent age class of spawning adults (Laurence and Yerger, 1967; Mettee and O'Neil, 2003; Ingram, 2007). Repeat spawning is common, but the percentage of returning spawners is highly variable among years. Annual fecundity ranges from approximately 16,000 to 360,000 eggs per female (Mettee and O'Neil, 2003; Ingram, 2007). Some natal homing tendency is evidenced by genetic differences among drainage basins (Bowen, 2005). The Alabama shad is relatively short lived, up to 6 years (Mettee and O'Neil, 2003).

Analysis of the Petition

First, we evaluated whether the petition presented the information indicated in 50 CFR 424.14(b)(2). The petition clearly indicates the administrative measure recommended and gives the scientific and common names of the taxonomically valid species involved. It contains a narrative justification for the recommended measure, describing the distribution of the species, as well as the threats faced by the species, and it is accompanied by supporting documentation in the form of bibliographic references. The petition presented very limited information to support the petitioned action. However, we have additional information in our files that was not provided in the petition to list the Alabama shad, including the abundance, age structure, and genetic make-up of the Alabama shad in the Apalachicola River, which we discuss in more detail below. We also have additional information clarifying the current range of the species. As stated in our prior 90-day finding (February 17, 2011), we periodically review our Species of Concern list to evaluate whether species should be retained or removed from the

list or proposed for listing under the ESA, and we announced our intent to release a biological review of the species. We considered information in the biological review, publicly released in 2011 (Smith *et al.,* 2011), to make this 90-day finding in response to the petition. Based on the information acquired in our files since publication of the prior finding, primarily the biological review by Smith *et al.* (2011), we find that substantial scientific or commercial information exists indicating that the petitioned action may be warranted.

The petition states that Alabama shad have likely experienced both dramatic long-term population declines and short-term population declines of as much as 30 percent, and attributes these trends to habitat loss and degradation caused by impoundments, pollution, dredging, and other factors. The petition also states that commercial fishing in the Ohio River was a threat historically. While commercial fishing is no longer a threat, over-exploitation for recreational, scientific, or educational purposes, including intentional eradication or indirect impacts of fishing, were cited by the petition as possible threats to the species. The petition states that it is unknown whether Alabama shad are ''appropriately protected,'' noting the lack of fish passage at locks and dams as a primary management concern, and cites lack of regulatory protections associated with classifications assigned to Alabama shad by IUCN, NatureServe, AFS, the NMFS Species of Concern Program, and the states of Mississippi, Alabama, and Georgia. Other factors, such as pollution, sedimentation, and drought, are cited in the petition as contributing to declines in shad populations. Thus, the petition states that four of the five causal factors in section 4(a)(1) of the ESA are adversely affecting the continued existence of Alabama shad: habitat modification and degradation due to dams, dredging, and pollution; overutilization in historical commercial fisheries and continued indirect effects from fishing and eradication programs; inadequacy of existing regulatory mechanisms associated with current status classifications; and other natural or manmade factors, such as pollution, sedimentation, and drought.

Evaluation of Information on Species Status

The petition states that Alabama shad has undergone a major geographic contraction of its historical range that originally spanned the Gulf Coast from the Suwannee River, Florida, to the Mississippi River, and westward in the Ouachita River system (Arkansas/Louisiana) to eastern Oklahoma. The petition states that the species' current range includes the Apalachicola River system below Jim Woodruff Lock and Dam (JWLD); the Pascagoula River drainage in Mississippi; the Conecuh, Choctawhatchee, and Mobile Rivers in Alabama; the Ouachita River, Arkansas; and, the Missouri, Gasconade, Osage, and Meramec Rivers, Missouri. Information in our files indicates that the current range of Alabama shad is larger than that described in the petition. In addition to the rivers listed in the petition, the current range of Alabama shad includes the Apalachicola, Chattahoochee, Flint (ACF) River system above JWLD in Florida/Georgia/Alabama, the Pea River in Alabama, the Pearl River in Louisiana/Mississippi, and the Little Missouri River in Arkansas (Smith *et al.,* 2011).

The petition describes Alabama shad populations as ''small'' and states that the species is considered ''very rare'' in large portions of its historical range. The petition cites a NatureServe (2008) estimate that 6 to 20 populations of Alabama shad remain, but neither the petition nor NatureServe (2008) specify the location of those populations, the size of the populations, or the number, locations, and size of historical Alabama shad populations for comparison. The petition includes an observation by Mettee *et al.* (1996) that ''there are only two known remaining runs of Alabama shad in the Mississippi River System and other spawning runs occur in the Florida Panhandle and southern Alabama.'' The petition also presents conclusions by Mettee and O'Neil (2003) that spawning populations of shad are ''relatively small.''

After submission of the petition and publication of the prior finding, Smith *et al.* (2011) conducted an extensive search of publications, technical reports, and theses, and surveyed universities, state and Federal facilities, and non-profit organizations throughout the Alabama shad's historical range for any recent (since 2000) recorded captures. In some systems (e.g., Choctawhatchee River, Alabama; Apalachicola/Flint River System, Florida/Georgia; and Pascagoula/Leaf River system, Mississippi), hundreds to thousands of Alabama shad have been documented since 2000. Records for some systems (e.g., Conecuh River and Mobile Bay, Alabama; Suwannee and Withlacoochee Rivers, Florida; Thibodaux Weir, Louisiana; Chickasawhay River, Mississippi; and, Gasconade River, Missouri) documented less than 25 Alabama shad since 2000. In many systems (e.g., Pea River, Alabama/Florida; Chattahoochee River, Georgia; and, Lake Pontchartrain, Louisiana), Alabama shad have been recorded in those systems since 2000, but the number of Alabama shad observed or captured was not provided in the records. No records of Alabama shad captures or observations since 2000 were found for many systems historically occupied by Alabama shad. It is not clear from the available information whether targeted studies were performed and shad were not present, or if the lack of Alabama shad data is due to the absence of studies or record-keeping in regards to the species. The NatureServe (2008) classification and literature cited by the petition, as well as the information in our files, do not present estimates for historical or current abundance of Alabama shad for comparison and evaluation. However, the low numbers of Alabama shad (less than 25) documented in some rivers and the lack of records of the species in some historically occupied rivers since 2000 (Smith *et al.* 2011) indicate that there may be cause for concern over declines in some systems currently and historically occupied by Alabama shad.

The petition cites various status classifications made by the IUCN, NatureServe, AFS, and our Species of Concern program to support its assertion that Alabama shad should be listed as threatened or endangered under the ESA. We do not give any particular weight to classifications established by other scientific and conservation organizations, which may or may not be based on criteria that directly correspond to the listing standards of the ESA. However, we have reviewed and evaluated the underlying information used to develop the various classifications given to Alabama shad by entities listed in the petition.

The petition cites the IUCN's 2010 classification of Alabama shad as ''endangered.'' We found the IUCN updated its classification of Alabama shad in 2012, relying on a more current assessment of the species (citing NatureServe as the ''assessor''), and reclassified the status from ''endangered'' to ''data deficient.'' The IUCN provided justification for their data deficient classification, stating there have been declines in the populations and geographic range of the species but ''there has been no quantification of the rate of range or population decline'' of the Alabama shad. NatureServe (2008) assigned Alabama shad a rank of ''G3'' or ''vulnerable'' given the species' limited distribution in Gulf of Mexico tributaries, reduction in population due

to the effects of dams in blocking spawning migration, and degradation of habitat by siltation and pollutants. NatureServe (2008) described the Alabama shad's short-term trend as ''relatively stable to decline of 30 percent'' and the long-term trend as ''relatively stable to decline of 70 percent''. The petition also included the 2008 AFS determination that Alabama shad were ''threatened'' (in imminent danger of becoming endangered throughout all or a significant portion of its range) based on (1) present or threatened destruction, modification, or reduction of habitat or range, and (2) over-exploitation for commercial, recreational, scientific, or educational purposes. The AFS designation did not provide any information on historical or current numbers, populations, or rates of decline, and also relies on NatureServe's (2008) ranking of ''G3/vulnerable'' (discussed in the previous section of this finding).

The petitioner also cited our classification of the Alabama shad as a NMFS species of concern as reason to support an ESA listing. As previously noted, Alabama shad became a NMFS Species of Concern in 2004 when it was reclassified from a Candidate Species. We considered the entirety of the scientific and commercial information available to us on the apparent population decline of Alabama shad and the threats that contributed to the apparent decline when we classified Alabama shad as a Species of Concern in 2004. By definition, a Species of Concern is one for which we have some concerns regarding status and threats, but for which insufficient information was available at the time of classification to indicate a need to list the species under the ESA. Our own Species of Concern designation does not include a specific analysis of extinction risk for Alabama shad, or an analysis of population size or trends, or other information directly addressing whether the species faces extinction risk that is cause for concern and may warrant listing.

In addition to these classifications by national and international organizations, the petition provided information that Alabama shad is considered by the states of Mississippi, Alabama, and Georgia to be of high conservation concern. Mississippi, Alabama, and Georgia did not provide population abundance estimates, population trends, or additional information supporting their classifications.

Information currently available in our files provides information on the abundance and increase of the species in one river system, as well as insight into the species' resilience. Abundance of Alabama shad varied greatly between 2005–2007 (~2,000–26,000) as described by Ely *et al.* (2008) and was lower than expected based on a comparison with American shad in the Savannah and Altamaha Rivers (100,000–200,000). Ingram (2007) compared growth and age class structure of Alabama shad in the Apalachicola River in 2005–2006 with results from studies conducted in 1967 and 1972 and indicated that the current population structure, with fewer age classes and an earlier age at maturity, was indicative of a declining population. Ingram (2007) also noted that when a population includes only a few year classes, abundance can rebound quickly when environmental conditions change (Rutherford *et al.,* 1992). Fluctuations in abundance of American shad were noted by Ely *et al.* (2008) and are well documented by others (Hattala *et al.,* 1996; Atlantic States Marine Fisheries Commission, 1998; Moring, 2005). Ely *et al.* (2008) concluded that commonly observed variations in year-class strength suggest Alabama shad are resilient and capable of quickly increasing in number under favorable conditions.

Evaluation of Information on Threats to the Species

The bulk of the information in the petition is an overview of many of the past and ongoing categories of threats that are believed to have contributed collectively to the decline of 404 aquatic, riparian, and wetland species in the Southeast. The majority of the information on threats in the petition is either general for all 404 species with no clear linkage to Alabama shad or is specifically linked to other species or to habitats not occupied by Alabama shad. The petition states that four of the five causal factors in section 4(a)(1) of the ESA are adversely affecting the continued existence of Alabama shad: (A) Present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for the commercial, recreational, scientific, or educational purposes; (C) inadequacy of regulatory mechanisms; and, (D) other natural or manmade factors.

The petition states that Alabama shad have been cut off from many historical spawning areas by dams and locks, citing Robison and Buchanan (1988), Etnier (1997), and Mirarchi *et al.* (2004). Dams can block access to upriver spawning sites for anadromous species, as well as alter downstream flow regimes. Dams are present on some rivers that are occupied by Alabama shad. The petition did not provide substantial information quantifying the extent to which shad populations have been reduced by the presence of dams, and we have no such information in our files. However, there is some information in our files suggesting that dams may be resulting in reduced populations in some rivers.

Beginning in 2005, a cooperative study supported by multiple local, academic, state, and Federal conservation partners, including NMFS, started tracking movements of Alabama shad and other fish species in the Apalachicola River (USFWS, 2008; Ely *et al.,* 2008; TNC, 2010). The study also evaluated the feasibility of moving fish upriver of JWLD, located at the confluence of the Chattahoochee and Flint Rivers, which presents the first major obstacle on the Apalachicola River to the upstream migration of Alabama shad to their historical spawning grounds. The results of this collaborative study showed that the existing lock at JWLD could be operated to allow fish to move upriver through the lock where they could access spawning habitat.

Based on these results, the U.S. Army Corps of Engineers (USACE) began ''conservation locking'' (operating the lock at JWLD to provide Alabama shad access to upstream habitat) in 2008. The locks are operated twice a day to correspond with the natural movement patterns of migrating fish during spawning seasons (February through May) each year. Since conservation locking began, Alabama shad have been found to pass upstream of the lock with 45 percent efficiency (Young, 2010) and, as a result, can access over 150 miles (241.4 km) of historical habitat and spawning areas in the ACF River System for the first time in more than 50 years (TNC, 2010). Young (2010) estimated the number of Alabama shad in the ACF River System at 98,469 in 2010, almost four times larger than the previous high estimate of 25,935 in 2005 (Ely *et al.,* 2008). The number of Alabama shad in the Apalachicola River in 2011 was estimated at 26,193 and was lower than the 2010 value but slightly higher than the maximum abundance in the 2005–2009 period (Young, 2011). The major difference between the 2010 and 2011 Alabama shad spawning runs was a lack of age-1 males in 2011 (Young, 2011). Notably, the 2011 run was dominated by older, larger adult females in excellent condition, a potential indicator of strong year classes in the future (Young, 2011). Sammons and Young (2012) provided the most recent report from the Apalachicola River, estimating the number of Alabama shad at 122,578 in 2012 (the largest since 2005). This

spawning run was composed of many males presumed to be from the 2010 year class, as well as numerous older, larger adults of both sexes (presumably recruits from 2009). Sammons and Young (2012) noted that a year of higher than average flows in 2009 may have contributed to spawning and recruitment successes in 2010 and 2012. Sammons and Young (2012) also noted that alosine population sizes commonly fluctuate widely.

Smith *et al.* (2011) conducted a population viability analysis (PVA) of Alabama shad in the ACF River System. A PVA is a modeling tool that estimates the future size and risk of extinction for populations of organisms. Smith *et al.* (2011) estimated returning female abundance in 20 years relative to current numbers and predicted that the ACF population is increasing and under present conditions could reach carrying capacity in about 40 years. The PVA indicated significant declines in abundance only in modeled scenarios with the highest levels and frequencies of mortality (Smith *et al.,* 2011).

We provided funds to USFWS to complete a genetic study on Alabama shad in the Apalachicola River, Florida (Moyer, 2012). The study assessed genetic parameters that may influence its extinction risk. Moyer (2012) determined that there is no observable genetic structure in Alabama shad in the Apalachicola River and that the species exhibits low amounts of genetic diversity.

The conservation locking program in the ACF River System and PVA on the ACF River Alabama shad demonstrated that the species is resilient and is responding positively to increased spawning habitat access. However, this may not be the case in other river systems historically occupied by Alabama shad. The petition relates the construction of dams built on the lower Tombigbee and Alabama Rivers in the 1960s to ''steep declines in shad populations'' in the Mobile River Basin (Barkuloo *et al.,* 1993; Mettee and O'Neil, 2003; NatureServe, 2008). While there is no information in the petition or our files quantifying declines in Alabama shad populations due to dams, Smith *et al.* (2011) found no records of Alabama shad in the Tombigbee and Alabama Rivers (the examples presented in the petition) since 2000. Therefore, the information presented in the petition and in our files indicates that Alabama shad populations in some rivers may have declined and causes us to be concerned that habitat modification may pose a significant risk to Alabama shad.

In addition to the information on the present and threatened destruction, modification, or curtailment of habitat or range, the petitioner provided information regarding the inadequacy of regulatory mechanisms and other natural or manmade factors that may cause a significant threat to the Alabama shad. However, because we have determined that the information available on the present and threatened destruction, modification, or curtailment of habitat or range may be a cause for concern for Alabama shad, we do not find a need to conduct a detailed analysis of the other submitted information here.

Petition Finding

We have determined after reviewing information readily available in our files that there is substantial information indicating that the petitioned action may be warranted. Under section 4(b)(3)(A) of the ESA, an affirmative 90-day finding requires that we promptly commence a status review of the petitioned species (16 U.S.C. 1533 (b)(3)(A)).

Information Solicited

To ensure that the status review is based on the best available scientific and commercial data, we are soliciting information on the status of the Alabama shad throughout its range including: (1) Historical and current distribution and abundance, including data addressing presence or absence at a riverine scale; (2) historical and current population sizes and trends; (3) biological information (life history, genetics, population connectivity, etc.); (4) landings and trade data; (5) management, regulatory, and enforcement information; (6) any current or planned activities that may adversely impact the species; and (7) ongoing or planned efforts to protect and restore the species and their habitats. We request that all information be accompanied by: (1) Supporting documentation such as maps, bibliographic references, or reprints of pertinent publications; and (2) the submitter's name, address, and any association, institution, or business that the person represents. Section 4(b)(1)(A) of the ESA and NMFS' implementing regulations (50 CFR 424.11(b)) require that a listing determination be based solely on the best scientific and commercial data, without consideration of possible economic or other impacts of the determination. During the 60-day public comment period we are seeking information related only to the status of the Alabama shad throughout its range.

Peer Review

On July 1, 1994, NMFS and the U.S. Fish and Wildlife Service published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270). The intent of the peer review policy is to ensure listings are based on the best scientific and commercial data available. The Office of Management and Budget issued its Final Information Quality Bulletin for Peer Review on December 16, 2004. The Bulletin went into effect June 16, 2005, and generally requires that all ''influential scientific information'' and ''highly influential scientific information'' disseminated on or after that date be peer reviewed. Because the information used to evaluate this petition may be considered ''influential scientific information,'' we solicit the names of recognized experts in the field that could take part in the peer review process for this status review (see **ADDRESSES**). Independent peer reviewers will be selected from the academic and scientific community, tribal and other Native American groups, Federal and state agencies, the private sector, and public interest groups.

References Cited

A complete list of all references is available upon request from the Protected Resources Division of the NMFS Southeast Regional Office (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 13, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2013–22869 Filed 9–18–13; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 78, No. 182

Thursday, September 19, 2013

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

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the District of Columbia Advisory Committee; Correction

AGENCY: Commission on Civil Rights.

ACTION: Notice; correction.

SUMMARY: The Commission on Civil Rights published a notice in the **Federal Register** of September 10, 2013, concerning a meeting of the District of Columbia Advisory Committee. The notice contained an incorrect time.

FOR FURTHER INFORMATION CONTACT: Ivy Davis, (202) 276–7533.

Correction

In the **Federal Register** of September 10, 2013, in FR Doc. 2013–21967, on page 55240, correct the first paragraph to read:

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the District of Columbia Advisory Committee to the Commission will convene at 9:30 a.m. (ET) on Tuesday, September 24, 2013, at 1331 Pennsylvania Avenue NW., Suite 1150, Washington, DC 20425. The purpose of the briefing meeting is to hear from government officials, advocates, and other experts on the issue of human trafficking in the District of Columbia. The planning meeting will discuss the next steps for the project and set forward a timeline for completing tasks related to the project.

Dated: September 16, 2013.

David Mussatt,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2013–22809 Filed 9–18–13; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Tilefish Individual Fishing Quota Program.

OMB Control Number: 0648–0590.

Form Number(s): NA.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 12.

Average Hours Per Response: Allocation applications; 30 minutes; renewal, 15 minutes; ownership cap forms and allocation transfers, 5 minutes each; cost recovery and fee payment, 2 hours; landing reports, 2 minutes.

Burden Hours: 42.

Needs and Uses: This request is for extension of a current information collection.

National Marine Fisheries Service (NMFS) Northeast Region manages the tilefish fishery of the Exclusive Economic Zone (EEZ) of the Northeastern United States, through the Tilefish Fishery Management Plan (FMP). The Mid-Atlantic Fishery Management Council prepared the FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

The recordkeeping and reporting requirements at § 648.294 form the basis for this collection of information. NMFS requests information from tilefish individual fishing quota (IFQ) permit holders in order to process applications to ensure that IFQ allocation holders are provided a statement of their annual catch quota, and for enforcement purposes, to ensure vessels are not exceeding an individual quota allocation. In conjunction with the application, NMFS also collects IFQ share accumulation information to ensure that an IFQ allocation holder does not acquire an excessive share of the total limited access privileges, as required by section 303A(c)(5)(D) of the Magnuson-Stevens Act.

NMFS requests transfer application information to process and track requests from allocation holders to transfer quota allocation (permanent and temporary) to another entity. The NMFS also collects information for cost recovery purposes as required under the Magnuson-Stevens Act to collect fees to recover the costs directly related to management, data collection and analysis, and enforcement of IFQ programs. Lastly, NMFS collects landings information to ensure that the amounts of tilefish landed and ex-vessel prices are properly recorded for quota monitoring purposes and the calculation of IFQ fees, respectively. Having this information results in an increasingly more efficient and accurate database for management and monitoring of fisheries of the Northeastern U.S. EEZ.

Affected Public: Business or other for-profit organizations.

Frequency: Annually and on occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: OIRA_Submission@omb.eop.gov.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: September 13, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–22753 Filed 9–18–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis (BEA).

Title: Quarterly Survey of U.S. Direct Investment Abroad—Transactions of U.S. Reporter with Foreign Affiliate.

OMB Control Number: 0608–0004.

Form Number: BE–577.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 15,000.

Average Hours Per Response: 1 hour.

Estimated Total Annual Burden Hours: 60,000.

Needs and Uses: The Quarterly Survey of U.S. Direct Investment Abroad—Transactions of U.S. Reporter with Foreign Affiliate (Form 577), obtains quarterly data on transactions and positions between U.S.-owned foreign business enterprises and their U.S. parents. The survey is a sample survey that covers all foreign affiliates above a size-exemption level. The sample data are used to derive universe estimates in nonbenchmark years from similar data reported in the BE–10, Benchmark Survey of U.S. Direct Investment Abroad, which is conducted every five years. The data are used in the preparation of the U.S. international transactions accounts, the input-output accounts, the national income and product accounts, and the international investment position of the United States. The data are needed to measure the size and economic significance of direct investment abroad, measure changes in such investment, and assess its impact on the U.S. and foreign economies.

The data from the survey are primarily intended as general purpose statistics. They should be readily available to answer any number of research and policy questions related to U.S. direct investment abroad.

Affected Public: Businesses or other for-profit organizations.

Frequency: Quarterly.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Paul Bugg, (202) 395–3093.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th Street and Constitution Avenue NW., Washington, DC 20230, or via email at *jjessup@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Paul Bugg, OMB Desk Officer, FAX number (202) 395–7245, or via email at *pbugg@omb.eop.gov.*

Dated: September 13, 2013

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–22754 Filed 9–18–13; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–84–2013]

Foreign-Trade Zone 39—Dallas/Fort Worth, Texas; Application for Reorganization (Expansion of Service Area) Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Dallas/Fort Worth International Airport Board, grantee of Foreign-Trade Zone 39, requesting authority to reorganize the zone to expand its service area under the alternative site framework (ASF) adopted by the FTZ Board (15 CFR 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new subzones or ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the FTZ Board's standard 2,000-acre activation limit for a zone. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on September 13, 2013.

FTZ 39 was approved by the FTZ Board on August 17, 1978 (Board Order 133, 43 FR 37478, 8/23/78) and reorganized under the ASF on January 15, 2010 (Board Order 1660, 75 FR 4355, 1/27/10). The zone project currently has a service area that includes Dallas, Tarrant, Kaufman, Collin, Grayson and Denton Counties, Texas.

The applicant is now requesting authority to expand the service area of the zone to include Hunt County, as described in the application. If approved, the grantee would be able to serve sites throughout the expanded service area based on companies' needs for FTZ designation. The proposed expanded service area is adjacent to the Dallas/Fort Worth Customs and Border Protection port of entry.

In accordance with the FTZ Board's regulations, Camille Evans of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is November 18, 2013. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 3, 2013.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via www.trade.gov/ftz. For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: September 13, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–22860 Filed 9–18–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–106–2013]

Approval of Subzone Status; Channel Control Merchants, LLC, Hattiesburg, Mississippi

On July 1, 2013, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Mississippi Coast Foreign Trade Zone, Inc., grantee of FTZ 92, requesting subzone status subject to the existing activation limit of FTZ 92 on behalf of Channel Control Merchants, LLC, in Hattiesburg, Mississippi.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (78 FR 40692, 7/8/2013). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval.

Pursuant to the authority delegated to the FTZ Board's Executive Secretary (15 CFR 400.36(f)), the application to establish Subzone 92E is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13 and further subject to FTZ 92's 2,000-acre activation limit.

Dated: September 13, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–22858 Filed 9–18–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–843, A–549–829, A–570–990]

Prestressed Concrete Steel Rail Tie Wire From Mexico, Thailand, and the People's Republic of China: Postponement of Preliminary Determinations of Antidumping Duty Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* September 19, 2013.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor (Mexico) (202) 482–4007, Katherine Johnson (Thailand) (202–482–4929) or Brian Smith (PRC) (202) 482–1766; AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Postponement of Preliminary Determinations

On May 13, 2013, the Department of Commerce (the Department) initiated antidumping duty investigations of imports of prestressed concrete steel rail tie wire from Mexico, Thailand, and the People's Republic of China. *See Prestressed Concrete Steel Rail Tie Wire From Mexico, the People's Republic of China, and Thailand: Initiation of Antidumping Duty Investigations,* 78 FR 29325 (May 20, 2013). The notice of initiation stated that we would issue our preliminary determinations no later than 140 days after the date of initiation. Currently, the preliminary determinations in these investigations are due on September 30, 2013.

On September 4, 2013, Davis Wire Corporation and Insteel Wire Products Company (hereafter, the petitioners) made timely requests, pursuant to section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.205(e), for a 50-day postponement of the preliminary determinations in the investigations.[1] The petitioners stated that a postponement of these preliminary determinations is necessary because the Department is still involved in gathering and analyzing data from the respondents and formulating supplemental questionnaires for the respondents in order to develop a complete and accurate record for purposes of the preliminary determinations.

Under section 733(c)(1)(A) of the Act, if the petitioner makes a timely request for an extension of the period within which the preliminary determination must be made under subsection (b)(1), then the Department may postpone making the preliminary determination under subsection (b)(1) until not later than the 190th day after the date on which the administering authority initiated the investigation. Therefore, for the reasons stated above and because there are no compelling reasons to deny the petitioners' requests, the Department is postponing the preliminary determinations in these investigations until November 19, 2013, which is 190 days from the date on which the Department initiated these investigations.

The deadline for the final determinations will continue to be 75 days after the date of the preliminary determinations, unless extended.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: September 10, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2013–22470 Filed 9–18–13; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See* the petitioners' letter to the Department dated September 4, 2013.

DEPARTMENT OF COMMERCE

International Trade Administration

Architecture Services Trade Mission to Rio de Janeiro and Recife, Brazil, October 7–10, 2013

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Amendment.

SUMMARY: The United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service is amending the Notice published at 78 FR 38687, June 27, 2013, regarding the Architecture Services Trade Mission to Rio de Janeiro and Recife, Brazil scheduled for October 7–10, 2013, to revise the mission description from executive-led to non-executive led.

FOR FURTHER INFORMATION CONTACT: Arica Young, Commercial Service, Trade Promotion Programs, Phone: 202–482–6219; Fax: 202–482–9000, Email: *Arica.Young@trade.gov*.

Frank Spector,

Senior International Trade Specialist.

[FR Doc. 2013–22826 Filed 9–18–13; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

Legal Services Trade Mission to China

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service is amending the Notice published at 78 FR 20893, April 8, 2013, regarding the Executive-Led Legal Services Trade Mission to China scheduled for September 16–18, 2013, to postpone the mission until further notice.

FOR FURTHER INFORMATION CONTACT: Frank Spector, Office of Domestic Operations, Trade Promotion Programs, Phone: 202–482–2054; Fax: 202–482–9000, Email: *Frank.Spector@trade.gov*.

Frank Spector,

Senior International Trade Specialist.

[FR Doc. 2013–22828 Filed 9–18–13; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

Secretarial Infrastructure Business Development Mission to Mexico November 18–23, 2013

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service is amending the Notice published at 78 FR 48855, August 12, 2013, regarding the Secretarial Infrastructure Business Development Mission to Mexico November 18–23, 2013, to revise the dates of the application deadline from September 13, 2013 to the new deadline of September 20, 2013.

SUPPLEMENTARY INFORMATION: Amendments to Revise the Application Deadline Dates.

Background

Recruitment for this Mission began in August 2013. Due to summer holidays, it has been determined that additional time is needed to allow for additional recruitment and marketing in support of the mission. Applications will now be accepted through September 20, 2013 (and after that date if space remains and scheduling constraints permit), interested companies which have not already submitted an application are encouraged to do so.

Amendments

For the reasons stated above, the Timeframe for Recruitment and Applications section of the Notice of the Secretarial Infrastructure Business Development Mission to Mexico November 18–23, 2013. Recruitment for this mission will conclude no later than September 20, 2013. We will inform all applicants of selection decisions no later than October 7, 2013. Applications received after the September 20, 2013 deadline will be considered only if space and scheduling constraints permit.

FOR FURTHER INFORMATION CONTACT: Jennifer Andberg, Office of Business Liaison, U.S. Department of Commerce, Phone: 202–482–1360; Fax: 202–482–5054, Email: *businessliaison@doc.gov*.

Frank Spector,

Senior International Trade Specialist.

[FR Doc. 2013–22824 Filed 9–18–13; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

Trade Mission to Philippines and Malaysia

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service is amending the Notice published at 78 FR 22237, April 15, 2013, regarding the education industry trade mission to Manila, Philippines and Kuala Lumpur, Malaysia scheduled for October 23–October 30, 2013, to revise the mission description from executive-led to non-executive led.

FOR FURTHER INFORMATION CONTACT: Melissa Branzburg, U.S. Commercial Service, Boston, MA, Phone: 617–565–4309, Email: *Melissa.Branzburg@trade.gov*.

Frank Spector,

Senior International Trade Specialist.

[FR Doc. 2013–22825 Filed 9–18–13; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC877

Mid-Atlantic Fishery Management Council (MAFMC); Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its Executive Committee, and its Mackerel, Squid, Butterfish Committee (MSB) will hold public meetings.

DATES: The meetings will be held Monday, October 7, 2013 through Thursday, October 10, 2013. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Courtyard Philadelphia Downtown, 21 N. Juniper St., Philadelphia, PA 19107–1901, telephone: (215) 496–3200.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State St., Suite 201, Dover, DE 19901; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D. Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION:

Monday, October 7, 2013

10:30 a.m. until 12:30 p.m.—The Executive Committee will meet.

1:30 p.m. until 5 p.m.—The MSB Committee will meet.

Tuesday, October 8, 2013

9 a.m.—The Council will convene.

9 a.m. until 10:30 a.m.—Dogfish Specifications will be discussed.

10:30 a.m. until 11:30 a.m.—Framework 8 to the Monkfish Fishery Management Plan (FMP) will be discussed.

11:30 a.m. until 12 p.m.—A Bluefin Tuna Presentation will occur.

1 p.m. until 3:30 p.m.—MSB issues will be discussed.

3:30 p.m. until 4:30 p.m.—The SAW/SARC 57 Summary will be presented.

4:30 p.m. until 5 p.m.—An Update on the Atlantic Wind Connection Project will be discussed.

5 p.m. until 6 p.m.—The Listening Session will be held.

Wednesday, October 9, 2013

The Demersal Committee will meet as a Committee of the Whole with the Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup, and Black Sea Boards.

9 a.m. until 4:30 p.m.—The Council will finalize summer flounder, scup, black sea bass, and bluefish management measures for 2014–15 (2014 for Bluefish) in conjunction with the Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup, Black Sea Bass, and Bluefish Boards. The ASMFC will provide an update on activities regarding summer flounder.

4:30 p.m. until 5 p.m.—Research Set-Aside Research Priorities will be discussed.

Thursday, October 10, 2013

9 a.m. until 10 a.m.—Final Rule for National Standard 2 Guidelines Presentation will be discussed.

10 a.m. until 1 p.m.—The Council will hold its regular Business Session to approve the June 2013 and August 2013 minutes, receive Organizational Reports, the South Atlantic and the New England Liaison Reports, the Executive Director's Report, the Science Report, Committee Reports, and conduct any continuing and/or new business.

Agenda items by day for the Council's Committees and the Council itself are:

On Monday, October 7—The Executive Committee will review and revise the Implementation Plan. The MSB Committee will develop Committee recommendations on river herring and/or shad management approach (stock in fishery or other).

On Tuesday, October 8—The Council will convene at 9 a.m. The Council will review the Scientific and Statistical Committee's (SSC), the Monitoring Committee's and Advisory Panel's specification recommendations for 2014 and adopt 2014 commercial and recreational harvest levels and commercial management measures for Dogfish. The Council will review Framework 8 to the Monkfish FMP for the range of alternatives; consider approval of alternatives for further analysis; measures include the specification of annual catch target; days-at-sea, and trip limits for 2014–16, and changes to the Category H Boundary. The Council will hear an

overview of the Bluefin Tuna Amendment 7 proposed rule. The Council will review the MSB Committee's recommendations regarding river herring/shad management and adopt a management approach for river herring/shad. The Council will hear a SAW/SARC 57 Summary Benchmark Assessment review of summer flounder and striped bass. The Council will receive an update on the Atlantic Wind Connection Project. The Council will hold a public Listening Session with a presentation on Ocean Acidification.

On Wednesday, October 9—The Council in conjunction with the ASMFC's Summer Flounder, Scup, Black Sea Bass and Bluefish Board will review the Scientific and Statistical Committee (SSC), the associated Monitoring Committee's and Advisory Panel's specification recommendations for 2014–15 (2014 for bluefish) and adopt 2014–15 (2014 for bluefish) commercial and recreational harvest levels and commercial management measures for summer flounder, scup, black sea bass, and bluefish. The ASMFC will approve the 2013 Fishery Management Plan Review and the Terms of Reference for the Bluefish stock assessment. Research Set-Aside research priorities will be established for 2015 RSA RFP.

On Thursday, October 10—The Council will receive a presentation regarding the Final Rule for National Standard 2 Guidelines. The Council will hold its regular Business Session to approve the June 2013 and August 2013 minutes, receive Organizational Reports to include an update on forms and process for data collection for the surfclam and ocean quahog fisheries and industry-funded observer coverage, South Atlantic and New England Liaison Reports, the Executive Director's Report, Science Report, Committee Reports, and conduct any continuing and/or new business.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: September 16, 2013.

Tracey L. Thompson,

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

[FR Doc. 2013–22773 Filed 9–18–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

First Responder Network Authority Board Meeting

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of special meeting of the First Responder Network Authority.

SUMMARY: The Board of the First Responder Network Authority (FirstNet) will hold a Special Board meeting via teleconference on September 23, 2013.

DATES: The meeting will be held on September 23, 2013, from 10:30 a.m. to 11:30 a.m. Eastern Daylight Time.

ADDRESSES: The meeting will be conducted via teleconference.

FOR FURTHER INFORMATION CONTACT: Uzoma Onyeije, Secretary, FirstNet, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230: telephone (202) 482–0016; email *uonyeije@ntia.doc.gov*. Please direct media inquiries to NTIA's Office of Public Affairs, (202) 482–7002.

SUPPLEMENTARY INFORMATION: *Background:* The Middle Class Tax Relief and Job Creation Act of 2012 (Act), Public Law 112–96, 126 Stat. 156 (2012), created FirstNet as an independent authority within the NTIA. The Act directs FirstNet to establish a single nationwide, interoperable public safety broadband network. The FirstNet Board is responsible for making strategic decisions regarding FirstNet's operations.

The Board may, by a majority vote, close a portion of the meeting as necessary to preserve the confidentiality of commercial or financial information that is privileged or confidential, to discuss personnel matters, or to discuss legal matters affecting FirstNet, including pending or potential litigation. *See* 47 U.S.C. 1424(e)(2).

Matters To Be Considered: NTIA will post an agenda for the Special Meeting of the FirstNet Board on its Web site, *http://www.ntia.doc.gov,* prior to the meeting. The agenda topics are subject to change. Please refer to NTIA's Web site at *http://www.ntia.doc.gov/category/firstnet* for the most up-to-date information.

Time and Date: The Special Meeting will be held on September 23, 2013, from 10:30 a.m. to 11:30 a.m. Eastern Daylight Time. The times and dates are subject to change. Please refer to NTIA's Web site at *http://www.ntia.doc.gov/category/firstnet* for the most up-to-date information.

Other Information: The teleconference for the Special Meeting of the FirstNet Board is open to the public. On the date and time of the Special Meeting, members of the public may call toll-free 1 (888) 469–3306 and use passcode ''FirstNet'' to listen to the meeting. If you experience technical difficulty, please contact Charles Franz by telephone (202) 482–1826; or via email *cfranz@ntia.doc.gov*. Public access will be limited to listen-only. Due to the limited number of ports, attendance via teleconference will be on a first-come, first-served basis. The Special Meeting is accessible to people with disabilities. Individuals requiring accommodations are asked to notify Mr. Onyeije, by telephone (202) 482–0016 or email *uzoma@firstnet.gov,* at least two days (2) business days before the meeting.

Records: NTIA maintains records of all Board proceedings. Board minutes will be available at *http://www.ntia.doc.gov/firstnet-public-meetings.*

Dated: September 13, 2013.

Kathy D. Smith,

Chief Counsel.

[FR Doc. 2013–22763 Filed 9–18–13; 8:45 am]

BILLING CODE 3510–60–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Wednesday, September 25, 2013, 10:00 a.m.–11:00 a.m.

PLACE: Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the public

Matters To Be Considered

Briefing Matter: Voluntary Recall Notice—Notice of Proposed Rulemaking.

A live Web cast of the Meeting can be viewed at *www.cpsc.gov/live*.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: September 17, 2013.

Todd A. Stevenson,

Secretary.

[FR Doc. 2013–22913 Filed 9–17–13; 4:15 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2013–OS–0194]

Proposed Collection; Comment Request

AGENCY: Defense Logistics Agency (DLA), DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Defense Logistics Agency (DLA) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 18, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Logistics Agency Headquarters, DLA Office of the Inspector General, ATTN: Ms. Joanna Palkovitz, 8725 John J. Kingman Road, Fort Belvoir, VA 22060 or call 703–767–0123.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Defense Criminal Incident Reporting System, OMB 0704–TBD.

Needs and Uses: Information in this system is used by DLA Office of the Inspector General (OIG), Investigations Division (ID), DLA Installation Support Offices, and the DLA Office of General Counsel personnel to monitor progress of cases and to develop non-personal statistical data on crime and criminal investigative support for the future. DLA General Counsel also uses data to review cases, determine proper legal action, and coordinate on all available remedies. Information is released to DLA managers who use the information to determine actions required to correct the causes of loss and to take appropriate action against DLA employees or contractors in cases of their involvement. Records are also used by DLA to monitor the progress of investigations, identify crime conducive conditions, and prepare crime vulnerability assessments/statistics.

Affected Public: Individuals or households; Federal Government personnel.

Annual Burden Hours: 800.

Number of Respondents: 400.

Responses Per Respondent: 1.

Average Burden Per Response: 2 hours.

Frequency: On occasion.

This system contains the following categories of records: Individuals name, address and telephone number, Reports of Preliminary Inquiry, Criminal Information Reports, Reports of Referral, Reports of Investigation, Police Incident Reports, Trade Security Controls Assessment Records, Reports of Post Sale Investigation, Crime Vulnerability Assessments, Response to Leads, Reports of Outreach, Reports of Corrective Action, Commander or Directors Reports of Corrective Action, invoices, sales contracts, messages, statements of witnesses, subjects, and victims, photographs, laboratory reports, data collection reports, and other related papers by DLA Investigators, Security Officers, Federal, State, and local law enforcement and investigative agencies.

Dated: September 16, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–22789 Filed 9–18–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2013–HA–0195]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Office of the Assistant Secretary of Defense for Health Affairs announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 18, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket

number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Lt. Col. Judith Schulik, TRICARE Policy and Operations, TRICARE Management Activity, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041, telephone (703) 681–0039.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Certification of non-contributory TriCare supplemental insurance plan; OMB Control Number 0720–0044.

Needs and Uses: Section 707 of the John Warner National Defense Authorization Act for Fiscal Year 2007 added section 1097c to Title 10. Section 1097c prohibits employers from offering financial or other incentives to certain TRICARE-eligible employees to not enroll in an employer-offered group health plan. In other words, employers may no longer offer TRICARE supplemental insurance plans as part of an employee benefit package. Employers may, however, offer TRICARE supplemental insurance plans as part of an employee benefit package provided the plan is not paid for in whole or in part by the employer and is not endorsed by the employer. When such TRICARE supplemental plans are offered, the employer must properly document that they did not provide any payment for the benefit nor receive any direct or indirect consideration or compensation for offering the benefit; the employer's only involvement is providing the administrative support. That certification will be provided upon request to the Department of Defense.

Affected Public: Business or other for profit; Not-for-profit institutions.

Annual Burden Hours: 250 hours.

Number of Respondents: 1,500.

Responses per Respondent: 1.

Average Burden per Response: 10 minutes.

Frequency: On Occasion.

Respondents are employers who make available non-contributory TRICARE supplemental insurance plan to their employees. This new paperwork requirement is consistent with section 707 of the John Warner National Defense Authorization Act for Fiscal Year 2007 which added Section 1097c to Title 10. Per Section 1097c, employers may no longer offer TRICARE supplemental insurance plans as part of an employee benefit package. They may offer TRICARE supplemental insurance plans, however, provided the plan is not paid for in whole or in part by the employer and is not endorsed by the employer. When such TRICARE supplemental plans are offered, the employer must properly document that they did not provide any payment for the benefit nor receive any direct or indirect consideration or compensation for offering the benefit; the employer's only involvement is providing the administrative support. One certification must be completed per employer. It should be kept on file by the employer for as long as such plans are offered. The employer will provide the certification to the Department of Defense upon request.

Dated: September 16, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–22807 Filed 9–18–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Notification of an Open Meeting of the National Defense University Board of Visitors (BOV)

AGENCY: National Defense University, DoD.

ACTION: Notice of open meeting.

SUMMARY: The Department of Defense is publishing this notice to announce that the following Federal Advisory Committee meeting of the National Defense University Board of Visitors (BOV) will take place.

DATES: The meeting will be held on October 8, 2013, from 12:00 p.m. to 5:00 p.m. and will continue on October 9, 2013, from 9:00 a.m. to 12:00 p.m.

ADDRESSES: The Board of Visitors meeting will be held at Lincoln Hall, Building 64, Room 1105, the National Defense University, 300 5th Avenue SW., Fort McNair, Washington, DC 20319–5066.

FOR FURTHER INFORMATION CONTACT: The point of contact for this notice of open meeting is Ms. Joycelyn Stevens at (202) 685–0079, Fax (202) 685–3920 or *StevensJ7@ndu.edu.*

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150. Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public.

The future agenda will include discussion on accreditation compliance, organizational management, strategic planning, resource management, and other matters of interest to the National Defense University. Limited space made available for observers will be allocated on a first come, first served basis. Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, written statements to the committee may be submitted to the committee at any time or in response to a stated planned meeting agenda by FAX or email to the point of contact person listed in **FOR FURTHER INFORMATION CONTACT**. (Subject Line: Comment/Statement to the NDU BOV).

Dated: September 16, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–22839 Filed 9–18–13; 8:45 a.m.]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE Over-the-Counter Drug Demonstration Project

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of modification to the TRICARE Over-the-Counter Drug Demonstration Project.

SUMMARY: This notice is to advise interested parties of a modification of the demonstration project in which the Department of Defense (DoD) evaluates allowing selected over-the-counter (OTC) drugs to be included on the TRICARE uniform formulary. The Department has been engaged in a demonstration project relating to Over the Counter (OTC) drugs since 2009. This demonstration project has been evaluating the costs/benefits and beneficiary satisfaction of providing selected OTC drugs under the pharmacy benefits program when the selected OTC drugs are determined to be clinically effective and when recommended by the Pharmacy and Therapeutics Committed and approved by the Assistant Secretary of Defense (Health Affairs). Under the current demonstration, the eligible

drugs have been limited to those drugs for which the beneficiary has a prescription for a drug in the same class and for which a clinically effective OTC drug is also available. The current demonstration is scheduled to end in November 2014. In the National Defense Authorization Act for Fiscal Year 2013, Congress authorized the Department to provide Over the Counter (OTC) drugs to beneficiaries under regulations prescribed by the Secretary. Although the Department could now cease the demonstration and implement this new Congressional authority, it is now considering the viability of adding some drugs, such as the Plan B One-Step (levonorgestrel) which is an OTC product for all women of child-bearing potential that does not require a prescription. It was decided that the most efficient method of testing this new criteria was by modification to the current demonstration.

DATES: This demonstration project will continue through until November 30, 2016 in order to provide adequate time to implement and evaluate the substantive changes allowing the DoD to provide drugs, such as the Plan B One-Step, that are in the class of drugs normally requiring a prescription but which the FDA has granted an exception to the prescription requirement.

FOR FURTHER INFORMATION CONTACT: Captain Nita Sood, TRICARE Management Activity, Pharmaceutical Operations Directorate, telephone (703) 681–2890.

SUPPLEMENTARY INFORMATION:

Background

Section 705 of the John Warner National Defense Authorization Act for 2007 directed the Secretary to conduct a demonstration project under 10 United States Code (U.S.C.) 1092 to allow certain over-the-counter (OTC) medications to be included on the uniform formulary under 10 U.S.C. 1074g. On June 15, 2007, the Department of Defense published a notice in the **Federal Register** (FR) (72 FR 33208–33210) implementing the demonstration project until the implementation of the combined TRICARE mail and retail contract (TPharm) which was on November 4, 2009. In order to more thoroughly evaluate the clinical and cost effectiveness of OTC drugs as well as beneficiary satisfaction with the project, the Department published a notice in the FR (74 FR 66626–66627) on December 16, 2009 that extended the demonstration project through November 4, 2012. The Department determined that continuation of the demonstration project for an additional 2 years was necessary to provide the Secretary with sufficient information to fully evaluate the project. The demonstration project continues to be authorized by 10 U.S.C. 1092. Section 702 of the National Defense Authorization Act for Fiscal Year 2013 authorized the Department to provide OTC pharmaceuticals under terms prescribed by the Secretary. This authorization would allow the Department to implement its current demonstration under its current terms. These terms have been to authorize the provision of OTC drugs when the beneficiary had been receiving prescription drugs in the same class and a clinically effective OTC was available. These drugs were treated as generic prescription medications, except that the need for a prescription and/or a copay were waived. The OTC drugs must have been recommended by the DoD Pharmacy and Therapeutics Committee and approved by the Assistant Secretary of Defense, (Health Affairs) prior to inclusion on the formulary. On June 20, 2013, the Food and Drug Administration (FDA) announced the use of Plan B One-Step (levonorgestrel) emergency contraceptive as an over-the-counter product ''for all women of child-bearing potential without age or point-of-sale restrictions.'' Contraceptive drugs are a type of drug which normally would require a prescription prior to dispensing, however the FDA made an exception for this particular drug. The statute governing the Department's pharmacy program, 10 U.S.C. 1074g, requires the Department to make available to its beneficiaries all prescription drugs approved by the FDA. The current issue for the Department regarding this drug, and any drugs for which the FDA might issue similar exceptions and mandates, is to determine how best to implement this requirement in our regulations. The modifications to the current demonstration are designed to help the Department determine whether these drugs can be treated in the same manner as the other OTC drugs which moved from prescription to non-prescription status.

Modification of the Demonstration Project

(1) Inclusion of the Over-the-Counter Plan B One-Step Emergency Contraceptive (levonorgestrel).

(2) OTC availability of Plan B One-Step Emergency Contraceptive (levonorgestrel) through the demonstration project will be at retail dispensing venue. Eligibility includes all active duty service women and female beneficiaries of child-bearing potential, without age restrictions. All military treatment facility (MTF) pharmacies carry OTC Plan B One-Step, and provide it to all active duty service women and female beneficiaries of child-bearing potential, without age restrictions, at no cost. The OTC Plan B One-Step Emergency Contraceptive (levonorgestrel) will not be available through the demonstration project at the TRICARE mail order program because it would be clinically inappropriate to take OTC Plan B One-Step Emergency Contraceptive (levonorgestrel) after 72 hours (3 days).

(3) Eligible beneficiaries will not require a written prescription for Plan B One-Step Emergency Contraceptive (levonorgestrel). The beneficiary simply presents to the retail pharmacy and which will process the request identically to all other pharmacy claims.

(4) Cost sharing requirements. The cost sharing will be zero copay.

(5) Period of demonstration. The demonstration project will continue until November 30, 2016.

Dated: September 16, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–22833 Filed 9–18–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Availability of a Draft Integrated Feasibility Report (Feasibility Study/ Environmental Impact Statement/ Environmental Impact Report), Los Angeles River Ecosystem Restoration Study, City of Los Angeles, Los Angeles County, CA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers (Corps) in conjunction with the City of Los Angeles (City) announces the availability of a Draft Integrated Feasibility Report (IFR), which includes a Draft Feasibility Study (FS) and Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) for the Los Angeles River Ecosystem Restoration Study, Los Angeles County, CA, for review and comment. The study evaluates alternatives for the purpose of restoring 11 miles of the Los Angeles River from approximately Griffith Park

to downtown Los Angeles while maintaining existing levels of flood risk management. Restoration includes creation and reestablishment of historic riparian strand and freshwater marsh habitat to support increased populations of wildlife and enhance habitat connectivity within the study area, as well as to provide opportunities for connectivity to ecological zones such as the Santa Monica Mountains, Verdugo Hills, Elysian Hills, and San Gabriel Mountains. Restoration also includes the reintroduction of ecological and physical processes such as a more natural hydrologic and hydraulic regime that reconnects the river to historic floodplains and tributaries, reduced flow velocities, increased infiltration, improved natural sediment processes, and improved water quality. The study also evaluates opportunities for passive recreation that is compatible with the restored environment. A Notice of Intent for the EIS/EIR was published on November 28, 2008 (73 FR 72455).

DATES: The Draft IFR is available for a 45-day review period from September 20, 2013 through November 5, 2013 pursuant to the National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA). Written comments pursuant to the NEPA will be accepted until the close of public review at close of business on November 5, 2013.

ADDRESSES: Questions or comments concerning the Draft IFR may be directed to: Josephine R. Axt, Ph.D.; Chief, Planning Division; U.S. Army Corps of Engineers; Los Angeles District; P.O. Box 532711; ATTN: Ms. Erin Jones, CESPL–PD–RN; Los Angeles, CA 90053–2325 or *comments.lariverstudy@usace.army.mil.*

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen Bergmann, U.S. Army Corps of Engineers, Los Angeles District, *Kathleen.M.Bergmann@usace.army.mil* and Ms. Erin Jones, U.S. Army Corps of Engineers, Los Angeles District, *Erin.L.Jones@usace.army.mil.*

SUPPLEMENTARY INFORMATION: As part of the public involvement process, notice is hereby given by the Corps Los Angeles District of a public meeting to be held at the Los Angeles River Center and Gardens (Atrium), 570 West Avenue 26, Los Angeles, CA 90065 from 5:30 p.m. to 7:30 p.m. on Thursday, October 17, 2013. The public meeting will allow participants the opportunity to comment on the IFR. Attendance at the public hearing is not necessary to provide comments. Written comments may also be given to the contacts listed under **ADDRESSES**.

The document is available for review at:

(1) online at *http://1.usa.gov/1ad0K9z.*

(2) Arroyo Seco Regional Branch Library; 6145 N. Figueroa Street, Los Angeles, CA 90042; CD and Hard Copy.

(3) Los Angeles Central Library; 630 W 5th Street Los Angeles, CA 90071; CD and Hard Copy.

(4) Atwater Village Branch Library; 3379 Glendale Boulevard, Los Angeles, CA 90039; CD and Hard Copy.

(5) Cypress Park Branch Library; 1150 Cypress Avenue, Los Angeles CA 90065; CD.

(6) Lincoln Heights Branch Library; 2530 Workman Street, Los Angeles, CA 90031; CD.

(7) Chinatown Branch Library; 639 N. Hill Street, Los Angeles, CA 90012; CD.

(8) Little Tokyo Branch Library; 203 S. Los Angeles Street, Los Angeles CA 90012; CD.

(9) Benjamin Franklin Branch Library; 2200 E. First Street, Los Angeles, CA 90033; CD.

Kimberly M. Colloton,

Colonel, U.S. Army, Commander and District Engineer.

[FR Doc. 2013–22797 Filed 9–18–13; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP13–1323–000.
Applicants: Questar Pipeline Company.
Description: QPC Statement of Rates to be effective 8/10/2013.
Filed Date: 9/11/13.
Accession Number: 20130911–5097.
Comments Due: 5 p.m. ET 9/23/13.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP13–1223–002.
Applicants: National Fuel Gas Supply Corporation.
Description: Errata—ACA 2013—RP13–1223 to be effective 10/1/2013.
Filed Date: 9/11/13.
Accession Number: 20130911–5049.
Comments Due: 5 p.m. ET 9/18/13.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, 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: September 12, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–22747 Filed 9–18–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–83–000]

Arlington Storage Company, LLC; Notice of Availability of the Environmental Assessment for the Proposed Gallery 2 Expansion Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Gallery 2 Expansion Project, proposed by Arlington Storage Company, LLC (Arlington) in the above-referenced docket. Arlington requests authorization to convert two existing salt caverns, known as Gallery 2, to natural gas storage at its Seneca Lake Storage facility in Schuyler County, New York. The conversion of the Gallery 2 caverns to natural gas storage would add 0.55 billion cubic feet (Bcf) of working gas capacity, and 0.20 Bcf of base gas capacity to the Seneca Lake Storage facility, increasing the total working gas capacity from 1.45 Bcf to 2.0 Bcf.

The EA assesses the potential environmental effects of the construction and operation of the Gallery 2 Expansion Project in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969. The FERC staff concludes that approval of the proposed

project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The New York State Department of Environmental Conservation participated as a cooperating agency in the preparation of the EA. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis.

In addition to the two existing salt caverns previously used for liquefied petroleum gas (LPG) storage, the proposed Gallery 2 Expansion Project includes the following facilities:

- Approximately 500 feet of pipeline (170 feet of 16-inch-diameter and 330 feet of 8-inch-diameter pipeline) to connect the Gallery 2 injection/withdrawal wells 30A and 31A to Arlington's existing Seneca Lake 16-inch-diameter natural gas pipeline;
- A 500 horsepower skid-mounted compressor unit;
- Use of well no. 45 for debrining and future monitoring of the caverns;
- A temporary brine pump and temporary brine pipelines;
- Electric and instrument air lines connecting the Gallery 2 facilities to Arlington's existing Compressor Station; and
- Plugging and abandonment of two existing wells (30 and 31) formerly used in the Gallery 2 caverns' brine production and liquefied petroleum gas storage operation.

The FERC staff mailed copies of the EA to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; newspapers and libraries in the project area; and parties to this proceeding. In addition, the EA is available for public viewing on the FERC's Web site (*www.ferc.gov*) using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Any person wishing to comment on the EA may do so. 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 the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before October 15, 2013.

For your convenience, there are three methods you can use to file your comments with the Commission. In all instances please reference the project docket number CP13–83–000 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 located on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also 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.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

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 (*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., CP13–83). 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.*

Dated: September 13, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–22779 Filed 9–18–13; 8:45 am]

BILLING CODE 6717–01–P

[1] See the previous discussion on the methods for filing comments.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF13–16–000]

Algonquin Gas Transmission, LLC; Notice of Intent To Prepare An Environmental Impact Statement for the Planned Algonquin Incremental Market Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the Algonquin Incremental Market Project (AIM Project or Project) involving construction and operation of facilities by Algonquin Gas Transmission, LLC (Algonquin), an indirect, wholly-owned subsidiary of Spectra Energy Corp, in New York, Connecticut, Rhode Island, and Massachusetts. The Commission will use this EIS 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 EIS. Please note that the scoping period will close on October 14, 2013. However, this is not your only public input opportunity; please refer to the Review Process flow chart in Appendix 1.[1]

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. In lieu of or in addition to sending written comments, the Commission invites you to attend the public scoping meeting(s) scheduled as follows:

Date and time [a]	Location
Monday, September 30, 2013, 7:00 PM Eastern Time	Muriel H. Morabito Community Center, 29 Westbrook Drive, Cortlandt Manor, NY 10567.
Tuesday, October 1, 2013, 7:00 PM Eastern Time	Rogers Park Middle School, 21 Memorial Drive, Danbury, CT 06810.
Wednesday, October 2, 2013, 7:00 PM Eastern Time	Kelly Middle School, 25 Mahan Drive, Norwich, CT 06360.
Thursday, October 3, 2013, 7:00 PM Eastern Time	Holiday Inn Dedham, 55 Ariadne Road, Dedham, MA 02026.

[a] Algonquin representatives will be present one hour before each meeting (starting at 6:00 PM) to describe the Project, present maps, and answer questions.

The public meetings are designed to provide you with more detailed information and another opportunity to offer your comments on the AIM Project. Interested groups and individuals are encouraged to attend the meetings and present comments on the issues they believe should be addressed in the EIS. A transcript of each meeting will be made so that your comments will be accurately recorded.

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 planned 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 planned 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.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' is available for viewing on the FERC Web site (*www.ferc.gov*). 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.

Summary of the Planned Project

Algonquin plans to construct, install, own, operate, and maintain the planned AIM Project, which will involve expansion of its existing pipeline and compressor station facilities located in New York, Connecticut, Rhode Island, and Massachusetts along with the abandonment of approximately 0.5 mile of existing mainline pipeline as a related component of the Project. Implementation of the Project will create the additional capacity from the Ramapo, New York and Mahwah, New Jersey receipt points on Algonquin's systems to various Algonquin city gate delivery points in Connecticut, and Massachusetts. If completed, the Project would be capable of delivering up to 342,000 dekatherms per day of natural gas.

The planned AIM Project includes approximately 37.0 miles of pipeline composed of the following facilities:

- Replacement of approximately 19.6 miles of existing 26-inch-diameter mainline pipeline with a 42-inch-diameter pipeline as follows:
  - 3.3 miles in Rockland County, New York (Ramapo to Stony Point Lift and Relay (L&R) [2]);
  - 11.9 miles in Rockland and Westchester counties, New York (Stony Point to Yorktown Heights L&R), which includes a new 1.2-mile-long horizontal directional drill (HDD) crossing of the Hudson River; and
  - 4.4 miles in Putnam County, New York and Fairfield County, Connecticut (Southeast to Mainline Valve (MLV) 19 L&R).
- Extension of an existing loop [3] pipeline with approximately 2.1 miles of additional 36-inch-diameter pipeline along Algonquin's existing pipeline right-of-way in Middlesex and Hartford counties, Connecticut (Cromwell Loop Extension).
- Replacement of approximately 9.1 miles of existing 6-inch-diameter pipeline with a 16-inch diameter pipeline in New London County, Connecticut (E–1 System L&R).
- Installation of approximately 1.4 miles of new 12-inch-diameter loop pipeline along Algonquin's existing pipeline right-of-way in New London County, Connecticut (E–1 System Loop).
- Installation of approximately 4.8 miles of new lateral pipeline off of Algonquin's existing I–4 System Lateral in Norfolk and Suffolk counties, Massachusetts (West Roxbury Lateral), which includes:
  - approximately 4.2 miles of new 16-inch-diameter pipeline; and
  - approximately 0.6 mile of new 24-inch-diameter pipeline.

The majority of the pipeline facilities (approximately 28.7 miles or 78 percent of the total 37.0 miles) will replace existing Algonquin pipelines, while the remainder of the pipeline facilities (approximately 8.3 miles or 22 percent) will consist of new pipeline loops and one new lateral.

In addition to the pipeline facilities, Algonquin will modify 5 existing compressor stations and 25 existing metering and regulating (M&R) stations, and construct 2 new M&R stations. Modifications to the five existing compressor stations will add an additional 72,240 horsepower to its pipeline system. The compressor stations to be modified are located in Rockland and Putnam counties, New York; Middlesex, and Windham counties, Connecticut; and Providence County, Rhode Island. The AIM Project will include modifications to 25 existing Algonquin M&R stations in New York,

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the 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] Lift and relay refers to a construction method by which an existing pipeline is removed and replaced with a new pipeline.

[3] A pipeline loop is a segment of pipe constructed parallel to an existing pipeline to increase capacity.

Connecticut, and Massachusetts to accept the new gas flows associated with the proposed Project. The two new M&R stations to be constructed are located in Suffolk and Bristol counties, Massachusetts. Algonquin will also need to construct a number of pig[4] launcher and receiver facilities, one new MLV, and potentially modify five existing MLV sites.

The general location of the Project facilities is shown in Appendix 2.

Pending Project approvals, the projected in-service date of the AIM Project is November 2016. The work is scheduled to start in the 1st Quarter of 2015 and be completed by October 2016.

Land Requirements for Construction

Construction of the planned facilities would disturb about 608 acres of land for the pipeline and aboveground facilities. Of the 608 acres, 255 acres would consist of Algonquin's existing pipeline right-of-way or property associated with its existing aboveground facility sites. The remaining 353 acres would consist of land outside of Algonquin's existing pipeline right-of-way or aboveground facility sites. Following construction, Algonquin would maintain an additional 12 acres for permanent operation of the Project's facilities. Approximately 98 percent of the 37.0 miles of AIM Project pipeline facilities will be within or adjacent to existing rights-of-way, consisting of Algonquin pipeline rights-of-ways, public roadways, railways, and/or other utility rights-of-ways.

The EIS 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[5] 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 EIS on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EIS. We will consider all filed comments during the preparation of the EIS.

In the EIS we will discuss impacts that could occur as a result of the construction and operation and maintenance of the planned Project under these general headings:

- geology and soils;
- land use, including prime farmland;
- water resources, fisheries, and wetlands;
- cultural resources;
- vegetation and wildlife;
- air quality and noise;
- endangered and threatened species;
- traffic and transportation;
- public safety; and
- cumulative impacts.

We will also evaluate possible alternatives to the planned Project or portions of the Project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before the FERC receives an application. As part of our pre-filing review, we have begun to contact some federal and state agencies to discuss their involvement in the scoping process and the preparation of the EIS.

The EIS will present our independent analysis of the issues. We will publish and distribute the draft EIS for public comment. After the comment period, we will consider all timely comments and revise the document, as necessary, before issuing a final EIS. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section of this notice.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues related to this Project to formally cooperate with us in the preparation of the EIS.[6] 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. Currently, the U.S. Army Corps of Engineers (USACE) and U.S. Environmental Protection Agency (EPA) have expressed their intention to participate as a cooperating agency in the preparation of the EIS to satisfy their NEPA responsibilities related to this Project.

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(s) (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.[7] We will define the Project-specific Area of Potential Effects (APE) in consultation with the SHPO(s) 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 EIS for this project will document our findings on the impacts on historic properties and summarize the status of consultations under Section 106.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the planned facilities and the environmental information provided by Algonquin. This preliminary list of issues may change based on your comments and our analysis.

- *Geology*—Effects as a result of blasting to remove existing surface and bedrock during Project construction.
- *Biological Resources*—Effects on threatened and endangered species and sensitive habitats potentially occurring within or adjacent to the Project right-of-way.
- *Water Resources*—Effects on waterbodies and wetlands including the crossing of the Hudson River using the HDD construction method; and the potential inadvertent release of drilling fluids associated with the HDD method.
- *Land Use*—Effects on residential and commercial areas, traffic and transportation corridors, and agricultural lands from construction of Project facilities.

[4] A pig is an internal tool that can be used to clean and dry a pipeline and/or to inspect the pipeline for damage. A pig launcher is the launching stations from which the pig is launched.

[5] "We," "us," and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

[6] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, § 1501.6.

[7] The Advisory Council on Historic Preservation 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.

• *Cultural Resources*—Effects on archaeological sites and historic resources.

• *Air Quality and Noise*—Effects on the local air quality and noise environment from construction and operation and maintenance of planned Project facilities.

• *Reliability and Safety*—The assessment of hazards associated with natural gas pipelines and aboveground facilities; the potential for Project-related fires during construction and operation and maintenance activities; and the development of an evacuation strategy/plan in case of a fire or natural disaster.

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 October 14, 2013. However, this is not your only public input opportunity; please refer to the Review Process flow chart in Appendix 1.

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 (PF13–16–000) 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 located 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 located 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 planned Project.

Copies of the completed draft EIS 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 3).

Becoming an Intervenor

Once Algonquin files its application with the Commission, 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. Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the Project.

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 (*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., PF13–16). 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 that 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: September 13, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–22781 Filed 9–18–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL13–87–000; QF13–658–000]

Eagle Valley Clean Energy, LLC; Notice of Filing

Take notice that on September 9, 2013, Eagle Valley Clean Energy, LLC filed Form 556 and a petition for certification as a qualifying small power production facility, including a Pro Forma Generator Interconnection Agreement with Holy Cross Electric Association, Inc.

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 September 30, 2013.

Dated: September 13, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–22780 Filed 9–18–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2013–0048; FRL 9532–5]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Information Requirements for Importation of Nonconforming Vehicles (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), Information Requirements for Importation of Nonconforming Vehicles (EPA ICR No.0010.13, OMB Control No. 2060–0095) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through September 30, 2013. Public comments were previously requested via the **Federal Register** (78 FR 15010) on March 8, 2013 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. 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.

DATES: Additional comments may be submitted on or before October 21, 2013.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2013–0048 to (1) EPA online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Lynn Sohacki, Compliance Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan 48105; telephone number: 734–214–4851; fax number 734–214–4869; email address: *sohacki.lynn@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: Importers into the U.S. of light duty vehicles, light duty trucks and on-road motorcycles or the corresponding engines are required to report and keep records regarding the imports. The collection of this information is mandatory to insure compliance with Federal emissions requirements. Joint EPA and U.S. Customs Service regulations at 40 CFR 85.1501 et seq., 19 CFR 12.73 and 19 CFR 12.74, promulgated under the authority of Clean Air Act sections 203 and 208, give authority for the collection of this information. The information is used by program personnel to ensure that all Federal emissions requirements are met and by State regulatory agencies, businesses and individuals to verify whether vehicles are in compliance. Any information submitted to the Agency for which a claim of confidentiality is made is safeguarded according to policies set forth in the Code of Federal Regulations, title 40, chapter 1, part 2, subpart B—Confidentiality of Business Information, and the public is not permitted access to information containing personal or organizational identifiers.

Form Numbers: EPA Form 3520–1, EPA Form 3520–8.

Respondents/affected entities: Importers (including Independent Commercial Importers) into the U.S. of light duty vehicles, light duty trucks and on-road motorcycles or the corresponding engines.

Respondent's obligation to respond: Required to obtain or retain a benefit (40 CFR 85.1501 et seq., 19 CFR 12.73 and 19 CFR 12.74).

Estimated number of respondents: 10,000 (total).

Frequency of response: Occasionally.

Total estimated burden: 8,040 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $460,412 (per year), which includes $141,493 annualized capital and operation & maintenance costs.

Changes in Estimates: There is a decrease of 1,310 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due to a decrease in the number of responses expected.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2013–22741 Filed 9–18–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2013–0334; FRL–9536–5]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Secondary Brass and Bronze Production, Primary Copper Smelters, Primary Zinc Smelters, Primary Lead Smelters, Primary Aluminum Reduction Plants, and Ferroalloy Production Facilities (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR) for: ''NSPS for Secondary Brass and Bronze Production (40 CFR Part 60, Subpart M), Primary Copper Smelters (40 CFR Part 60, Subpart P), Primary Zinc Smelters (40 CFR Part 60, Subpart Q), Primary Lead Smelters (40 CFR Part 60, Subpart R), Primary Aluminum Reduction Plants (40 CFR Part 60, Subpart S) and Ferroalloy Production Facilities (40 CFR Part 60, Subpart Z) (Renewal)'', (EPA ICR No. 1604.10, OMB Control No. 2060–0110) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*). This is a proposed extension of the ICR, which is currently approved through October 31, 2013. Public comments were previously requested via the **Federal Register** (78 FR 33409) on June 4, 2013, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. 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.

DATES: Additional comments may be submitted on or before October 21, 2013.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2013–0334; to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the Provisions specified at 40 CFR part 60, subparts M, P, Q, R, S and Z. Owners or operators of the affected facilities must make an initial notification report, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports are required semiannually at a minimum.

Form Numbers: None.

Respondents/affected entities: Owners or operators of secondary brass and bronze production facilities, primary copper smelters, primary zinc smelters, primary lead smelters, primary aluminum reduction plants, and ferroalloy production facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subparts M, P, Q, R, S and Z).

Estimated number of respondents: 19 (total).

Frequency of response: Initially, occasionally, semiannually and annually.

Total estimated burden: 4,961 hours (per year). ''Burden'' is defined at 5 CFR 1320.3(b).

Total estimated cost: $612,224 (per year), includes $127,100 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is an adjustment increase in the respondent burden from the most recently approved ICR. This increase is not due to any program changes. The increase is due to a correction in respondent burden activity associated with NSPS Subpart S. The previous ICR did not include the time required to prepare semiannual reports for the respondents. This correction results in an increase in respondent burden hours, costs, and the total number of responses. There is also an increase in the respondent labor costs due to an update in labor rates. Further, there is an overall decrease in O&M costs due to an update in the number of sources. In this ICR, we estimate that two ferroalloy facilities are subject to Subpart Z and one primary lead facility is subject to subpart R; however, the affected sintering unit and blast furnace at this primary lead facility will be shutdown and will no longer have burden associated with the standards.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2013–22739 Filed 9–18–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2002–0091; FRL 9531–1]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Ambient Air Quality Surveillance (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), Ambient Air Quality Surveillance (Renewal) (EPA ICR No. 0940.27, OMB Control No. 2060–0084) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through January 31, 2015. This ICR renewal also addresses and incorporates requirements and burden currently approved under the Nitrogen Oxides Ambient Monitoring ICR (OMB# 2060–0638, EPA ICR Number 2358.03) and the Sulfur Dioxides Ambient Monitoring ICR (OMB# 2060–0642, EPA ICR Number 2370.02). Public comments were previously requested via the **Federal Register** (78 FR 12052) on February 21, 2013 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. 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.

DATES: Additional comments may be submitted on or before October 21, 2013.

ADDRESSES: Submit your comments, referencing Docket ID number EPA–HQ–OAR–2002–0091, to (1) EPA online using *www.regulations.gov* (our preferred method), by Email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Laurie Trinca, Air Quality Analysis Division (C304–06), Environmental Protection Agency; telephone number (919) 541–0520; fax number: 919–541–1903; email address: *trinca.laurie@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: This Information Collection Request (ICR) includes ambient air monitoring data and other supporting measurements reporting and recordkeeping activities associated with the Ambient Air Quality Surveillance Rule, 40 CFR part 58. This data and information are collected by various State and local air quality management agencies and Tribal entities, and reported to the Office of Air Quality Planning and Standards within the Office of Air and Radiation, EPA.

The data collected through this information collection consist of ambient air concentration measurements for the seven air pollutants with National Ambient Air Quality Standards (i.e., ozone, sulfur dioxide, nitrogen dioxide, lead, carbon monoxide, $PM_{2.5}$ and PM–10), ozone precursors, meteorological variables at a select number of sites and other supporting measurements. Accompanying the pollutant concentration data are quality assurance/quality control data and air monitoring network design information.

The EPA and others (e.g., State and local air quality management agencies, tribal entities, environmental groups, academic institutions, industrial groups) use the ambient air quality data for many purposes, including informing the public and other interested parties of an area's air quality, judging an area's (e.g., county, city, neighborhood) air quality in comparison with the established health or welfare standards (including both national and local standards), evaluating an air quality management agency's progress in achieving or maintaining air pollutant levels below the national and local standards, developing and revising State Implementation Plans (SIPs) in accordance with 40 CFR 51, evaluating air pollutant control strategies, developing or revising national control policies, providing data for air quality model development and validation, supporting enforcement actions, documenting episodes and initiating episode controls, air quality trends assessment and air pollution research.

The State and local agencies and tribal entities with responsibility for reporting ambient air quality data and information as requested in this ICR submit these data electronically to the EPA's Air Quality System (AQS) database. Quality assurance/quality control records and monitoring network documentation are also maintained by each State and local agency, in AQS electronic format where possible.

Respondents/Affected Entities: State and local air pollution agencies and Tribal entities.

Respondent's obligation to respond: Mandatory.

Estimated Number of Respondents: 168.

Frequency of Response: Quarterly, but may occur more frequently.

Total Estimated Annual Hour Burden: 1,790,021 hours. Burden is defined at 5 CFR 1320.3(b).

Total Estimated Annual Cost: $194,490,047. This includes an estimated labor cost of $126,733,274 and an estimated cost of $13,090,237 for operations and maintenance and $54,666,536 for equipment and contract costs.

Changes in the Estimates: There is a decrease of 700,331 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This decrease reflects EPA's consolidation of monitors into fewer sites, termination of unnecessary monitors, and more efficient procedures for measuring and reporting data.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2013–22740 Filed 9–18–13; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

Sunshine Act Meeting

ACTION: Notice of a Partially Open Meeting of the Board of Directors of the Export-Import Bank of the United States.

TIME AND PLACE: Friday, September 27, 2013 at 9:30 a.m. The meeting will be held at Ex-Im Bank in Room 321, 811 Vermont Avenue NW., Washington, DC 20571.

OPEN AGENDA ITEMS: Item No. 1: PEFCO Secured Notes Resolutions for FY 2014.

PUBLIC PARTICIPATION: The meeting will be open to public observation for Item No. 1 only.

FURTHER INFORMATION: Members of the public who wish to attend the meeting should call Joyce Stone, Office of the Secretariat, 811 Vermont Avenue NW., Washington, DC 20571 (202) 565–3336 by close of business Wednesday, September 25, 2013.

Cristopolis Dieguez,

Program Specialist, Office of the General Counsel.

[FR Doc. 2013–22893 Filed 9–17–13; 11:15 am]

BILLING CODE 6690–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE & TIME: Tuesday, September 24, 2013 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters that relate solely to the Commission's internal personnel decisions, or internal rules and practices.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the

implementation of a proposed Commission action.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shelley E. Garr,

Deputy Secretary of the Commission.

[FR Doc. 2013–22933 Filed 9–17–13; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 13–07]

Global Link Logistics, Inc., v. Hapag-Lloyd AG; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission (Commission) by Global Link Logistics, Inc. (''Global Link''), hereinafter ''Complainant,'' against Hapag-Lloyd AG (''Hapag''), hereinafter ''Respondent.'' Complainant states that it is an FMC licensed, non-vessel-operating common carrier (''NVOCC'') incorporated in Delaware. Complainant alleges that Respondent is an ocean common carrier which has its principal place of business in Hamburg, Germany.

Complainant alleges that Respondent: ''failed to establish, observe, and enforce just and reasonable regulations and practices relating to the receiving, handling, storing or delivering property in violation of 46 U.S.C. §§ 41102(c), by entering into a Service Contract with Global Link that does not comport with the Shipping Act's definition of a service contract;'' ''acted in violation of 46 U.S.C. § 41104(10) in unreasonably refusing to deal or negotiate in regard to the rates it was charging under its Service Contract;'' and ''[i]n resorting to unfair or unjustly discriminatory methods, Hapag acted in violation of 46 U.S.C. § 41104(3).''

Complainant requests that the Commission issue the following relief: ''that Hapag be required to answer the charges in this Complaint; that after due hearing and investigation an order be made commanding Hapag to pay Global Link reparations for violations of the Shipping Act, plus interest, costs and attorney's fees, and any other damages to be determined; and that such other and further relief be granted as the Commission determines to be proper, fair and just under the circumstances.''

The full text of the complaint can be found in the Commission's Electronic Reading Room at *www.fmc.gov/13-07.*

This proceeding has been assigned to the Office of Administrative Law Judges. The initial decision of the presiding officer in this proceeding shall be issued by September 15, 2014 and the final decision of the Commission shall be issued by March 16, 2015.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2013–22768 Filed 9–18–13; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

The Commission gives notice that the following applicants have filed an application for an Ocean Transportation Intermediary (OTI) license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF) pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101). Notice is also given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a licensee.

Interested persons may contact the Office of Ocean Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by email at *OTI@fmc.gov*.

ABC Logistics, Inc. (NVO), 1833 N. 105th Street, Suite 306, Seattle, WA 98133–8973, Officers: Mark Dudley, Vice President (QI), Alexander Mednikow, President, Application Type: New NVO License.

AfriCom Logistics, Incorporated (NVO & OFF), 565 Broadhollow Road, Suite 10E, Farmingdale, NY 11735, Officers: Emeka J. Ukasoanya, Vice President (QI), Ugo N. Ukasoanya, Secretary, Application Type: New NVO & OFF License.

Aztec Marine Agencies, Inc. dba Beaumont Logistics Group (OFF), 1485 Wellington Circle, Suite 101, Beaumont, TX 77706, Officers: Rosemary Asta, President (QI), Christopher Asta, Vice President, Application Type: Change Trade Name to Acceleron Logistics LLC.

Base Ventures International, Inc. dba Base Ventures Shipping (NVO & OFF), 160 1st Street SE. Suite 201, New Brighton, MN 55112, Officers: Oluwaseyi E. Olawore, President (QI), Novella E. Olawore, Vice President, Application Type: New NVO & OFF License.

DGL (L.A.) Inc. (NVO & OFF), 2707 East Valley Blvd., Suite 312, West Covina, CA 91792, Officers: Andy Kung, Vice President (QI), Dongcheng Yang, President, Application Type: New NVO & OFF License.

Global Transport System, Inc. (OFF), 4624 NW 74th Avenue, Miami, FL 33166, Officers: Ivonne Cardenas, President (QI), Jose A. Lopez, Vice President, Application Type: New OFF License.

Honeybee International, Inc. (NVO), 2301 South Tubeway Avenue, Commerce, CA 90040, Officer: Reda Aljabi, President (QI), Application Type: QI Change.

Kenter Logistics USA, LLC (NVO & OFF), 700 Louisiana Street, Suite 3950, Houston, TX 77002, Officers: Gerald Stoll, Vice President (QI), Emily Jackman, Managing Member, Application Type: New NVO & OFF License.

Loadnship LLC (NVO & OFF), 516 E. Oaks Street, Compton, CA 90221, Officer: Moaykel Moaykel, President (QI), Application Type: New NVO & OFF License.

Next Generation Logistics Inc (NVO & OFF), 7325 Adams Street, Paramount, CA 90273, Officers: David Shen, Director (QI), Xu Yang, Director, Application Type: New NVO & OFF License.

Ryder Global Services, LLC (NVO & OFF), 11690 NW. 105th Street, Law 4W, Miami, FL 33178, Officers: Jeffrey A. Kristol, Vice President (QI), John H. Williford, President, Application Type: QI Change.

Swift Freight (USA) Inc. dba American Container Lines (NVO & OFF), 16808 Marquardt Avenue, Cerritos, CA 90703, Officers: Kamal Vazirani, Vice President (QI), Jayant Bharadwaj, President, Application Type: Add OFF Service.

Tecnoship Group, Corp. (NVO), 2153 NW. 79th Avenue, Miami, FL 33122, Officers: Jose F. Rodriguez, President (QI), Maria P. De Oliveira, Director, Application Type: QI Change.

TLI International, Inc. (OFF), 25 Shaw Street, Annapolis, MD 21401, Officers: Gregory J. McCloskey, Vice President (QI), John W. Rodenhouse, CEO, Application Type: Transfer to DFS Ocean Services LLC.

By the Commission.

Dated: September 13, 2013.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2013–22767 Filed 9–18–13; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

The Commission gives notice that the following Ocean Transportation Intermediary licenses have been

reissued pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101).

License No.: 004306F.
Name: International Transport Services, Inc.
Address: 19987 Commerce Parkway, Cleveland, OH 44130.
Date Reissued: August 9, 2013.

License No.: 022827N.
Name: Stella Maris International Trading, Inc. dba OP Shipping.
Address: 1601 Sahlman Drive, Tampa, FL 33605.
Date Reissued: July 24, 2013.

License No.: 023062NF.
Name: A & M Ocean Machinery, Inc.
Address: 9725 Fontainebleau Blvd., Suite 103, Miami, FL 33172.
Date Reissued: July 4, 2013.

License No.: 024023N.
Name: OES Logistics, Inc.
Address: 10900 E. 183rd Street, #130, Cerritos, CA 90703.
Date Reissued: July 16, 2013.

James A. Nussbaumer,
Deputy Director, Bureau of Certification and Licensing.

[FR Doc. 2013–22811 Filed 9–18–13; 8:45 am]

BILLING CODE 6730–01–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.: 1632F.
Name: Stringfield, William M. dba William M. Stringfield Company.
Address: 249 East Ocean Blvd., Suite 108, Long Beach, CA 90802.
Date Revoked: August 1, 2013.
Reason: Failed to maintain a valid bond.

License No.: 003394F.
Name: Hartford Despatch & Warehouse Company, Inc. dba Hartford Despatch International.
Address: 225 Prospect Street, East Hartford, CT 06108.
Date Revoked: July 31, 2013.
Reason: Failed to maintain a valid bond.

License No.: 010559N.
Name: Advanced Shipping Corporation dba Star Cluster USA.
Address: 5343 West Imperial Highway, Suite 200, Los Angeles, CA 90045.
Date Revoked: July 14, 2013.
Reason: Failed to maintain a valid bond.

License No.: 12717N.
Name: GFI Express Corp.
Address: 145–18 156th Street, Room 1, Jamaica, NY 11434.
Date Revoked: July 22, 2013.
Reason: Failed to maintain a valid bond.

License No.: 16352N.
Name: Lynch International Inc.
Address: 34–37 65th Street, Woodside, NY 11377.
Date Revoked: July 25, 2013.
Reason: Failed to maintain a valid bond.

License No.: 17110NF.
Name: Proway Forwarding, Inc. dba Arrowhead Forwarding.
Address: 1111 Corporate Center Drive, Suite 103, Monterey Park, CA 91754.
Date Revoked: July 27, 2013.
Reason: Failed to maintain valid bonds.

License No.: 019929F.
Name: Intercargo Logistics Inc. dba Impex Express.
Address: 145–38 157th Street, 2nd Floor, Jamaica, NY 11434.
Date Revoked: August 29, 2013.
Reason: Voluntary Surrender of License.

License No.: 020121NF.
Name: T & M Shipping Ltd. dba 4 Oceans.
Address: 3426 Hancock Bridge Parkway, Suite 305, North Fort Myers, FL 33903.
Dates Revoked: 020121N July 11, 2013 and 020121F August 24, 2013.
Reason: Failed to maintain valid bonds.

License No.: 020241N.
Name: President Container Line, Inc.
Address: 1515 West Walnut Parkway, Suite B, Compton, CA 90220.
Date Revoked: July 22, 2013.
Reason: Failed to maintain a valid bond.

License No.: 020357N.
Name: Manuel L. Melo dba Agencia Internacional.
Address: 599 Central Street, Lowell, MA 01852.
Date Revoked: July 26, 2013.
Reason: Failed to maintain a valid bond.

License No.: 020547N.
Name: DLR International Freight Forwarders, Inc.
Address: 901 Cambridge Drive, Elk Grove Village, IL 60007.
Date Revoked: August 9, 2013.
Reason: Voluntary Surrender of License.

License No.: 021997N.
Name: Rax International, Inc.
Address: 65 Railroad Avenue, Suite 2, Ridgefield, NJ 07657.
Date Revoked: August 19, 2013.
Reason: Voluntary Surrender of License.

License No.: 021582N.
Name: PNGL (USA) Inc.
Address: 2730 Monterey Street, Suite 103, Torrance, CA 90503.
Date Revoked: August 18, 2013.
Reason: Failed to maintain a valid bond.

License No.: 021975F.
Name: Adora International LLC dba Adora.
Address: 16813 FM 1485, Conroe, TX 77306.
Date Revoked: July 18, 2013.
Reason: Failed to maintain a valid bond.

License No.: 023232N.
Name: R. N. Orane USA, LLC.
Address: 31823 Ponderosa Way, Evergreen, CO 80439.
Date Revoked: July 25, 2013.
Reason: Voluntary Surrender of License.

License No.: 023737NF.
Name: King Solutions, Inc.
Address: 11011 Holly Lane North, Dayton, MN 55369.
Date Revoked: August 13, 2013.
Reason: Voluntary Surrender of License.

License No.: 023795N.
Name: Original U.S.A. Group Corp.
Address: 145–30 156th Street, Suite 202, Jamaica, NY 11434.
Date Revoked: July 24, 2013.
Reason: Failed to maintain a valid bond.

License No.: 023989NF.
Name: A. & A. Trading, Inc.
Address: 409 Blue Bell Road, Houston, TX 77037.
Date Revoked: August 9, 2013.
Reason: Failed to maintain valid bonds.

James A. Nussbaumer,
Deputy Director, Bureau of Certification and Licensing.

[FR Doc. 2013–22812 Filed 9–18–13; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its

approval authority under the Paperwork Reduction Act (PRA), pursuant to 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR part 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before November 18, 2013.

ADDRESSES: You may submit comments, identified by FR 2052a and b, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets NW.) between 9:00 a.m. and 5:00 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer, Shagufta Ahmed, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235 725 17th Street NW., Washington, DC 20503 or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer, Cynthia Ayouch, Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Request for Comment on Information Collection Proposal

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Proposal to approve under OMB delegated authority the implementation of the following information collection:

Report titles: Complex Institution Liquidity Monitoring Report and Liquidity Monitoring Report.

Agency form numbers: FR 2052a and FR 2052b.

OMB control number: 7100- to be assigned.

Frequency: FR 2052a: Daily, twice a month, and on occasion. FR 2052b: monthly, quarterly, and on occasion.

Reporters: FR 2052a: U.S. Bank Holding Companies (BHCs) that the Financial Stability Board designated as Global Systematically Important Banks (G–SIBs) and Foreign banking organizations (FBOs) with U.S. broker/dealer assets > $100 billion. FR 2052b: U.S. BHCs (excluding G–SIBs) with total assets > $50 billion, U.S. BHCs with total assets $10 billion–$50 billion, and FBOs with total U.S. assets > $50 billion and US broker/dealer assets < $100 billion.

Estimated annual reporting hours: FR 2052a: 315,680 hours. FR 2052b: 9,075 hours.

Estimated average hours per response: FR 2052a: U.S. BHCs that the Financial Stability Board designated as G–SIBs, 150 hours; FBOs with U.S. broker/dealer assets > $100 billion complete, 150 hours; FBOs with U.S. broker/dealer assets > $100 billion abbreviated, 37.5 hours; Ad-Hoc, 38 hours. FR 2052b: U.S. BHCs (excluding G–SIBs) with total assets > $50 billion, 25 hours; U.S. BHCs with total assets $10 billion–$50 billion, 25 hours; FBOs with total U.S. assets > $50 billion and U.S. broker/dealer assets < $100 billion, 25 hours.

Number of respondents: FR 2052a: U.S. BHCs that the Financial Stability Board designated as G–SIBs, 8; FBOs with U.S. broker/dealer assets > $100 billion complete, 8; FBOs with U.S. broker/dealer assets > $100 billion abbreviated, 8; Ad-Hoc, 16. FR 2052b: U.S. BHCs (excluding G–SIBs) with total assets > $50 billion, 17; U.S. BHCs with total assets $10 billion–$50 billion, 38; FBOs with total U.S. assets > $50 billion and U.S. broker/dealer assets < $100 billion, 7.

General description of report: This information collection is authorized pursuant to section 5 of the Bank Holding Company Act (12 U.S.C. 1844), section 8 of the International Banking Act (12 U.S.C. 3106) and section 165 of the Dodd Frank Act (12 U.S.C. 5365) and are mandatory. Section 5(c) of the Bank Holding Company Act authorizes the Board to require BHCs to submit reports to the Board regarding their financial condition. Section 8(a) of the International Banking Act subjects FBOs to the provisions of the Bank Holding Company Act. Section 165 of the Dodd Frank Act requires the Board to establish prudential standards for certain BHCs and FBOs; these standards include liquidity requirements. The individual financial institution information provided by each

respondent would be accorded confidential treatment under exemption 8 of the Freedom of Information Act (5 U.S.C. 552(b)(8)). In addition, the institution information provided by each respondent would not be otherwise available to the public and is entitled to confidential treatment under the authority of exemption 4 of the Freedom of Information Act (5 U.S.C. 552(b)(4)), which protects from disclosure trade secrets and commercial or financial information.

Abstract: The Federal Reserve proposes to implement the FR 2052 reports, collecting quantitative information on selected assets, liabilities, funding activities, and contingent liabilities on a consolidated basis and by material subsidiary entity. U.S. BHCs designated by the Financial Stability Board as G–SIBs would report the complete FR 2052a daily. FBOs with U.S. broker/dealer assets greater than $100 billion would report the complete FR 2052a on occasion and an abbreviated FR 2052a twice a month. U.S. BHCs, excluding G–SIBs, with total assets greater than $50 billion, U.S. BHCs with assets between $10 and $50 billion, and FBOs with total U.S. assets greater than $50 billion and with broker/dealer assets less than $100 billion would report on the FR 2052b monthly, quarterly, and on occasion, respectively.

The FR 2052 reports would be used to monitor an individual organization's overall liquidity profile for institutions supervised by the Federal Reserve. These data would also provide detailed information on the liquidity risks within different business lines (e.g., financing of securities positions and prime brokerage activities). In particular, these data would serve as part of the Federal Reserve's supervisory surveillance program in its liquidity risk management area and would provide timely information on firm-specific liquidity risks during periods of stress. Analysis of both systemic and idiosyncratic liquidity risk issues would then be used to inform the Federal Reserve's supervisory processes, including the preparation of analytical reports that detail funding vulnerabilities.

FR 2052a

The FR 2052a report would include sections covering broad funding classifications by product, outstanding balance and purpose, segmented by maturity date. Generally, each section can be classified into one of the following categories:

- *Section 1: Secured Financing:* Institutions would report obligations and lending activities backed by the pledge of assets or other collateral. This section would include asset-backed commercial paper (single-seller and multi-seller arrangements), term asset-backed securities, collateralized commercial paper, and other secured financing.
- *Section 2: Official Government Sources Drawn:* Institutions would report their borrowings from the Federal Reserve and other Central Banks, Federal Home Loan Banks (FHLBs) as well as any amounts drawn from official government sources.
- *Section 3: Repurchase & Securities Lending Transactions:* Institutions would report repurchase and securities lending transactions such as those conducted under a Global Master Repo Agreement, Master Securities Loan Agreement or a Master Securities Forward Transaction Agreement. Repurchase & Securities Lending Transaction would be grouped according to specific categories pre-identified by the Federal Reserve.
- *Section 4: Unencumbered Assets:* Institutions would report the amount of assets that are free and clear of any encumbrances such as creditor claims or liens. Unencumbered assets would be grouped according to specific categories pre-identified by the Federal Reserve.
- *Section 5: Expected Cash Inflows:* Institutions would report cash and collateral inflows, for example those related to derivatives, and not covered in any other section.
- *Section 6: Cash Inflows from External Counterparties:* Institutions would report inflows related to Fed funds and Eurodollars sold and other loan cash inflows.
- *Section 7: Reverse Repurchase & Securities Borrowing Transactions:* Institutions would report reverse repurchase and securities borrowing transactions such as those conducted under a Global Master Repo Agreement, Master Securities Loan Agreement or a Master Securities Forward Transaction Agreement. Reverse Repurchase & Securities Borrowing Transactions would be grouped according to specific categories pre-identified by the Federal Reserve.
- *Section 8: Unsecured Financing:* Institutions would report the amount of obligations not backed by the pledge of specific collateral. Categories would include commercial paper, wholesale certificates of deposit and bank notes, promissory notes, Fed funds and Eurodollars purchased, long-term debt (structured and non-structured), draws on committed lines from external entities and other unsecured financing.
- *Section 9: Central Bank, FHLB Sources, and Nostro Balances:* Institutions would report cash balances maintained at the Federal Reserve and at other central banks. Firms' cash balances held at other financial institutions (Nostro balances) would be reported.
- *Section 10: Deposit Funding:* Institutions would report the amounts of retail and wholesale deposits and retail CDs based on Basel III classifications as of the December 2010 release. These classifications differentiate between accounts that are stable versus less stable and operating versus non-operating. Institutions would report wholesale CDs in Section 8.
- *Section 11: Expected Cash Outflows:* Institutions would report cash and collateral outflows, for example those related to derivatives, and not covered in any other section.
- *Section 12: Operating Cash Flows:* Institutions would report operating cash flows related to prime brokerage (e.g., free credits, external/internal funding used to cover customer shorts, margin loans, lockup cash flows) to help supervisors disentangle firm-specific and business-specific trends. Expected cash outflows/inflows related to derivatives activities would also be reported.
- *Section 13: Unsecured Internal Cash Flows:* Institutions would report unsecured lending between internal entities.
- *Section 14: Secured Internal Cash Flows:* Institutions would report the amounts of repurchase, reverse-repurchase, and securities borrowed and securities lending transactions between legal entities. Secured Internal Cash Flows would be grouped according to specific categories pre-identified by the Federal Reserve.
- *Section 15: Contingency Line Items:* Institutions would report all contingent items that could impact the funding and liquidity at the reporting institution. Examples include undrawn commitments provided to external counterparties. Firms would also report the total cumulative market value of additional collateral their counterparties will require the firm to post as a result of various levels of credit rating downgrades.
- *Section 16: Funding Pricing:* Institutions would report the market rates paid to third parties to execute secured and unsecured transactions.

The FR 2052a report daily data submissions would be provided on a best efforts basis. For institutions providing FR 2052a daily information, the month-end submission would be required to be certified.

For continuous monitoring purposes, FBOs with U.S. broker/dealer assets greater than $100 billion would be required to provide a complete FR 2052a report on an occasional basis, and such data would be expected to be certified. These FBOs would also submit an abbreviated FR 2052a report twice a month as reflected in Appendix C of the FR 2052a instructions. This abbreviated data would not be required to be certified.

The Federal Reserve specifically requests comment on the certification requirements with respect to the timeframe needed for updating systems and internal controls.

The Federal Reserve proposes to conduct up to 10 ad-hoc collections of daily liquidity data from a total of 16 respondents. The ad-hoc collections would consist of approximately 65 data items not reported on the FR 2052a. Results from the ad-hoc collections would be used to develop future enhancements to the FR 2052a report.

FR 2052b

The FR 2052b would include sections covering broad funding classifications by product, outstanding balance, and purpose segmented by maturity date. Generally, each section may be classified into one the following categories:

• *Section 1: Liquid Assets:* Institutions would report cash balances maintained at the Federal Reserve and at other central banks. Firms' cash balances held at other financial institutions would be reported as well as physical currency and coin positions.

• *Section 2: Reverse Repos:* Institutions would report obligations repos by maturity and security collateral type.

• *Section 3: Investment Securities:* Reporting would be segregated into assets by risk weight and type that are unencumbered and those assets pledged to garner secured funding by the counterparty type (FHLB, Central Bank, etc.) to which the collateral is pledged. Both marketable and lendable values would be included.

• *Section 4: Loans and Leases:* Reporting would be segregated into loan types that are unencumbered and those assets pledged to garner secured funding by the counterparty type to which the collateral is pledged.

• *Section 5: Secured Funding Sources Outstanding:* Institutions would report their borrowing outstanding by maturity from the Federal Reserve, the FHLB, and other secured financing facilities.

• *Section 6: Repurchase Transaction:* Institutions would report repurchase transactions by securities collateral type and maturity.

• *Section 7: Unsecured Financing:* Institutions would report the amount of obligations not backed by the pledge of specific collateral. Categories include commercial paper, wholesale certificates of deposits & bank notes, Fed funds and Eurodollars purchased, long-term debt (structured and non-structured), draws on committed lines from external entities and other unsecured financing.

• *Section 8: Estimated Cored Funding Gap:* The Net Loan Growth/Attrition and Net Retail Deposit Growth/Attrition line items would be included to capture the forecasted (best estimate, non-stressed) change in loan and retail deposits over the stated horizon.

• *Section 9: Contractual Loan Inflows and Committed Inflow:* Contractual inflows of all maturing performing loans would be listed in the corresponding maturity columns.

• *Section 10: Deposit Funding:* Institutions would report the amounts of retail and wholesale deposits and retail CDs. Institutions would differentiate retail/SME deposit accounts that are stable versus less stable.

• *Section 11: ABCP Exposure:* Institutions would report the outstanding asset backed commercial paper issued to fund the assets of a single or several unrelated sellers.

• *Section 12: Undrawn Commitments and Contingent Liquidity Needs:* Institutions would report all contingent items that could impact the funding and liquidity at the reporting institution. Examples include undrawn commitments provided to external counterparties.

• *Section 13–18: Parent Company Only Tab:* Institutions would report items in the Parent Company Only section which relate only to the Parent Company. Included are fields for liquid assets, forecasts of cash inflows (such as dividends from subsidiaries and operations) and outflows (such as operating expenses, dividends, subsidiary support and debt service), unsecured financing (such as commercial paper, debt and draws on committed lines), and committed liquidity and credit facilities provided to third-party banks.

• *Section 20–21: Contingency Pricing Tab:* Institutions would report the market rates paid to third parties to execute unsecured and secured transactions, by BHC, across the maturity spectrum. If market funding quotes are unavailable, the institution's internal funds pricing curve could be used as a supplement.

The FR 2052b reports submitted on monthly, quarterly, and on an occasional basis would be certified.

The Federal Reserve specifically requests comment on the certification requirements with respect to the timeframe needed for updating systems and internal controls.

Board of Governors of the Federal Reserve System, September 13, 2013.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2013–22709 Filed 9–18–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 16, 2013.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *American Heritage Holding Company,* Saint Cloud, Minnesota, to become a bank holding company by acquiring 100 percent of the voting

shares of American Heritage National Bank, Long Prairie, Minnesota.

2. *Forstrom Bancorporation, Inc.,* Clara City, Minnesota, to acquire 100 percent of the voting shares of First Bank of Lincoln, Lincoln, Montana.

B. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Northeast Texas Bancshares, Inc., Mount Pleasant, Texas,* to become a bank holding company by acquiring 100 percent of the voting shares of The American National Bank of Mount Pleasant, Mount Pleasant, Texas.

C. Federal Reserve Bank of San Francisco (Gerald C. Tsai, Director, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *TFB Bancorp, Inc.,* Yuma, Arizona to become a bank holding company by acquiring 100 percent of the voting shares of The Foothills Bank, also of Yuma, Arizona.

Board of Governors of the Federal Reserve System, September 13, 2013.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2013–22711 Filed 9–18–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR Part 238), and Regulation MM (12 CFR Part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association and nonbanking companies owned by the savings and loan holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the HOLA (12 U.S.C. 1467a(e)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 11, 2013.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *The 2012 Dorchester Trust, David D. Morgan and Ellen Records Morgan as trustees; and the Katherine R. Ryan 2012 Family Trust, G. Jeffrey Records, Jr. and Ellen Records Morgan as trustees;* all of Oklahoma City, Oklahoma, to become savings and loan holding companies through the acquisition of controlling interests in Midland Financial Corporation, and therefore indirectly acquire, MidFirst Bank, both of Oklahoma City, Oklahoma.

Board of Governors of the Federal Reserve System, September 13, 2013.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2013–22710 Filed 9–18–13; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–20475–60D]

Agency Information Collection Activities; Proposed Collection; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, announces plans to submit a new Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting that ICR to OMB, OS seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on the ICR must be received on or before November 18, 2013.

ADDRESSES: Submit your comments to *Information.CollectionClearance@hhs.gov* or by calling (202) 690–6162.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the document identifier HHS–OS–20475–60D for reference.

Information Collection Request Title: Survey of Medical Care Providers for the Evaluation of the Regional Extension Center (REC) Program

Abstract: This new, one-time data collection activity is needed to collect information from practices that are utilizing assistance from the Regional Extension Center program to implement and meaningfully use health information technology, as well as practices that are not working with a Regional Extension Center. The survey data will be analyzed to determine whether there is an association between REC participation and the use of technical assistance, EHR adoption, and achievement of meaningful use of electronic health records by primary care practices. The data will also be used to identify challenges faced by primary care practices when adopting and meaningfully using EHRs. The resulting data will inform policy decisions by the Office of the National Coordinator for Health Information Technology (ONC), REC program administrators, and the broader community of policy makers and researchers interested in electronic health record (EHR) adoption.

Need and Proposed Use of the Information: The Office of the National Coordinator for Health Information Technology has funded an independent national program evaluation of the Regional Extension Center program. The proposed information collection effort is necessary to collect information to answer the following research questions: (1) Is REC participation associated with adoption of EHRs and meaningful use of EHRs? (2) Is REC participation associated with attestation in the Centers for Medicare and Medicaid Services (CMS) Medicare and Medicaid incentive programs? (3) Is REC participation associated with satisfaction and positive opinions about EHRs? (4) Is REC participation associated with use of assistance services? (5) Is REC participation associated with experiencing less difficulty in adoption of EHRs? (6) Is REC participation associated with being part of a care transformation program? There is no existing data source that can be used to answer these research questions.

Likely Respondents: The survey targets small primary care practices, and

asks for the staff member most knowledgeable about electronic health record (EHR) adoption and utilization to answer the survey.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information, to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Physicians	Form A Screener Administered on Paper.	1571	1	5/60	131
Nurses	Form A Screener Administered on Paper.	1571	1	5/60	131
Practice Managers	Form A Screener Administered on Paper.	1570	1	5/60	131
Physicians	Form B Survey Administered as a Computer-Assisted Telephone Interview.	475	1	30/60	238
Nurses	Form B Survey Administered as a Computer-Assisted Telephone Interview.	475	1	30/60	238
Practice Managers	Form B Survey Administered as a Computer-Assisted Telephone Interview.	475	1	30/60	238
Physicians	Form C Shortened Survey Administered on Paper.	119	1	10/60	20
Nurses	Form C Shortened Survey Administered on Paper.	119	1	10/60	20
Practice Managers	Form C Shortened Survey Administered on Paper.	118	1	10/60	20
Total					1167

OS specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Darius Taylor,

Deputy Information Collection Clearance Officer.

[FR Doc. 2013–22732 Filed 9–18–13; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Request for Comments on Pediatric Planned Procedure Algorithm

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of request for comments on pediatric planned procedure algorithm from the members of the public.

SUMMARY: Section 401(a) of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), Public Law 111–3, amended the Social Security Act (the Act) to enact section 1139A (42 U.S.C. 1320b–9a). Section 1139A(b) charged the Department of Health and Human Services with improving pediatric health care quality measures. This effort includes development of several new pediatric quality measures, including a pediatric readmission measure. The Agency for Healthcare Research and Quality (AHRQ) is requesting comments from the public on an algorithm for identifying pediatric planned procedures as part of the readmission measure. The purpose of the algorithm is to identify, using International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM) procedure codes, pediatric procedures that are usually planned so that admissions for these procedures can be excluded from calculations of readmission rates.

To identify planned procedures, expert pediatric clinicians in 14 different procedure-oriented specialties reviewed procedures typically performed by their specialty. The reviewers indicated which procedures (1) are usually planned (defined as planned in more than 80% of cases) and (2) could require hospitalization. Admissions for which the primary procedure coded was one of these procedures are excluded from the count of readmissions.

The list of ICD–9–CM codes and code descriptions for the planned procedures is available at: *http://www.ahrq.gov/policymakers/chipra/pedprocedurecodes.html.*

DATES: Please submit comments October 21, 2013. AHRQ will not respond to individual comments, but will consider all comments.

ADDRESSES: Electronic submissions are encouraged, preferably as an email with an electronic file in a standard word processing format as an email attachment. Submissions may also be in the form of a letter to: Maushami (Mia)

DeSoto, MSc, Ph.D., MHA, Office of Extramural Research, Education and Priority Populations, Agency for Healthcare Research and Quality, 540 Gaither Rd., Rockville, MD 20850, Phone: (301) 427–1546, Fax: (301) 427–1238, Email: *Maushami.Desoto@AHRQ.hhs.gov*.

Submission Guidelines: When submitting comments, please include, to the extent available:

—Detailed responses and suggestions; and

—Rationale and evidence for any recommended changes to the algorithm, including citations of published evidence, if available.

For all submissions, please also include:

A brief cover letter summarizing the information requested above for submitted comments;

Complete information about the person submitting the comments, including:

(a) Name; and

(b) Email address.

FOR FURTHER INFORMATION CONTACT: Maushami (Mia) DeSoto, MSc, Ph.D., MHA

SUPPLEMENTARY INFORMATION: Section 401(a) of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), Public Law 111–3, amended the Social Security Act (the Act) to enact section 1139A (42 U.S.C. 1320b–9a). Since the law was passed, the Agency for Healthcare Research and Quality (AHRQ) and the Centers for Medicare & Medicaid Services (CMS) have been working together to implement selected provisions of the legislation related to children's health care quality. Section 1139A(b) of the Act charged the Department of Health and Human Services with improving pediatric health care quality measures. To implement the law, AHRQ and CMS have established the CHIPRA Pediatric Quality Measures Program (PQMP), which is designed to enhance select pediatric quality measures and develop new measures as needed.

The information sought in this Notice is being collected pursuant to the needs of the Children's Hospital Boston Center of Excellence for Pediatric Quality Measurement (CEPQM). It is one of the seven CHIPRA Pediatric Quality Measures Program (PQMP) Centers of Excellence and has been assigned the task of developing a pediatric readmission measure.

Dated: September 12, 2013.

Richard Kronick,

AHRQ Director.

[FR Doc. 2013–22796 Filed 9–18–13; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day–13–13TD]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call (404) 639–7570 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

''So What? Telling a Compelling Story'' Template—New—Office of Public Health Preparedness and Response (OPHPR), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Background: Stories are difficult to gather and track; therefore, OPHPR must use a creative method to collect relevant stories on the impacts of the Public Health Emergency Preparedness (PHEP) grant in state and local health departments and at the community level. Several resources and tools exist within CDC and partner organizations to share stories but the stories tend to be dated or already used in another capacity. OPHPR must be proactive in leveraging this template to collect new, timely anecdotes, described as ''leads'' in the rest of this notice, versus full stories, in order to describe the current successes and challenges public health officials face implementing the PHEP grant and associated activities.

CDC requests Office of Management and Budget (OMB) approval to collect information for three years.

Description: The storytelling template is a single page, double-sided guide for storytellers, described as ''sources'' in the remainder of this notice. With this tool, developers intend to dramatically reduce the burden on respondents and employees who may otherwise engage in complete story development with each new event. In this manner, staff may tease out pertinent and timely leads for potential development at a later date based on the needs of leadership. Development of a complete story from this template will occur with a small percentage of the leads. The text specifically requested is the source's name, telephone number, email address, organization, job title, the topic of the compelling story, a headline, and up to three key bullet points. The intent of this template is to guide the development of bullets and headlines describing successes, impacts, and other funding-related activities.

The goals of these leads are shaped by four topics:

1. Showcasing the nature of the preparedness and response challenge: Something observed at ground level that clearly illustrates why preparedness and response work is necessary.

2. Illustrating the public health contribution: Examples that prove public health preparedness and response not only makes a difference, but also describe the unique approach public health brings to emergency response.

3. Supporting the evidence-base: Examples that compliment qualitative research on evidence based interventions.

4. Demonstrating return on investment: Leads describing awareness of how funds are used and demonstrating fiscal responsibility and transparency.

OPHPR representatives intend to collect story leads from a variety of sources including CDC Field Staff, state health officers, local health department directors, preparedness planners, non-public health preparedness and response partners, the public and volunteer group members.

The developers plan to leverage existing communications channels if the leads are used or developed into more lengthy stories. Just as stories are used currently, leads from this template will be potentially used in congressional inquiries, leadership presentations, annual reports, and CDC OPHPR Web sites.

There are no costs to respondents other than their time. The total estimated annual burden hours are 95.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
CDC Field Staff, state health officers, local health department directors, preparedness planners, non-public health preparedness and response partners, the public and volunteer group members.	''So What? Telling a Compelling Story''	100	1	30/60
CDC Field Staff, state health officers, local health department directors, preparedness planners, non-public health preparedness and response partners, the public and volunteer group members.	''So What? Telling a Compelling Story'' Follow-Up Questions.	30	1	1.5

Leroy 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. 2013–22806 Filed 9–18–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

The President signed the Child and Family Services Improvement and Innovation Act (Pub. L. 112–34) into law on September 30, 2011. This act includes a targeted grants program (section 437(f) of the Social Security Act), which directs the Secretary of Health and Human Services (HHS) to reserve a specified portion for Regional Partnership Grants, designed to improve the well-being of children affected by parental substance abuse. On September 28, 2012, CB/ACYF awarded new 5-year RPG grants to 17 partnerships in 15 states. The overall objective of the Cross-Site Evaluation and Technical Assistance project (the RPG Cross-Site Evaluation) is to plan, develop, and implement a rigorous national cross-site evaluation of the RPG Grant Program, provide legislatively-mandated performance measurement, and furnish evaluation-related technical assistance to the grantees in order to improve the quality and rigor of their local evaluations. The project will evaluate the programs and activities conducted through the RPG Grant Program.

Title: RPG National Cross-Site Evaluation and Evaluation Technical Assistance.

OMB No.: New collection.

Description: The Children's Bureau within the Administration for Children and Families of the U.S. Department of Health and Human Services seeks approval to collect information for the Regional Partnership Grants to Increase the Well-being of and to Improve Permanency Outcomes for Children Affected by Substance Abuse (known as the Regional Partnership Grants Program or ''RPG'') Cross-Site Evaluation and Evaluation-Related Technical Assistance project. Under RPG, the Children's Bureau has issued 17 grants to organizations such as child welfare or substance abuse treatment providers or family court systems to develop interagency collaborations and integration of programs, activities, and services designed to increase well-being, improve permanency, and enhance the safety of children who are in an out-of-home placement or are at risk of being placed in out-of-home care as a result of a parent's or caretaker's substance abuse. The Child and Family Services Improvement and Innovation Act (Pub. L. 112–34) includes a targeted grants program (section 437(f) of the Social Security Act) that directs the Secretary of Health and Human Services to reserve a specified portion of the appropriation for these Regional Partnership Grants, to be used to improve the well-being of children affected by substance abuse. The overall objective of the Cross-Site Evaluation and Technical Assistance project (the RPG Cross-Site Evaluation) is to plan, develop, and implement a rigorous national cross-site evaluation of the RPG Grant Program, provide legislatively-mandated performance measurement, and furnish evaluation-related technical assistance to the grantees in order to improve the quality and rigor of their local evaluations. The project will evaluate the programs and activities conducted through the RPG Grant Program. The evaluation is being undertaken by the Children's Bureau and its contractor Mathematica Policy Research. The evaluation is being implemented by Mathematica Policy Research and its subcontractors, Walter R. McDonald & Associates and Synergy Enterprises.

The RPG Cross-Site Evaluation will include the following components:

1. Implementation and Partnership Study. The RPG cross-site implementation and partnership study will contribute to building the knowledge base about effective implementation strategies by examining the process of implementation in the 17 RPG projects, with a focus on factors shown in the research literature to be associated with quality implementation of evidence-based programs. This component of the study will describe the RPG projects' target populations, selected interventions and their fit with the target populations, inputs to implementation, and actual services provided (including dosage, duration, content, adherence to curricula, and participant responsiveness). It will examine the key attributes of the regional partnerships that grantees develop (for example, partnerships among child welfare and substance abuse treatment providers, social services, and the courts). It will describe the characteristics and roles of the partner organizations, the extent of coordination and collaboration, and their potential to sustain the partnerships after the grant ends. Key data collection activities of the implementation and partnership study are: (1) Conducting site visits during which researchers will interview RPG program directors, managers, supervisors, and frontline staff who work directly with families; (2) administering a survey to frontline staff involved in providing direct services to children, adults, and families; (3) asking grantees to provide information about implementation and their partnerships as part of their federally required semi-

annual progress reports; (4) obtaining service use data from grantees, enrollment date and demographics of enrollees, exit date and reason, and service participation, to be entered into a web-based system developed and operated by Mathematica Policy Research and its subcontractors; and (5) administering a survey to representatives of the partner organizations.

2. Outcomes Study. The goal of the outcomes study is to describe the changes that occur in children and families who participate in the RPG programs. This study will describe participant outcomes in five domains: (1) Child well-being, (2) family functioning/stability, (3) adult recovery from substance use, (4) child permanency, and (5) child safety. Two main types of outcome data will be used—both of which are being collected by RPG grantees: (1) Administrative child welfare and adult substance abuse treatment records and (2) standardized instruments administered to the parents and/or caregivers. The Children's Bureau is requiring grantees to obtain and report specified administrative records, and to use a prescribed set of standardized instruments. Grantees will provide these data to the Cross-Site Evaluation team twice a year by uploading them to a data system developed and operated by Mathematica Policy Research and its subcontractors.

3. Impact Study. The goal of the impact study is to assess the impact of the RPG interventions on child, adult, and family outcomes by comparing outcomes for people enrolled in RPG services to those in comparison groups, such as people who do not receive RPG services or receive only a subset of the services. The impact study will use demographic and outcome data on both program (treatment) and comparison groups from a subset of grantees with appropriate local evaluation designs such as randomized controlled trials or strong quasi-experimental designs; 8 of the 17 grantees have such designs. Site-specific impacts will be estimated for these eight grantees. Aggregated impact estimates will be created by pooling impact estimates across appropriate sites to obtain a more powerful summary of the effectiveness of RPG interventions.

In addition to conducting local evaluations and participating in the RPG Cross-Site Evaluation, the RPG grantees are legislatively required to report performance indicators aligned with their proposed program strategies and activities. A key strategy of the RPG Cross-Site Evaluation is to minimize burden on the grantees by ensuring that the cross-site evaluation, which includes all grantees in a study that collects data to report on implementation, the partnerships, and participant characteristics and outcomes, fully meets the need for performance reporting. Thus, rather than collecting separate evaluation and performance indicator data, the grantees need only participate in the cross-site evaluation. In addition, using the standardized instruments that the Children's Bureau has specified will ensure that grantees have valid and reliable data on child and family outcomes for their local evaluations. The inclusion of an impact study conducted on a subset of grantees with rigorous designs will also provide the Children's Bureau, Congress, grantees, providers, and researchers with information about the effectiveness of RPG programs. This 60-Day Notice covers the following data collection activities: (1) The site visits with grantees; (2) the web-based survey of frontline staff who provide direct services to children, adults, and families, and their supervisors; (3) the semi-annual progress reports; (4) enrollment and service data provided by grantees; (5) the web-based survey of grantee partners; and (6) outcome data provided by grantees.

Respondents: Respondents include grantee staff or contractors (such as local evaluators) and partner staff. Specific types of respondents and the expected number per data collection effort are noted in the burden table below.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Program director individual interview	17	1	1.34	22.8
Program manager/supervisor group interview	153	1	1.34	205
Program manager/supervisor individual interviews	102	1	0.67	68.3
Frontline staff individual interviews	102	1	0.67	68.3
Semi-annual progress reports	17	2	16.5	561
Case enrollment log	51	30	0.25	382.5
Service log	102	780	0.05	3978
Staff survey	340	1	0.34	115.6
Partner Survey	340	1	0.34	115.6
Administrative data	17	2	93.5	3,179
Outcome master instrument (data entry and uploading)	17	2	189	6426
Impact master instrument (data entry and uploading)	8	2	69	1104

Estimated Total Annual Burden Hours: 15,490.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or

other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2013–22774 Filed 9–18–13; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HOMELAND SECURITY

Agency Information Collection Activities: Department of Homeland Security (DHS) Cybersecurity Education Office (CEO) National Initiative for Cybersecurity Careers and Studies (NICCS) Cybersecurity Training and Education Catalog (Training Catalog) Collection

AGENCY: Cybersecurity Education Office, DHS.

ACTION: 30-Day Notice and request for comments; New Collection (Request for a new OMB Control No.), 1601–NEW.

SUMMARY: The Department of Homeland Security, Cybersecurity Education Office, DHS will submit the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). DHS previously published this information collection request (ICR) in the **Federal Register** on June 12, 2013 at 78 FR 35295, for a 60-day public comment period. No comments were received by DHS. The purpose of this notice is to allow additional 30-days for public comments.

DATES: Comments are encouraged and will be accepted until October 21, 2013. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, Department of Homeland Security and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

FOR FURTHER INFORMATION CONTACT: If additional information is required contact: The Department of Homeland Security (DHS), Cybersecurity Education Office, DHS Attn.: Michael Wigal, *dhs.pra@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION: Title II, Homeland Security Act, 6 U.S.C. 121(d)(1) To access, receive, and analyze law enforcement information, intelligence information and other information from agencies of the Federal Government, State and local government agencies * * * and Private sector entities and to integrate such information in support of the mission responsibilities of the Department. The following authorities also permit DHS to collect information of the type contemplated: Federal Information Security Management Act of 2002 (FISMA), 44 U.S.C. 3546; Homeland Security Presidential Directive (HSPD) 7, ''Critical Infrastructure Identification, Prioritization, and Protection'' (2003); and NSPD–54/HSPD–23, ''Cybersecurity Policy'' (2009).

In May 2009, the President ordered a Cyberspace Policy Review to develop a comprehensive approach to secure and defend America's infrastructure. The review built upon the Comprehensive National Cybersecurity Initiative (CNCI).

In response to increased cyber threats across the Nation, the National Initiative for Cybersecurity Education (NICE) expanded from a previous effort, the CNCI #8. NICE formed in March 2011, and is a nationally coordinated effort comprised of over 20 federal departments and agencies, and numerous partners in academia and industry. NICE focuses on cybersecurity awareness, education, training and professional development. NICE seeks to encourage and build cybersecurity awareness and competency across the Nation and to develop an agile, highly skilled cybersecurity workforce.

The NICCS Portal is a national online resource for cybersecurity awareness, education, talent management, and professional development and training. NICCS Portal is an implementation tool for NICE. Its mission is to provide comprehensive cybersecurity resources to the public.

To promote cybersecurity education, and to provide a comprehensive resource for the Nation, NICE developed the Cybersecurity Training and Education Catalog. The Cybersecurity Training and Education Catalog will be hosted on the NICCS Portal. Both Training Course and Certification information will be stored in the Training Catalog.

Note: Any information received from the public in support of the NICCS Portal and Cybersecurity Training and Education Catalog is completely voluntary. Organizations and individuals who do not provide information can still utilize the NICCS Portal and Cybersecurity Training and Education Catalog without restriction or penalty. An organization or individual who wants their information removed from the NICCS Portal and/or Cybersecurity Training and Education Catalog can email the NICCS Supervisory Office (SO).

Department of Homeland Security (DHS) Cybersecurity Education Office (CEO) intends for the collected information from the NICCS Cybersecurity Training Course Form and the NICCS Cybersecurity Certification Form to be displayed on a publicly accessible Web site called the National Initiative for Cybersecurity Careers and Studies (NICCS) Portal (*http://niccs.us-cert.gov/*). Collected information from the NICCS Cybersecurity Training Course Form and the NICCS Cybersecurity Certification Form will be included in the Cybersecurity Training and Education Catalog. Both sets of information will be made available to the public to support the National Initiative for Cybersecurity Education (NICE) mission and the Comprehensive National Cybersecurity Initiative (CNCI)—Initiative 8: Expand Cyber Education.

The DHS CEO NICCS Supervisory Office will use information collected from the NICCS Vetting Criteria Form to primarily manage communications with the training providers; this collected information will not be shared with the public and is intended for internal use only. Additionally, this information will be used to validate training providers and certification owners before uploading their training course or certification information to the Training Catalog.

The information will be completely collected via electronic means. Collection will be exchanged between the public and DHS CEO via email (*niccs@hq.dhs.gov*). All information collected from the NICCS Cybersecurity Training Course Form and the follow-on NICCS Cybersecurity Training Course Web Form will be stored in the publicly accessible NICCS Cybersecurity Training and Education Catalog (*http://nics.us-cert.gov/training/training-home*). The NICCS Cybersecurity Certification Form and follow-on NICCS Cybersecurity Certification Web Form will also be stored in the publicly accessible NICCS Cybersecurity Training and Education Catalog (*http://nics.us-cert.gov/training/training-home*).

The NICCS SO will electronically store information collected via the NICCS Vetting Criteria Form. This information will not be publicly accessible

Analysis

Agency: Cybersecurity Education Office, DHS.

Title: Department of Homeland Security (DHS) Cybersecurity Education Office (CEO) National Initiative for Cybersecurity Careers and Studies (NICCS) Cybersecurity Training and Education Catalog (Training Catalog) Collection

OMB Number: 1601–NEW.

Number of Respondents: 300.

Estimated Number of Responses: 2100.

Estimated Time per Respondent: 1 hour.

Total Burden Hours: 2100 hours.

Dated: September 5, 2013.

Margaret H. Graves,

Acting Chief Information Officer.

[FR Doc. 2013–22831 Filed 9–18–13; 8:45 am]

BILLING CODE 4410–9B–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2103–0050]

Critical Infrastructure Partnership Advisory Council (CIPAC)

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: Committee management; Notice of an open Federal Advisory Committee Meeting.

SUMMARY: The Critical Infrastructure Partnership Advisory Council (CIPAC) Plenary Meeting will be held on Tuesday, November 5, 2013, at the Washington DC Convention Center located at 801 Mount Vernon Place NW., Washington, DC 20001. The meeting will be open to the public.

DATES: The CIPAC Plenary will be held on Tuesday, November 5, 2013, from 8:30 a.m. to 4:00 p.m. Registration will begin at 7:30 a.m. For additional information, please consult the CIPAC Web site, *http://www.dhs.gov/cipac,* or contact the CIPAC Secretariat by phone at (703)235–3999 or by email at *CIPAC@hq.dhs.gov.*

ADDRESSES: The meeting will be held at the Washington DC Convention Center, 801 Mount Vernon Place, Washington, DC 20001.

While this meeting is open to the public, participation in the CIPAC deliberations is limited to committee members, Department of Homeland Security officials and persons invited to attend the meeting for special presentations. Immediately following the committee member deliberation and discussion period, there will be a limited time period for public comment. This public comment period is designed for substantive commentary that must pertain only to matters involving critical infrastructure security and resiliency. Off-topic questions or comments will not be permitted or discussed. Please note that the public comment period may begin prior to 3:00 p.m. if the committee has completed its business. To accommodate as many speakers as possible, oral presentations will be limited to three (3) minutes per speaker, with no more than 30 minutes for all speakers. Parties interested in presenting must register in person at the meeting location. Oral presentations will be permitted on a first-come, first-serve basis, and given based upon the order of registration; all registrants may not be able to speak if time does not permit.

Written comments are welcome at any time prior to or following the meeting. Written comments may be sent to Renee Murphy, Department of Homeland Security, National Protection and Programs Directorate, 245 Murray Lane SW., Mail Stop 0607, Arlington, VA 20598–0607. For consideration in the CIPAC deliberations, written comments must be received by Renee Murphy by no later than 12:00 p.m. on September 24, 2013, identified by **Federal Register** Docket Number DHS–2013–0050 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting written comments.
- *Email: CIPAC@hq.dhs.gov.* Include the docket number in the subject line of the message.
- *Fax:* (703)603–5098.
- *Mail:* Renee Murphy, National Protection and Programs Directorate, Department of Homeland Security, 245 Murray Lane SW., Mail Stop 0607, Arlington, VA 20598–0607.

Instructions: All written submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Written comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the CIPAC, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION, CONTACT: Renee Murphy, Critical Infrastructure Partnership Advisory Council Alternate Designated Federal Officer, telephone (703) 235–3999.

SUPPLEMENTARY INFORMATION: CIPAC represents a partnership between the Federal Government and critical infrastructure owners and operators, and provides a forum in which they can engage in a broad spectrum of activities to support and coordinate critical infrastructure security and resilience. The September 25, 2013, meeting will include topic-specific discussions focused on partnership efforts to enhance critical infrastructure resilience. Topics such as the Executive Order for Improving Critical Infrastructure Cybersecurity, Presidential Policy Directive 21—Critical Infrastructure Security and Resilience, and Critical Infrastructure Program Updates will be discussed.

Information on Services for Individuals With Disabilities: For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the CIPAC Secretariat at (703) 235–3999 as soon as possible.

Dated: September 12, 2013.

Larry May,

Designated Federal Officer for the CIPAC.

[FR Doc. 2013–22830 Filed 9–18–13; 8:45 am]

BILLING CODE 4410–9P–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2013–0002: Internal Agency Docket No. FEMA–B–1355]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, part 65 of the Code of Federal Regulations (44 CFR part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Associate Administrator for Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR Part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Pennsylvania:						
Chester	Borough of West Chester (13–03–0592P).	The Honorable Carolyn T. Comitta, Mayor, Borough of West Chester, 401 East Gay Street, West Chester, PA 19380.	Department of Building, Housing and Code Enforcement, 401 East Gay Street, West Chester, PA 19380.	*http://www.msc.fema.gov/lomc*	November 29, 2013	420292
Chester	Township of East Bradford (13–03–0592P).	The Honorable Vincent M. Pompo, Chairman, Township of East Bradford Board of Supervisors, 666 Copeland School Road, West Chester, PA 19380.	East Bradford Township Hall, 666 Copeland School Road, West Chester, PA 19380.	*http://www.msc.fema.gov/lomc*	November 29, 2013	420276

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Crawford	Township of Rockdale (13–03–1553P).	The Honorable Maxwell Ferris, Chairman, Township of Rockdale Board of Supervisors, 29393 Miller Station Road, Cambridge Springs, PA 16403.	Rockdale Township Hall, 29393 Miller Station Road, Cambridge Springs, PA 16403.	*http://www.rampp-team.com/lomrs.htm.*	November 12, 2013	422394
Texas:						
Bexar	City of San Antonio (12–06–3120P).	The Honorable Julian Castro, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Department of Public Works, Storm Water Engineering, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	*http://www.msc.fema.gov/lomc*	November 14, 2013	480045
Bexar	City of San Antonio (13–06–0091P).	The Honorable Julian Castro, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Department of Public Works, Storm Water Engineering, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	*http://www.msc.fema.gov/lomc*	November 21, 2013	480045
Denton	City of Highland Village (13–06–1723P).	The Honorable Patrick Davis, Mayor, City of Highland Village, 1000 Highland Village Road, Highland Village, TX 75077.	City Hall, 1000 Highland Village Road, Highland Village, TX 75077.	*http://www.rampp-team.com/lomrs.htm.*	November 12, 2013	481105
Tarrant	City of Arlington (13–06–2205P).	The Honorable Robert Cluck, Mayor, City of Arlington, P.O. Box 90231, Arlington, TX 76004.	City Hall, 101 West Abram Street, Arlington, TX 76010.	*http://www.rampp-team.com/lomrs.htm.*	November 12, 2013	485454
Tarrant	City of Arlington (12–06–3558P).	The Honorable Robert Cluck, Mayor, City of Arlington, P.O. Box 90231, Arlington, TX 76004.	City Hall, 101 West Abram Street, Arlington, TX 76010.	*http://www.msc.fema.gov/lomc*	November 14, 2013	485454
Tarrant	City of Fort Worth (12–06–1456P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	Department of Transportation and Public Works, 1000 Throckmorton Street, Fort Worth, TX 76102.	*http://www.rampp-team.com/lomrs.htm.*	October 31, 2013	480596
Tarrant	City of Saginaw (12–06–1456P).	The Honorable Gary Brinkley, Mayor, City of Saginaw, 333 West McLeroy Boulevard, Saginaw, TX 76179.	City Hall, 333 West McLeroy Boulevard, Saginaw, TX 76179.	*http://www.rampp-team.com/lomrs.htm.*	October 31, 2013	480610
Virginia:						
Fairfax	Unincorporated areas of Fairfax County (12–03–2453P).	The Honorable Sharon Bulova, Chairman-at-Large, Fairfax County Board of Supervisors, 12000 Government Center Parkway, Suite 530, Fairfax, VA 22035.	Fairfax County Department of Public Works and Environmental Services, 12000 Government Center Parkway, Suite 449, Fairfax, VA 22035.	*http://www.rampp-team.com/lomrs.htm.*	October 31, 2013	515525
Richmond	Independent City of Richmond (13–03–1712X).	The Honorable Dwight C. Jones, Mayor, City of Richmond, 900 East Broad Street, Suite 201, Richmond, VA 23219.	Department of Public Works, 900 East Broad Street, Suite 704, Richmond, VA 23219.	*http://www.rampp-team.com/lomrs.htm.*	November 12, 2013	510129

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

Dated: August 30, 2013.

Roy E. Wright,

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

[FR Doc. 2013–22834 Filed 9–18–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2013–0002: Internal Agency Docket No. FEMA–B–1343]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and

where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before December 18, 2013.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1343, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov*.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html*.

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf*.

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

I. Non-Watershed-Based Studies

Community	Community map repository address
Delaware County, Iowa, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Manchester	City Hall, 208 East Main Street, Manchester, IA 52057.
Unincorporated Areas of Delaware County	Delaware County Engineering Office, 2139 Highway 38, Manchester, IA 52057.
Calhoun County, Texas, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Point Comfort	City Hall, 102 Jones Street, Point Comfort, TX 77978.
City of Port Lavaca	City Hall, 202 North Virginia Street, Port Lavaca, TX 77979.
City of Seadrift	City Hall, 501 South Main Street, Seadrift, TX 77983.
Unincorporated Areas of Calhoun County	Calhoun County Courthouse, 211 South Ann Street, Port Lavaca, TX 77979.
Harris County, Texas, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Baytown	City Hall, 2401 Market Street, Baytown, TX 77522.
City of Deer Park	City Hall, 710 East San Augustine, Deer Park, TX 77536.
City of El Lago	City Hall, 411 Tallowood Drive, El Lago, TX 77586.
City of Friendswood	City Hall, 910 South Friendswood Drive, Friendswood, TX 77546.
City of Galena Park	City Hall, 2000 Clinton Drive, Galena Park, TX 77547.

Community	Community map repository address
City of Houston	Floodplain Management Office, 1002 Washington Avenue, 3rd Floor, Houston, TX 77002.
City of Jacinto City	Jacinto City City Hall, 1301 Mercury Drive, Houston, TX 77029.
City of La Porte	City Hall, 604 West Fairmont Parkway, La Porte, TX 77571.
City of League City	Building Department, 600 West Walker Street, League City, TX 77573.
City of Morgan's Point	City Hall, 1415 East Main Street, Morgan's Point, TX 77571.
City of Nassau Bay	City Hall, 18100 Upper Bay Road, Nassau Bay, TX 77058.
City of Pasadena	Municipal Services Building, 1114 Davis Street, Pasadena, TX 77506.
City of Seabrook	City Hall, 1700 1st Street, Seabrook, TX 77586.
City of Shoreacres	City Hall, 601 Shoreacres Boulevard, Shoreacres, TX 77571.
City of South Houston	City Hall, 1018 Dallas Street, South Houston, TX 77587.
City of Taylor Lake Village	City Hall, 500 Kirby Boulevard, Taylor Lake Village, TX 77586.
City of Webster	City Hall, 101 Pennsylvania Avenue, Webster, TX 77598.
Unincorporated Areas of Harris County	Harris County Permits Office, 10555 Northwest Freeway, Suite 120, Houston, TX 77092.
Lancaster County, Virginia, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Town of Irvington	Town Hall Office, 235 Steamboat Road, Irvington, VA 22480.
Town of Kilmarnock	Town Hall Office, 514 North Main Street, Kilmarnock, VA 22482.
Town of White Stone	Town Hall Office, 433 Rappahannock Drive, White Stone, VA 22578.
Unincorporated Areas of Lancaster County	Lancaster County Courthouse, 8311 Mary Ball Road, Lancaster, VA 22503.

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

Dated: August 30, 2013.

Roy E. Wright,

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

[FR Doc. 2013–22832 Filed 9–18–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning Video Teleconferencing Server

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (''CBP'') has issued a final determination concerning the country of origin of video teleconferencing server Prescient T7–FW. Based upon the facts presented, CBP has concluded in the final determination that China is the country of origin of the video teleconferencing server for purposes of U.S. Government procurement.

DATES: The final determination was issued on September 11, 2013. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination on or before October 21, 2013.

FOR FURTHER INFORMATION CONTACT: Karen S. Greene, Valuation and Special Programs Branch: (202) 325–0041.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on September 11, 2013, pursuant to subpart B of Part 177, Customs and Border Protection Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of video teleconferencing server Prescient T7–FW, which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, in HQ H218360, was issued at the request of CyberPoint International Inc., under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination CBP concluded that, based upon the facts presented, since the Chinese-origin Video Board and the Filter Board, impart the essential character to the video teleconferencing server, that China is the country of origin of the video teleconferencing server for purposes of U.S. Government procurement.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that a notice of final determination shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: September 11, 2013.

Sandra L. Bell,

Executive Director, Regulations and Rulings, Office of International Trade.

Attachment

HQ H218360

September 11, 2013

MAR–2 OTF:CTF:VS H218360 KSG

Vanessa P. Sciarra
Holland & Knight
2099 Pennsylvania Ave. NW
Suite 100
Washington, DC 20006

RE: Final determination; country of origin of video teleconferencing server; substantial transformation

Dear Ms. Sciarra:

This is in response to your letter, submitted May 2, 2012, supplemental submission dated October 22, 2012, and emails on July 22, and August 14, 2013, requesting a final determination on behalf of CyberPoint International Inc., pursuant to subpart B of part 177 of the U.S. Customs and Border Protection (''CBP'') Regulations (19 CFR Part 177). Under these regulations, which implement Title III of the Trade Agreements Act of 1979 (''TAA''), as amended (19 U.S.C. 2511 et seq.). CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of the video teleconferencing server Prescient T7–FW

(''the Server''). As a U.S. manufacturer and wholesaler, CyberPoint International LLC. is a party-at-interest within the meaning of 19 CFR 177.22(d)(1), and is entitled to request this final determination.

FACTS:

This case involves the Server which is designed to communicate in a secure environment. The basic functionality of the product is to capture motion picture images and sound and send them digitally (via Ethernet) to a similar unit at a different location, where the digital data is reconstructed into motion picture and sound. In addition, the Server ensures that digital data (motion picture and sound) is sent securely between the two units, making the ability to infiltrate the unit via eavesdropping or malware through the network connection more difficult. You state that the security feature adds approximately 40 percent of the unit's value.

The Server is comprised of a video processing electronic circuit board (''Video Board'') which includes the codec; a network filter electronic circuit board (''Filter Board''); a housing case; a power supply circuit board; minor components, which include a heat sink, standoff hardware and screws, network cables and wire harnesses; and CyberPoint's proprietary software known as the CyberPoint Linux Firewall (''Linux software''). The Linux software allows the Filter Board to inspect each Ethernet packet of information as it enters the LAN port of the Video Board, and to accept only those packets needed to perform the video teleconferencing functionality. You state that the Linux software is designed, developed and installed in the United States at great expense and with many man hours in its engineering, development and design by cyber-security professionals with years of experience in creating defensive solutions.

The Server can be used with video cameras, microphones and video display; however, these are optional attachments and are not part of the product under consideration.

The key hardware components are the Video Board, which converts image and sound into digital data, and the Filter Board, programmed with Linux software, which transmits the digital data via a LAN connector over the Ethernet and protects the connection from malware infiltration. The Video Board, including the codec, is manufactured in China, and has connections for various video input and output formats, two USB connections, and two Ethernet connections. One of the Ethernet connections interfaces with a microphone to capture sound, and the other interfaces with a LAN.

Two scenarios are presented. In the first scenario, the Video Board lacks the LAN connection when imported, meaning that it cannot transmit data. In the second scenario, the Video Board is fully functional as imported. Once imported into the U.S., the LAN connection is removed, the hole for this connection in the rear sheet metal of the unit is covered, a modification is made to the rear sheet metal to provide for a new connection point, and CyberPoint installs another cable that connects from the Filter Board to the new connection point. The LAN connector hardware is produced in the U.S. and developed by CyberPoint at its facilities in the U.S. CyberPoint states that the purposes of its installation of the LAN connection is to wipe the device clean from any malware residing in the original equipment.

The Filter Board is a circuit board that provides the necessary LAN connection of the Server and the secure connection that ensures no malware infiltrates the system during a videoconferencing session or during off hours. The Filter Board is made from a DreamPlug unit manufactured in China, a mini generic computer housed in a plug that contains a blank non-functional circuit board. In the U.S., the DreamPlug is disassembled; and the circuit board is removed, mounted on an aluminium heat sink, wired and programmed with Linux software, and configured, reinstalled and mounted on the Server's metal case. The programming of the Filter Board with Linux software inputs the connectivity functionality, so that digital data can be transmitted securely from one unit to another.

The power supply and metal case for the server are produced in China. The heat sink is produced in the U.S.

The assembly of the various components in the U.S. involves the following:

- As stated above, holes are drilled in the metal case so the Filter Board and LAN connector hardware can be mounted;
- The DreamPlug is disassembled and the blank circuit board is removed, the Linux software is downloaded, and the card is then re-installed. This process takes approximately 4.5 hours;
- The Video Board is removed from the case and it is connected to the LAN connector with a network cable. Under the second scenario, the existing LAN connection has to be removed as well;
- A wire harness is installed to route the cables, and the Filter Board is installed to the heat sink. The LAN network connector is installed through the rear of the metal case. This takes approximately 2.5 hours;
- The finished Server is tested, labeled and packaged.

Counsel states that the overall assembly process in the U.S. takes approximately 20 hours to complete each unit.

ISSUE:

What is the country of origin of the Server?

LAW AND ANALYSIS:

Pursuant to subpart B of part 177, 19 CFR 177.21 et seq., which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 *et seq.*) (''TAA''), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. government. Under the rule of origin set forth under 19 U.S.C. 2518(4)(B), an article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. *See also* 19 CFR 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. government procurement, CBP applies the provisions of subpart B of part 177 consistent with the Federal Acquisition Regulations. *See* 19 CFR 177.21. In this regard, CBP recognizes that the Federal Acquisition Regulations restrict the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. *See* 48 CFR 25.403(c)(1). The Federal Acquisitions Regulations define ''U.S.-made end product'' as:

> . . . an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

48 CFR 25.003

In *Data General v. United States,* 4 CIT 182 (1982), the court determined that for purposes of determining eligibility under item 807.00, Tariff Schedule of the United States (predecessor to subheading 9802.00.80, Harmonized Tariff Schedule of the United States), the programming of a foreign Programmable Read Only Memory Chip (''PROM'') in the United States substantially transformed the PROM into a U.S. article.

In programming the imported PROM's, the U.S. engineers systematically caused various distinct electronic interconnections to be formed within each integrated circuit.

The court noted that it was undisputed that programming altered the character of a PROM and that in that case, the essence of the article, its interconnections or stored memory, was established by programming.

In this case, we find that the essence of the imported good is its use as a video conferencing server. The Video Board and the Filter Board, which is a configuration of the DreamPlug unit, are the hardware components that impart the ability of the product to capture sound and image and to transmit that digital data so they impart the essential character to the finished good. While the addition of the U.S. developed software may add 40 percent to the unit's value, the software only adds a characteristic to the Server, but does not change its main function which is to send images and sound. Since the hardware components that impart the essential character to the finished product are of Chinese origin, we find that the country of origin of the Server for government procurement purposes is China.

HOLDING:

Based on the facts provided, the Server is considered a product of China for government procurement purposes.

Notice of this final determination will be given in the **Federal Register**, as required by

19 CFR 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 CFR 177.30, any party-at-interest may, within 30 days of publication of the **Federal Register** Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Sandra L. Bell

Executive Director, Regulations and Rulings Office of International Trade

[FR Doc. 2013–22765 Filed 9–18–13; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5700–FA–11]

Announcement of Funding Awards for the Self-Help Homeownership Opportunity Program (SHOP) for Fiscal Year 2013

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of the Department's funding decisions with respect to the Fiscal Year 2013 (FY2013) Notice of Funding Availability (NOFA) for the Self-Help Homeownership Opportunity Program (SHOP) that was posted on the Grants.gov Web site. This announcement contains the names and addresses of the recipients of the FY2013 SHOP grant awards.

FOR FURTHER INFORMATION CONTACT: Ginger Macomber, SHOP Program Manager, Office of Affordable Housing Programs, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–4500, telephone (202) 402–4605. Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The SHOP program provides federal grants on a competitive basis to national and regional nonprofit organizations and consortia to undertake self-help homeownership housing programs. Grantees may carry out SHOP activities directly and/or distribute SHOP funds to local nonprofit affiliate organizations. SHOP Grant funds must be used for land acquisition, infrastructure improvements, and for reasonable and necessary planning, administration and management costs (not to exceed 20 percent). The average SHOP Grant expenditure for the combined costs of land acquisition and infrastructure improvements must not exceed $15,000 per SHOP unit. The construction or rehabilitation costs of each SHOP unit must be funded with other leveraged public and private funds.

Low-income homebuyers must contribute a significant amount of sweat equity towards the development of the SHOP units. Sweat equity involves participation in the construction of the housing, which can include, but is not limited to, assisting in the painting, carpentry, trim work, drywall, roofing, and siding for the housing. Reasonable accommodations must be made for homebuyers with disabilities. Labor is also contributed by community volunteers. The SHOP funds together with the homebuyer's sweat equity and volunteer labor contributions significantly reduce the cost of the housing for the low-income homebuyers.

SHOP units must be decent, safe, and sanitary non-luxury dwellings that comply with state and local codes, ordinances, and zoning requirements, and with the SHOP requirements (including requirements for energy-efficiency and water conservation). The SHOP units must be sold to homebuyers at prices below the prevailing market price. A homebuyer's sweat equity contribution must not be mortgaged or otherwise restricted upon future sale of the SHOP unit.

HUD awarded FY2013 SHOP grants to the following self-help housing organizations in accordance with the competitive criteria set forth in the FY2013 SHOP NOFA.

Community Frameworks, 409 Pacific Avenue Suite 105, Bremerton, WA 98337	$1,579,500
Habitat for Humanity International, 270 Peachtree Street NW., Atlanta, GA 30303	7,700,637
Housing Assistance Council, 1025 Vermont Avenue NW., Washington, DC 20005	2,846,803
Tierra del Sol Housing Corporation (lead entity), Western States Housing Consortium, 210 East Idaho Avenue, 880 Anthony Drive, Las Cruces, NM 88005	666,929.
Total	12,793,869

These organizations propose to distribute their SHOP grant funds to over a hundred local affiliates and consortium members that will acquire and prepare land for development, provide homebuyer counseling, select homebuyers, coordinate the homebuyer sweat equity and volunteer labor efforts, and assist in arranging interim and permanent financing. At least 718 units of self-help homeownership housing will be completed and conveyed to low-income homebuyers.

Dated: September 11, 2013.

Mark Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 2013–22817 Filed 9–18–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2013–N240; FXES11130800000–134–FF08E00000]

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (Act) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing these permits.

DATES: Comments on these permit applications must be received on or before October 21, 2013.

ADDRESSES: Written data or comments should be submitted to the Endangered Species Program Manager, U.S. Fish and Wildlife Service, Region 8, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825 (telephone: 916–414–6464; fax: 916–414–6486). Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Daniel Marquez, Fish and Wildlife Biologist; see **ADDRESSES** (telephone: 760–431–9440; fax: 760–431–9624).

SUPPLEMENTARY INFORMATION: The following applicants have applied for scientific research permits to conduct certain activities with endangered species under section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*). We seek review and comment from local, State,

and Federal agencies and the public on the following permit requests.

Applicant

Permit No. TE–062121

Applicant: Ryan R. Young, Wrightwood, California.

The applicant requests a permit renewal to take (harass by survey and locate and monitor nests) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with survey and population monitoring activities throughout the range of the species in California, Nevada, Arizona, New Mexico, Texas, Utah, and Colorado for the purpose of enhancing the species' survival.

Permit No. TE–205609

Applicant: Lawrence P. Kobernus, San Francisco, California.

The applicant requests a permit renewal and amendment to take (harass by survey, capture, handle, and release) the callippe silverspot butterfly (*Speyeria callippe callippe*) and California tiger salamander (Santa Barbara County DPS) (*Ambystoma californiense*) in conjunction with survey activities throughout the range of each species within the jurisdictional area of the Sacramento Field Office of the U.S. Fish and Wildlife Service in California for the purpose of enhancing the species' survival.

Permit No. TE–022183

Applicant: Los Angeles World Airports, Los Angeles, California.

The applicant requests a permit renewal to take (harass by survey and conduct maintenance, restoration, and habitat enhancement activities) the El Segundo blue butterfly (*Euphilotes battoides allyni*) in conjunction with restoration and habitat enhancement activities on lands owned and operated by the Los Angeles World Airport, Los Angeles County, California, for the purpose of enhancing the species' survival.

Permit No. TE–086267

Applicant: Channel Islands National Park, Ventura, California.

The applicant requests a permit renewal to take (survey, capture, handle, measure, determine sex, insert passive integrated transponder (PIT) tags, radio-collar, vaccinate, collect biological samples, conduct veterinary care, transport, and release to the wild) the San Miguel Island fox (*Urocyon littoralis littoralis*), Santa Rosa Island fox (*Urocyon littoralis santarosae*), and Santa Cruz Island fox (*Urocyon littoralis santacruzae*) in conjunction with surveys, population monitoring, and scientific research on San Miguel Island, Santa Rosa Island, and Santa Cruz Island, Ventura County, California, for the purpose of enhancing the species' survival.

Permit No. TE–815537

Applicant: Swaim Biological, Incorporated, San Francisco, California.

The applicant requests a permit renewal to take (harass by survey, capture, handle, mark, collect tissue, insert passive integrated transponder (PIT) tags, and release) the San Francisco garter snake (*Thamnophis sirtalis tetrataenia*) and take (harass by survey, capture, handle, and release) the California tiger salamander (Santa Barbara County DPS and Sonoma County DPS) (*Ambystoma californiense*) in conjunction with survey activities and scientific research throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–075898

Applicant: Sue Orloff, San Rafael, California.

The applicant requests a permit renewal to take (harass by survey, capture, handle, mark, and release) the California tiger salamander (Santa Barbara County DPS and Sonoma County DPS) (*Ambystoma californiense*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–053598–4

Applicant: Nicole M. Kimball, Spring Valley, California.

The applicant requests a permit renewal to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) and take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Public Comments

We invite public review and comment on each of these recovery permit applications. Comments and materials we receive 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.

Dated: September 13, 2013.

Larry Rabin,

Acting Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2013–22776 Filed 9–18–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2013–N167; FF08ESMF–FXES11120800000–134]

Habitat Conservation Plan for the Community of Los Osos, San Luis Obispo County, CA; Notice of Intent

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent; notice of public scoping meeting; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, intend to prepare either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) under the National Environmental Policy Act, as amended (NEPA), for the proposed Los Osos Community-wide Habitat Conservation Plan (LOHCP or plan). The LOHCP is being prepared by the County of San Luis Obispo (County or applicant) in support of its application for an incidental take permit under the Endangered Species Act of 1973, as amended (Act). The decision to prepare an EA or EIS will be, in part, contingent on the complexity of issues identified during, and following, the scoping phase of the NEPA process. The proposed permit would authorize the incidental take of threatened and endangered wildlife species that could result from the activities covered under the LOHCP and would include conservation measures to an endangered plant species that would also be covered under the plan. We announce meetings and invite comments from other agencies, Tribes, and the public.

DATES: To ensure consideration of any written comments, please send by

November 4, 2013. Two public scoping meetings will be held on Tuesday, October 8, 2013; the first from 3:30 to 5:30 p.m., and the second from 7 to 9 p.m. For the public meeting address, see *''Scoping Meetings''* below.

ADDRESSES: To request further information or submit written comments, please use one of the following methods and note that your information request or comment is in reference to the Los Osos Community-wide Habitat Conservation Plan.

• *U.S. Mail:* U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003.

• *In Person Drop-off, Viewing, or Pick-Up:* Call 805–644–1766 to make an appointment during regular business hours to drop off comments or view received comments at the U.S. mail address above.

• *Facsimile:* U.S. Fish and Wildlife Service, 805–644–3958, Attn: Julie M. Vanderwier.

FOR FURTHER INFORMATION CONTACT: Julie M. Vanderwier, Senior Fish and Wildlife Biologist, or Douglass M. Cooper, Deputy Assistant Field Supervisor, by phone at 805–644–1766 or by U.S. mail at the above address. If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at 800–977–8339.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), publish this notice under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.;* NEPA), and its implementing regulations in the Code of Federal Regulations (CFR) at 40 CFR 1506.6, as well as in compliance with section 10(c) of the Act. We intend to prepare either a draft EA or EIS, hereafter referred to as the NEPA document, to evaluate the impacts of several alternatives related to the potential issuance of an incidental take permit (ITP) to the applicant, as well as impacts of the proposed Los Osos Community-wide Habitat Conservation Plan.

The LOHCP is a comprehensive plan designed to provide long-term conservation and management of sensitive species and the habitats upon which those species depend within the Los Osos plan area, while accommodating other important land uses.

Background

Section 9 of the Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations prohibit the ''take'' of wildlife species listed as endangered or threatened. The Act defines the term ''take'' as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed wildlife species, or to attempt to engage in any such conduct. Harm includes significant habitat modifications or degradation where it actually kills or injures wildlife by significantly impairing essential behavior patterns, including breeding, feeding, or sheltering (50 CFR 17.3(c)). Pursuant to section 10(a)(1)(B) of the Act, we may issue permits to authorize ''incidental take'' of listed wildlife species. ''Incidental take'' is defined by the Act as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Service regulations governing permits for endangered and threatened species are promulgated at 50 CFR 17.22 and 50 CFR 17.32, respectively.

Section 10(a)(1)(B) of the Act contains provisions for issuing such ITPs to non-Federal entities for the take of endangered and threatened wildlife species, provided the following criteria are met:

• The taking will be incidental to an otherwise lawful activity;

• The applicant will, to the maximum extent practicable, minimize and mitigate the impact of such taking;

• The applicant will develop a proposed habitat conservation plan (HCP) and ensure that adequate funding for the plan is provided;

• The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and

• The applicant will carry out any other measures that the Service may deem necessary or appropriate for purposes of implementing the HCP.

Thus, the purpose of the proposed ITP is to authorize the County of San Luis Obispo to incidentally take covered wildlife species associated with development and other covered activities within the Los Osos plan area provided such take is minimized and mitigated through an HCP (the LOHCP) that meets the requirements of the Act. Implementation of an HCP for multiple species can maximize the benefits of conservation measures and eliminate expensive and time-consuming efforts associated with processing of individual species ITPs. The Service expects the County will request a permit term of 25 years.

Plan Area

The LOHCP plan area includes approximately 3,560 acres in the unincorporated community of Los Osos. It is largely coterminous with the Los Osos Urban Reserve Line—the boundary separating suburban and rural land uses in the region, within which land use is guided by the Estero Area Plan. The plan area borders the Morro Bay Estuary to the west, Morro Bay State Park to the north, Los Osos Creek to the east, and Montana de Oro State Park to the south. This area includes suitable habitat for the covered species that is anticipated to be impacted by the activities covered in the LOHCP.

Covered Activities

Four main categories of covered activities were identified through the outreach conducted by the County to prepare the LOHCP:

• *Private development:* Commercial and residential development and redevelopment (including remodels) on privately owned parcels;

• *Capital Projects:* Public and private utility company facility and infrastructure development projects, such as building or expanding roads, libraries, and parks;

• *Facilities Operations and Maintenance:* Public and private utility company activities to operate and maintain, including repair and replace, existing facilities, such as roads, drainage basins, and water systems; and

• *Conservation Strategy Implementation:* Activities conducted to implement the LOHCP conservation strategy, including restoration, management, maintenance, and monitoring of conservation lands used to mitigate the effects of the other covered activities.

As the permittee, the County would have the ability to issue certificates of inclusion to confer take coverage to landowners and other entities for covered species and activities.

The LOHCP will include measures necessary to avoid, minimize, and mitigate the effects of the taking for three wildlife species covered by the plan that result from private development, capital projects, facilities operation and maintenance, and implementation of the conservation strategy within plan area. The LOHCP will also include measures to conserve one endangered plant species covered by the plan.

Covered Species

We anticipate that four federally listed species will be included as covered species in the proposed LOHCP: Morro Bay kangaroo rat (*Dipodomys heermanni morroensis;* federally endangered), Morro shoulderband snail (*Helminthoglypta walkeriana;* federally endangered), Indian Knob mountainbalm (*Eriodictyon altissimum;* federally endangered), and

Morro manzanita (*Arctostaphylos morroensis;* federally threatened).

''Take'' under the Act does not apply to listed plant species. Consequently, the Act does not prohibit take of listed plant species, and take of listed plant species cannot be authorized under an ITP. The LOCHP proposes to include a listed plant species on the permit in recognition of the conservation benefits provided for them under the LOHCP. Additionally, inclusion of protections for federally listed plant species in an HCP assists us in meeting our regulatory obligations under section 7(a)(2) of the Act.

The applicant would receive assurances under the Service's ''No Surprises'' regulations found in 50 CFR 17.22(b)(5) and 17.32(b)(5) for all species included on the ITP.

Environmental Assessment or Environmental Impact Statement

Before deciding whether or not to issue the requested ITP, the Service will prepare a draft NEPA document to analyze the environmental impacts associated with issuance of this permit. In this document, we will consider the following alternatives: (1) The proposed action, which includes the issuance of take authorizations consistent with the proposed LOHCP under section 10(a)(1)(B) of the Act; (2) no-action (no permit issuance); and (3) a reasonable range of alternatives that could include variations in impacts, conservation, permit duration, covered species, covered activities, permit area, or a combination of these elements.

The NEPA document will identify and analyze potentially significant direct, indirect, and cumulative impacts of permit issuance and the implementation of the proposed LOHCP on biological resources, land uses, utilities, air quality, water resources, cultural resources, socioeconomics and environmental justice, recreation, aesthetics, climate change and greenhouse gases, and other environmental issues that could occur with the implementation of each alternative. The Service will also identify measures to avoid or minimize any significant effects of the proposed action on the quality of the human environment.

Following completion of the environmental review, the Service will publish a notice of availability and a request for comment on the draft NEPA document and the applicant's permit application (which will include the proposed LOHCP.)

Public Comments

We request data, comments, new information, and suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other party on this notice. We will consider these comments in developing a draft NEPA document and in the development of the LOCHP and ITP. We particularly seek comments on the following:

1. Biological information concerning the species proposed to be covered in the LOHCP, including information on range, distribution, population sizes, and population trends;
2. Relevant information concerning impacts of proposed covered activities on these species;
3. Information on other current or planned activities in the plan area and their possible impacts on the species;
4. The presence of archaeological sites, buildings and structures, historic events, sacred and traditional areas, and other historic preservation concerns, which must be considered in project planning by the National Historic Preservation Act;
5. A range of alternatives to be included in the NEPA document; and
6. Any other environmental issues that should be considered with regard to the proposed development and permit action.

You may submit your comments and materials by any one of the methods listed in the **ADDRESSES** section.

Comments and materials we receive, as well as supporting documentation we use in preparing the draft NEPA document, will be available for public inspection by appointment, during normal business hours (Monday through Friday, 8 a.m. to 4 p.m.) at the Service's Ventura address (see **ADDRESSES**). Please note that all comments and materials we receive, including names and addresses, will become part of the administrative record and may be released to the public. 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.

Scoping Meetings

The scoping meeting will be held at the South Bay Community Center, located at 2180 Palisades Avenue, Los Osos, CA; see **DATES** for the dates and times of the meetings. The purpose of scoping meetings is to provide the public with a general understanding of the background of the proposed LOHCP and activities it would cover, alternative proposals under consideration for the draft EA or EIS, and the Service's role and steps to be taken to develop the draft NEPA document for the proposed LOHCP; and also to solicit suggestions and information on the scope of issues and alternatives for the Service to consider when drafting the EA or EIS. Written comments will be accepted at the meetings. Comments can also be submitted by the methods listed in the **ADDRESSES** section. Once the draft NEPA document and proposed LOCHP are complete and made available for public review, there will be additional opportunity for public comments on the content of these documents.

Scoping Meetings Location Accommodations

Persons needing reasonable accommodation in order to attend and participate in the public meetings should contact Julie M. Vanderwier at 805–664–1766 as soon as possible. In order to allow sufficient time to process requests, a request should be submitted no later than 1 week before the public meetings.

Authority

We provide this notice under section 10(c) of the Act (16 U.S.C. 1531 *et seq.*) and NEPA implementing regulations (40 CFR 1501.7, 40 CFR 1506.6, and 40 CFR 1508.22).

Dated: September 13, 2013.

Alexandra Pitts,

Deputy Regional Director, Pacific Southwest Region, Sacramento, CA.

[FR Doc. 2013–22778 Filed 9–18–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX13LR000F60100]

Agency Information Collection Activities: Comment Request for the Comprehensive Test Ban Treaty (1 Form)

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of an extension of a currently approved information collection (1028–0059).

SUMMARY: We (the USGS) will ask the Office of Management and Budget (OMB) to approve the information collection request (ICR) described

below. This collection consists of 1 form. As required by the Paperwork Reduction Act (PRA) of 1995, and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this ICR. This collection is scheduled to expire on September 30, 2013.

DATES: To ensure that your comments on this ICR are considered, OMB must receive them on or before October 21, 2013.

ADDRESSES: Please submit written comments on this information collection directly to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior via email: (*OIRA_SUBMISSION@omb.eop.gov*); or by fax (202) 395–5806; and identify your submission with OMB Control Number 1028–0059. Please also submit a copy of your comments to the Information Collection Clearance Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive, 807 National Center, 12201 Sunrise Valley Drive, Reston, VA 20192 (mail); 703–648–7195 (fax); or *dgovoni@usgs.gov* (email). Please reference Information Collection 1028–0059.

FOR FURTHER INFORMATION CONTACT: Lori E. Apodaca at 703–648–7724 (telephone); *lapodaca@usgs.gov* (email); or by mail at U.S. Geological Survey, 989 National Center, 12201 Sunrise Valley Drive, Reston, VA 20192. You may also find information about this ICR at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The collection of this information is required by the Comprehensive Test Ban Treaty (CTBT), and will, upon request, provide the CTBT Technical Secretariat with geographic locations of sites where chemical explosions of 300 tons of TNT-equivalent, or greater, have occurred.

II. Data

OMB Control Number: 1028–0059. Form Number: 9–4040–A.

Title: Comprehensive Test Ban Treaty.

Type of Request: Extension of a currently approved collection.

Affected Public: Business or Other-For-Profit Institutions: U.S. nonfuel minerals producers.

Respondent Obligation: Voluntary.

Frequency of Collection: Annually.

Estimated Number of Annual Responses: 2,500.

Annual Burden Hours: 625 hours. We expect to receive 2,500 annual responses. We estimate an average of 15 minutes per response.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have not identified any ''non-hour cost'' burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, et seq.) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number.

III. Request for Comments

Comments: We are soliciting comments as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden time to the proposed collection of information; (c) how to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology. Please note that the comments submitted in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee we will be able to do so.

Dated: September 11, 2013.

W. David Menzie,

Acting Director, National Minerals Information Center, U.S. Geological Survey.

[FR Doc. 2013–22640 Filed 9–18–13; 8:45 am]

BILLING CODE 4311–AM–M

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRSS–13352; PPWONRADD1, PPMRSNR1Y.NM0000]

Proposed Information Collection; Research Permit and Reporting System Applications and Reports

AGENCY: National Park Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on February 28, 2014. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: To ensure that we are able to consider your comments on this IC, we must receive them by November 18, 2013.

ADDRESSES: Send your comments on the IC to Madonna L. Baucum, Information Collection Clearance Officer, National Park Service, 1849 C Street NW., (2601), Washington, DC 20240 (mail); or *madonna_baucum@nps.gov* (email). Please include ''1024–0236'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Bill Commins, Natural Resource Stewardship and Science, National Park Service, 1201 Eye St. NW. (Room 1125), Washington, DC 20005 (mail); 202–513–7166 (telephone); 202–371–2131 (fax); or *bill_commins@nps.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Abstract

Regulations at 36 CFR 2.1 and 2.5 provide for taking of scientific research specimens in parks. We use a permit system to manage scientific research and collecting. National Park Service Forms 10–741a (Application for a Scientific Research and Collecting Permit) and 10–741b (Application for a Science Education Permit) collect information from persons seeking a permit to conduct natural or social science research and collection activities in individual units of the National Park System. The information we collect includes, but is not limited to:

- Names and business contact information.
- Project title, purpose of study, summary of proposed field methods and activities, and study and field schedules.
- Location where scientific activities are proposed to take place, including method of access.
- Whether or not specimens are proposed to be collected or handled,

and if yes, scientific descriptions and proposed disposition of specimens.

• If specimens are to be permanently retained, the proposed repositories for those specimens.

Persons who receive a permit must report annually on the activities conducted under the permit. Form 10–226 (Investigator's Annual Report) collects the following information:

• Reporting year, park, and type of permit.

• Names and business contact information and names of additional investigators.

• Project title, park-assigned study or activity number, park-assigned permit number, permit start and expiration dates, and scientific study start and ending dates.

• Activity type, subject discipline, purpose of study/activity during the reporting year, and finding and status of study or accomplishments of education activity during the reporting year.

We use the above information to manage the use and preservation of park resources and for reporting to the public via the Internet about the status of permitted research and collecting activities. We encourage respondents to use the Internet-based, automated Research Permit and Reporting System (RPRS) to complete and submit applications and reports. For those who use RPRS, much of the information needed for the annual report is generated automatically through information supplied in the application or contained in the permit.

You may obtain additional information about the application and reporting forms and existing guidance and explanatory material by clicking on ''Help'' at the RPRS Web site (*https://irma.nps.gov/RPRS/*).

II. Data

OMB Control Number: 1024–0236.

Title: Research Permit and Reporting System Applications and Reports, 36 CFR 2.1 and 2.5.

Service Form Number(s): 10–226, 10–741a, and 10–741b.

Type of Request: Extension of a currently approved collection.

Description of Respondents: Individuals; businesses; academic and research institutions; and Federal, State, local, and tribal governments.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion for applications; annually for reports.

Activity	Number of respondents	Number of annual responses	Completion time per response	Total annual burden hours
Investigator's Annual Report (Form 10–226)	5,395	5,395	15 minutes	1,349
Application for a Scientific Research and Collecting Permit (Form 10–741a)	4,980	4,980	1.375 hours	6,872
Application for a Science Education Permit (Form 10–741b)	415	415	1 hour	415
Totals	10,790	10,790		8,636

III. Comments

We invite comments concerning this information collection on:

• Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

• The accuracy of our estimate of the burden for this collection of information;

• Ways to enhance the quality, utility, and clarity of the information to be collected; and

• Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: September 13, 2013.

Madonna L. Baucum,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2013–22783 Filed 9–18–13; 8:45 am]

BILLING CODE 4310–EH–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–13957; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before August 24, 2013. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by October 4, 2013. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: August 28, 2013.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

CALIFORNIA

Los Angeles County

Rubel Castle Historic District, 844 N. Live Oak Ave., Glendora, 13000810

FLORIDA

Hillsborough County

Perry, Harvey Sr., Park Skateboard Bowl, 900 E. Scott St., Tampa, 13000811

St. Johns County

Government House, (Florida's New Deal Resources MPS) 48 King St., St. Augustine, 13000812

GEORGIA

Jones County

Shaver, Herman and Allene, House, 1421 Monticello Hwy., Wayside Community, 13000813

ILLINOIS

Cook County

Hines, Edward Jr., Veterans Administration Hospital Historic District, (United States Second Generation Veterans Hospitals MPS) 5000 S. 5th Ave., Hines, 13000814

KANSAS

Dickinson County

Kubach, Gustave A., House, 101 S. Buckeye Ave., Abilene, 13000815

Johnson County

Westwood Hills Historic District, Bounded by State Line Rd., W. 50th St. Terr., Rainbow Blvd., N. side of W. 48th St. Terr., Westwood Hills, 13000816

Miami County

New Lancaster General Store, 36688 New Lancaster Rd., New Lancaster, 13000817

New Lancaster Grange Hall, No. 223, 12655 W. 367th St., New Lancaster, 13000818

Wyandotte County

Meeks, Cordell D. Sr., House, 600 Oakland Ave., Kansas City, 13000819

St. John the Divine Catholic Church, 2511 Metropolitan Ave., Kansas City, 13000820

MISSOURI

Jackson County

Braley, Charles A., House, 3 Dunford Cir., Kansas City, 13000821

OREGON

Multnomah County

Brooks, Andrew J. and Minnie J., House, 2216 SE. 32nd Ave., Portland, 13000822

WASHINGTON

King County

Ford Motor Company Assembly Plant, 4735 E. Marginal Way, Seattle, 13000823

WISCONSIN

Racine County

Burlington Cemetery Chapel, 701 S. Browns Lake Dr., Burlington, 13000824

[FR Doc. 2013–22769 Filed 9–18–13; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On September 13, 2013, the Department of Justice lodged a proposed Consent Decree in *United States and San Joaquin Valley Unified Air Pollution Control District* v. *Post Holdings, Inc. and Ralcorp Holdings, Inc,* Civil Action No. 1:13-cv-01482, with the United States District Court for the Eastern District of California, Fresno Division.

The proposed Consent Decree resolves the claims of the United States and the San Joaquin Valley Unified Air Pollution Control District (the ''Air District'') against Post Holdings, Inc. and Ralcorp Holdings, Inc. for violations of the Clean Air Act, 42 U.S.C. 7413, and the federally enforceable California state implementation plan. The plaintiffs alleged that defendants' cereal manufacturing facility in Modesto, California operated without the appropriate permits and pollution controls. Under the Consent Decree, defendants will pay a civil penalty of $635,000 ($317,500 shall be paid to the United States; $317,500 shall be paid to the Air District); shall operate and maintain the facility's pollution control equipment as specified; and shall comply with recordkeeping and monitoring requirements.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and San Joaquin Valley Unified Air Pollution Control District* v. *Post Holdings, Inc. and Ralcorp Holdings, Inc.,* D.J. Ref. No. 90–5–2–1–10136. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email ...	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, D.C. 20044–7611.

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Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

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BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

S & S Pharmacy, Inc., d/b/a Platinum Pharmacy & Compounding; Decision and Order

On October 27, 2011, I, the Administrator of the Drug Enforcement Administration, issued an Order to Show Cause and Immediate Suspension of Registration to S & S Pharmacy, Inc., d/b/a Platinum Pharmacy & Compounding (hereinafter, Registrant), of Tampa, Florida. GX B, at 1. The Show Cause Order proposed the revocation of Registrant's Certificate of Registration as a retail pharmacy, which before it expired, authorized it to dispense controlled substances in schedules II through V, as well as the denial of any pending application to renew or modify its registration, on the ground that its ''continued registration is inconsistent with the public interest.'' *Id.*

More specifically, the Order alleged that Registrant was ''owned and operated by Ihab S. Barsoum,'' a registered pharmacist and that its registration was due to expire ''on February 12, 2012.'' *Id.* The Order further alleged that Registrant's owner/operator had ''unlawfully distributed oxycodone, a Schedule II narcotic controlled substance, in exchange for cash, based on fraudulent prescriptions.'' *Id.* at 2. The Order then alleged that Barsoum had made the following five unlawful distributions:

(1) on January 24, 2011, 429 dosage units of oxycodone 30mg. and 372 dosage units of oxycodone 15mg. for $2,500 cash;

(2) on February 2, 2011, 1,000 dosage units of oxycodone 30mg. for $4,000 cash;

(3) on March 7, 2011, 2,000 dosage units of oxycodone 30mg. for $8,100 cash;

(4) on April 13, 2011, 700 dosage units of oxycodone 30mg. for $3,500 cash; and

(5) on June 23, 2011, 800 dosage units of oxycodone 30mg. for $4,000 cash. Id.

Based on the above, I further concluded that Registrant's continued registration during the pendency of the proceedings ''constitutes an imminent

danger to the public health and safety'' and ordered that its registration be immediately suspended. *Id.* (citing 21 U.S.C. 824(d); 21 CFR 1301.36(e)). Pursuant to my authority under section 824(d) and 21 CFR 1301.36(f), I authorized ''the Special Agents and Diversion Investigators . . . who serve[d]'' the Order ''to place under seal or to remove for safekeeping all controlled substances'' possessed by Registrant ''pursuant to [its] registration.'' *Id.*

On October 28, 2011, the Order, which also notified Registrant of its right to either request a hearing on the allegations or to submit a written statement as to the matters of fact and law involved in lieu of a hearing, the procedure for electing either option, and the consequence of failing to elect either option, was personally served on Mr. Barsoum. *See id.* (citing 21 CFR 1301.43(a), (c)–(e)); GX C. Thereafter, neither Mr. Barsoum, nor any other person purporting to represent Registrant, timely requested a hearing, or submitted a written statement.

On January 25, 2012, the Government forwarded a Request for Final Agency Action along with the Investigative Record. Because more than thirty (30) days have passed since service of the Order to Show Cause and Immediate Suspension of Registration, I find that Registrant has waived its right to either request a hearing or to submit a written statement in lieu of a hearing. 21 CFR 1301.43(d). I therefore issue this Decision and Order based upon the investigative record submitted by the Government. *Id.* 1301.43(e).

Findings

Registrant is a retail pharmacy, which is owned by Mr. Ihab (Steve) Barsoum. GX A. On October 17, 2009, Registrant was issued DEA Certificate of Registration FT0131386, which authorized it to dispense controlled substances in schedules II through V at the registered location of Suite 204, 14937 Bruce B. Downs Blvd., Tampa, Florida, with an expiration date of February 29, 2012. GX A. According to the Agency's registration records, Registrant neither submitted a renewal application nor an application for a new registration. As a consequence, Registrant's registration expired on February 29, 2012, and on April 1, 2012, the Agency retired its registration.

The Government, however, supplemented the record with the affidavit of a Diversion Investigator, which established that on October 28, 2011, at which time the Order to Show Cause and Immediate Suspension of Registration was served on Mr. Barsoum and a search warrant was executed at Registrant, ''controlled substances were seized from the pharmacy.'' Affidavit of DI (Feb. 2, 2012). Attached to the DI's affidavit was an inventory of the controlled substances that were seized; the inventory listed numerous controlled substances in addition to various dosage strengths of oxycodone.[1]

According to the affidavit of a DEA Special Agent (S/A), in November 2010, he was contacted by a source of information who told him that he/she had previously purchased oxycodone from a person identified as Ihab Amir (Steve) Barsoum. GX D, at 4. The S/A then determined that Barsoum was a registered pharmacist and the owner of Registrant. *Id.* at 5.

At some point, the source of information became a confidential source (CS), and on January 24, 2011, the CS was interviewed at the Tampa DEA Office by the S/A and other Special Agents regarding text messages he had exchanged with Barsoum, in which Barsoum stated that he had 372 dosage units of oxycodone 15mg. and 430 dosage units of oxycodone 30mg. that he could sell to the CS. *Id.* That same day, the Agents conducted an undercover buy operation, using the CS to purchase oxycodone from Barsoum. *Id.* Prior to the buy, the CS was searched for contraband, with none found. *Id.* The CS was then given $2,500 and a recording device. *Id.*

The S/A observed the CS travel to Registrant, enter and leave Registrant, and travel back to a neutral location, where upon arriving, the S/A received from the CS a paper bag which contained several bottles of oxycodone tablets. *Id.* The S/A also retrieved the recording device and searched the CS, finding the CS ''free of any excess currency or contraband.'' *Id.*

Upon counting the drugs, the S/A found 372 dosage units of oxycodone 15mg. and 429 dosage units of oxycodone 30mg. *Id.* The S/A also watched the video recording of the meeting and determined that Barsoum was the person who had sold the oxycodone to the CS. *Id.* In addition, a transcription of the recording was made and submitted as part of the record.

On February 2, 2011, a second undercover buy was conducted using the CS. *Id.* at 6. During the debriefing, the CS told the Agents that Barsoum had sent a text message stating that he had 1,000 dosage units of oxycodone 30mg. that he could sell to the CS and that Barsoum had also asked the CS to provide fictitious prescriptions for both the current and previous transactions. *Id.* After searching the CS and finding him/her to not possess any contraband, the CS was given $4,100 in currency, a recording device, and several incomplete prescription forms. *Id.* The Agents then maintained surveillance as the CS travelled to and entered Registrant, as well as upon the CS's exiting from Registrant and travelling back to meet the Agents. *Id.*

Upon meeting the CS, the S/A took custody of a paper bag which contained two bottles of oxycodone (which upon counting, contained 1,000 dosage units); retrieved the recording device and $100 of unused currency; and upon searching the CS, found that the CS did not possess any contraband or excess currency. *Id.* at 6–7. The S/A reviewed the recording and again observed that Barsoum was the person who had sold the drugs to the CS. *Id.* at 7. A transcription of the recording was made and submitted as part of the record.

On February 9, 2011, the CS contacted the S/A and related that he/she had been contacted by Barsoum, who told the CS that the prescriptions the CS had provided ''were not going to work'' and that the CS needed to ''generate new prescription papers.'' *Id.* at 7. Later that day, the Agents met with the CS, and upon searching the CS, determined that he/she did not possess any contraband or excess currency. *Id.* Thereafter, the CS was given a recording device, as well as eleven pieces of security paper, and was observed travelling to and entering Registrant, as well as upon exiting the Registrant and travelling back to meet the Agents, who again searched the CS and found that he/she had neither excess currency nor any contraband. *Id.*

During the meeting, Barsoum told the CS to place the name of a Tampa-area physician and the physician's registration number, along with a working telephone number, on the fictitious prescriptions. *Id.* at 7–8. Barsoum then explained to the CS that the prescriptions would provide supporting documentation for the sale of the oxycodone to the CS; Barsoum also explained that the phone number would be used to show that he had called and verified the prescriptions. *Id.* at 8.

The following day, the Agents met with the CS, and after searching the CS, gave the CS a recording device as well as nine blank prescriptions; the CS proceeded to fill out seven of the blank prescriptions with the names of patients, their dates of birth, and the

[1] In addition to oxycodone, the drugs seized included, but are not limited to, morphine sulfate, methadone, hydromorphone, fentanyl, codeine with acetaminophen, hydrocodone with acetaminophen, alprazolam, clonazepam, diazepam, lorazepam, temazepam, phentermine, phendimetrazine, zolpidem, and Lyrica.

quantity of controlled substances. *Id.* The CS was then observed travelling to and entering Registrant, as well as upon exiting Registrant and returning to meet the Agents. *Id.*

According to the S/A, the CS had attempted to give all nine prescriptions to Barsoum. *Id.* However, Barsoum gave the two blank prescriptions back to the CS. *Id.* The CS explained to Barsoum that the doctor's information including his DEA number had been placed on the prescriptions, and that the voice mail for the telephone number had been changed to ''to match the new prescriptions.'' *Id.*

On March 7, 2011, the Agents again met with the CS, who informed them that Barsoum had texted him/her that he had 2,000 dosage units of oxycodone 30mg. available for sale. *Id.* at 9. The CS also told the Agents that he/she and Barsoum had exchanged text messages about providing fictitious prescriptions and that Barsoum needed a list of the names that were to be placed on the prescriptions so that he could enter the fictitious prescription data into Registrant's dispensing software on different days to make it appear that the dispensings had occurred on different days. *Id.* The CS faxed the names to Barsoum, who then sent a text to the CS acknowledging that he had received them. *Id.*

That same day, another undercover buy was performed. *Id.* After searching the CS and finding the CS to not possess any contraband, the CS was provided with $8,100 in cash, a recording device, and several incomplete fictitious prescriptions. *Id.* The CS was then observed travelling to and entering Registrant, as well as exiting Registrant and traveling to meet the Agents. *Id.*

Upon meeting the CS, the S/A received a paper bag which contained five bottles of oxycodone, which upon counting, totaled 2,000 dosage units of oxycodone 30mg. *Id.* at 9–10. After retrieving the recording device and three unused prescriptions from the CS, the CS was searched and found to not possess any contraband and excess currency. *Id.* at 10. Subsequently, the S/A listened to the recording of the transaction and determined that Barsoum was the person who had sold the oxycodone to the CS. *Id.* A transcription of the visit was also made and submitted as part of the record. *Id.*

On April 13, 2011, the Agents again met with the CS who informed them that Barsoum had texted him/her that he had 700 dosage units of oxycodone 30mg available for sale. *Id.* The Agents proceeded to conduct another undercover buy. *Id.* After searching the CS, who was found to not possess any contraband, the CS was given $5,000 in cash, a recording device, and five incomplete fictitious prescriptions. *Id.* The Agents then observed the CS travelling to and entering Registrant, as well as upon exiting Registrant and travelling back to meet the Agents. *Id.*

Upon meeting with the Agents, the CS turned over a plastic bag which contained one bottle of 700 oxycodone 30mg. tablets. *Id.* at 11. The S/A then obtained the recording device, two unused prescriptions, and $1,500 of unused cash. *Id.* The CS was searched again and found to not possess any excess currency and contraband. *Id.* Later, the S/A listened to the recording and identified Barsoum as the person who had sold the drugs to the CS. *Id.* A transcription of the recording was made and submitted for the record.

On June 23, 2011, the Agents again met with the CS. *Id.* The CS reported that Barsoum had texted him/her that he had 1,000 dosage units of oxycodone 30mg. available for sale; however, the CS's texts to Barsoum had not been returned. *Id.* That day, the CS placed a phone call to Barsoum, which was recorded and monitored by the Agents; during the call, the CS told Barsoum that he was on his way to Registrant. *Id.* The Agents then proceeded to conduct another undercover buy.

After searching the CS and finding the CS to not possess any contraband, the CS was provided with a recording device, $5,000 cash, and eight incomplete fictitious prescriptions. *Id.* The Agents observed the CS travel to and enter Registrant; they also observed the CS exit Registrant, depart the parking lot, then immediately return and re-enter Registrant, followed by the CS again exiting Registrant and traveling back to meet with them. *Id.* at 12.

Upon meeting the Agents, the CS turned over a paper bag, which contained four bottles of oxycodone 30mg. tablets; subsequently, the contents of the bottles were counted and totaled 800 dosage units. *Id.* The S/A also retrieved the recording device, $1,000 in unused cash, and four unused prescriptions. *Id.* The CS was then searched and found to not possess any excess currency and contraband. *Id.*

The S/A reviewed the recording and again identified Barsoum as the person who sold the oxycodone to the CS. *Id.* Moreover, during the course of the transaction, Barsoum told the CS to fill out four prescriptions totaling 1,200 dosage units even though Barsoum was selling only 800 dosage units to the CS. *Id.*

On October 26, 2011, a federal grand jury indicted Barsoum on six felony counts of violating the Controlled Substances Act. The charges included five counts of ''knowingly and intentionally'' distributing oxycodone ''outside the course of professional practice,'' in violation of 21 U.S.C. 841(a)(1) and 841(b)(1)(C). GX 6, at 2–3. The indictment also charged Barsoum with one count of ''knowingly and willfully conspir[ing] with other[ ]s'' to unlawfully dispense oxycodone, in violation of 21 U.S.C. 841(a)(1) and 841(b)(1)(C) and 21 U.S.C. 846. *Id.* at 1. Finally, the indictment sought the forfeiture of, *inter alia,* ''all of [Barsoum's] right, title and interest in'' both ''property constituting and derived from any proceeds . . . obtained, directly, or indirectly, as a result of such violations,'' as well as ''property used and intended to be used in any manner or part to commit or to facilitate the commission of such violations.'' *Id.* at 4–5.

On July 5, 2012, a grand jury issued a superseding indictment, which again alleged each of the conspiracy and unlawful distribution counts, as well as sought the forfeiture of the above described property. *See* Superseding Indictment at 1–4, *United States* v. *Ihab ''Steve'' Barsoum,* No. 8:11–CR–548–T–33MAP (M.D. Fla. July 2012). Barsoum pled not guilty, went to trial, and was convicted on all six counts. *See* Judgment and Sentence at 1, *United States* v. *Barsoum* (Feb. 5, 2013). The District Court sentenced Barsoum to 204 months imprisonment on each count, with the ''terms to run concurrently,'' and subsequently placed him in the custody of the U.S. Bureau of Prisons; the Court also imposed thirty-six months of supervised release following his term of imprisonment. *Id.* at 3–4. The Court further ordered that Barsoum ''forfeit [his] interest in the following property to the United States: . . . any and all assets previously identified in the Indictment that are subject to forfeiture,'' and specifically identified the property to include, but not be ''limited to,'' his DEA registration and two BMW automobiles. *Id.* at 6. Barsoum then filed a notice of appeal.

Discussion

Mootness

As found above, the registration at issue in this proceeding was due to expire on February 29, 2012, and in any event, as part of its judgment, the District Court ordered Mr. Barsoum to forfeit Registrant's registration. Moreover, Mr. Barsoum did not file either a renewal application or a new application. Accordingly, there is neither a registration to revoke nor an application to act upon.

While ordinarily these facts would render this proceeding moot, *see Ronald J. Riegel,* 63 FR 67132, 67133 (1998), simultaneously with the issuance of the Show Cause Order, I also ordered that Registrant's registration be immediately suspended. Moreover, pursuant to my authority under 21 U.S.C. 824(f), I authorized the seizure or placement under seal of the controlled substances possessed by Registrant pursuant to its registration. As found above, the Government seized an extensive inventory of controlled substances, including numerous drugs in addition to oxycodone.

Under section 824(f), ''[u]pon a revocation order becoming final, all such controlled substances'' which have been seized or placed under seal ''shall be forfeited to the United States'' and ''[a]ll right, title, and interest in such controlled substances shall vest in the United States upon a revocation order becoming final.'' 21 U.S.C. 824(f). DEA has previously held that a registrant, who has been issued an immediate suspension order, cannot defeat the effect of this provision by allowing its registration to expire. *See Meetinghouse Community Pharmacy, Inc.,* 74 FR 10073, 10074 n.5 (2009); *RX Direct Pharmacy, Inc.,* 72 FR 54070, 54072 n.3 (2007). Thus, this proceeding presents the collateral consequence of who has title to the controlled substances that were seized and which have not been forfeited under the District Court's judgment. Accordingly, I hold that this case is not moot and proceed to the merits.

The Merits

Under the CSA, ''[a] registration pursuant to section 823 of this title to manufacture, distribute, or dispense a controlled substance . . . may be suspended or revoked by the Attorney General upon a finding that the registrant . . . has committed such acts as would render [its] registration under section 823 of this title inconsistent with the public interest as determined under such section.'' 21 U.S.C. 824(a)(4). In the case of a retail pharmacy, which is deemed to be a practitioner, *see* id. § 802(21), Congress directed the Attorney General to consider the following factors in making the public interest determination:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

Id.

''[T]hese factors are . . . considered in the disjunctive.'' *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003). It is well settled that I ''may rely on any one or a combination of factors, and may give each factor the weight [I] deem[ ] appropriate in determining whether'' to suspend or revoke an existing registration. *Id.; see also MacKay* v. *DEA,* 664 F.3d 808, 816 (10th Cir. 2011); *Volkman* v. *DEA,* 567 F.3d 215, 222 (6th Cir. 2009); *Hoxie* v. *DEA,* 419 F.3d 477, 482 (6th Cir. 2005). Moreover, while I am required to consider each of the factors, I ''need not make explicit findings as to each one.'' *MacKay,* 664 F.3d at 816 (quoting *Volkman,* 567 F.3d at 222); *see also Hoxie,* 419 F.3d at 482.[2]

Under the Agency's regulation, ''[a]t any hearing for the revocation or suspension of a registration, the Administration shall have the burden of proving that the requirements for such revocation or suspension pursuant to . . . 21 U.S.C. 824(a) . . . are satisfied.'' 21 CFR 1301.44(e). In this matter, I have considered all of the factors and find that the Government's evidence with respect to factors two and four, establishes that Registrant, through its owner, has committed acts which render its registration ''inconsistent with the public interest.'' I therefore affirm the Order of Immediate Suspension.

Factors Two and Four—The Registrant's Experience in Dispensing Controlled Controlled Substances and Compliance With Applicable Laws Related to Controlled Substances

''Except as authorized by'' the CSA, it is ''unlawful for any person [to] knowingly or intentionally . . . manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance.'' 21 U.S.C. 841(a)(1). Moreover, ''[p]ersons registered by the Attorney General . . . to manufacture, distribute, or dispense controlled substances . . . are authorized to possess, manufacture, distribute, or dispense such substances . . . to the extent authorized by their registration and in conformity with the other provisions of this subchapter.'' *Id.* § 822(b). Under the Act, a pharmacy's registration authorizes it ''to dispense,'' *id.* § 823(f), which ''means to deliver a controlled substance to an ultimate user . . . by, or pursuant to the lawful order of, a practitioner.'' *Id.* § 802(10).

Under a longstanding DEA regulation, ''[a] prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04(a). Furthermore, ''[a]n order purporting to be a prescription issued not in the usual course of professional treatment . . . is not a prescription within the meaning and intent of section 309 of the Act (21 U.S.C. 829) and the person knowingly filling such a purported prescription . . . shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances.''[3] *Id.; see also* 21 U.S.C. 829(a) (''Except when dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, no controlled substance in schedule II, which is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act [21 U.S.C.A. § 301 et seq.], may be dispensed without the written prescription of a practitioner, except that in emergency situations, as prescribed . . . by regulation . . . such drug may be dispensed upon oral prescription in accordance with . . . 21 U.S.C.A. § 353(b).'').[4]

As found above, on five occasions, Mr. Barsoum, Respondent's owner and pharmacist-in-charge, offered for sale, and subsequently distributed to the CS, large quantities of oxycodone, a schedule II controlled substance (*see* 21 CFR 1308.12(b)(1)(xiii)), in exchange for cash. Over the course of the five transactions, Barsoum distributed a total

[2] In short, this is not a contest in which score is kept; the Agency is not required to mechanically count up the factors and determine how many favor the Government and how many favor the registrant. Rather, it is an inquiry which focuses on protecting the public interest; what matters is the seriousness of the registrant's or applicant's misconduct. *Jayam Krishna-Iyer,* 74 FR 459, 462 (2009). Accordingly, as the Tenth Circuit has recognized, findings under a single factor can support the revocation of a registration. *MacKay,* 664 F.3d at 821. Likewise, findings under a single factor can support the denial of an application.

[3] As the Supreme Court has explained, ''the prescription requirement . . . ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse. As a corollary, the provision also bars doctors from peddling to patients who crave the drugs for those prohibited uses.'' *Gonzales* v. *Oregon,* 546 U.S. 243, 274 (2006) (citing *United States* v. *Moore,* 423 U.S. 122, 135, 143 (1975)).

[4] *See also* 21 CFR 1306.11(a) (''A pharmacist may dispense directly a controlled substance listed in Schedule II that is a prescription drug as determined under . . . 21 U.S.C. 353(b) . . . only pursuant to a written prescription signed by the practitioner,'' except for in an emergency situation.).

of 4,929 tablets of oxycodone 30mg. and 372 tablets of oxycodone 15mg., in exchange for $22,100 in cash. The distributions were not dispensings within the meaning of the CSA because the controlled substances were not delivered ''pursuant to the lawful order of[ ] a practitioner.'' 21 U.S.C. 802(10). Indeed, as the evidence shows, Barsoum required the CS to produce fictitious prescriptions in order to provide a paper trail which, in the event his pharmacy was inspected by the authorities, he could use to justify the distributions. In short each of the transactions was a blatant drug deal and a distribution in violation of the CSA. *See* 21 U.S.C. 841(a)(1), 21 CFR 1306.04(a).

Accordingly, I hold that the Government has established that Registrant, through its principal Mr. Barsoum, committed acts which rendered its registration ''inconsistent with the public interest,'' 21 U.S.C. 824(a)(4), and which justified the immediate suspension of its registration as ''an imminent danger to the public health or safety.'' *Id.* § 824(d). I therefore affirm the immediate suspension of Registrant's registration, and while Mr. Barsoum allowed Registrant's registration to expire, had he filed a renewal application, I would have revoked his pharmacy's registration.

Pursuant to 21 U.S.C. 824(f), ''[u]pon a revocation order becoming final, all . . . controlled substances'' seized pursuant to a suspension order, ''shall be forfeited to the United States'' and ''[a]ll right, title, and interest in such controlled substances shall vest in the United States upon a revocation order becoming final.'' As the Agency has previously held, a registrant cannot defeat the effect of this provision by allowing its registration to expire. *Meetinghouse Community Pharmacy, Inc.,* 74 FR 10073, 10074 n.5 (2009); *RX Direct Pharmacy, Inc.,* 72 FR 54070, 54072 n.3 (2007). Registrant had the right to challenge the suspension order before the Agency but chose not to.

Accordingly, I declare forfeited to the United States all controlled substances that were seized pursuant to the Immediate Suspension Order, which have not been previously declared forfeited by the District Court in the Judgment and Sentence in *United States* v. *Barsoum.* I further hold that in the event the District Court's Judgment and Sentence are vacated, any controlled substances which had been previously declared forfeited by the District Court, shall be forfeited to the United States.

Order

Pursuant to the authority vested in me by 21 U.S.C. 824(a) and (d), as well as 28 CFR 0.100(b), I affirm the Order of Immediate Suspension of Registration issued to S & S Pharmacy, Inc., d/b/a Platinum Pharmacy & Compounding. Pursuant to the authority vested in me by 21 U.S.C. 824(f), as well as 28 CFR 0.100(b), I further order that all controlled substances seized pursuant to the Order of Immediate Suspension of Registration, which are not subject to forfeiture pursuant to the District Court's Judgment and Sentence in *United States* v. *Ihab ''Steve'' Barsoum,* No. 8:11–CR–548–T–33MAP (M.D. Fla. Feb. 5, 2013), be, and they hereby are, forfeited to the United States. This order is effective October 21, 2013.

Dated: September 8, 2013.

Michele M. Leonhart,

Administrator.

[FR Doc. 2013–22793 Filed 9–18–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Labor Standards for Federal Service Contracts

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Wage and Hour Division (WHD) sponsored information collection request (ICR) titled, ''Labor Standards for Federal Service Contracts,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before October 21, 2013.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201304–1235–001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–WHD, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Information Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210, email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: The WHD administers the McNamara-O'Hara Service Contract Act (SCA), 41 U.S.C. 351 *et seq.* The SCA applies to every contract entered into by the United States or the District of Columbia, the principal purpose of which is to furnish services to the United States through the use of service employees. The SCA requires contractors and subcontractors performing services on covered federal or District of Columbia contracts in excess of $2,500 to pay service employees in various classes no less than the monetary wage rates and to furnish fringe benefits found prevailing in the locality, or the rates (including prospective increases) contained in a predecessor contractor's collective bargaining agreement. Safety and health standards also apply to such contracts. The WHD administers and enforces SCA compensation requirements. This ICR is to continue PRA authorization the following information collections: (1) Vacation Benefit Seniority List, (2) Conformance Record, and (3) Submission of Collective Bargaining Agreement. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 7, 2013 (78 FR 26657).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1235–0007.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on October 31, 2013. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. It should also be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review.

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1235–0007. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–WHD.

Title of Collection: Labor Standards for Federal Service Contracts.

OMB Control Number: 1235–0007.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 48,984.

Total Estimated Number of Responses: 50,116.

Total Estimated Annual Burden Hours: 49,166.

Total Estimated Annual Other Costs Burden: $0.

Dated: September 16, 2013.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2013–22838 Filed 9–18–13; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Agency Information Collection Activities: Announcement of the Office of Management and Budget (OMB) Control Numbers Under the Paperwork Reduction Act

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice; announcement of OMB approval of information collection requirements.

SUMMARY: The Occupational Safety and Health Administration announces that the Office of Management and Budget (OMB) extended its approval for a number of information collection requirements found in sections of 29 CFR parts 1910, 1915, and 1926. OSHA sought approval of these requirements under the Paperwork Reduction Act of 1995 (PRA–95), and, as required by that Act, is announcing the approval numbers and expiration dates for these requirements.

DATES: This notice is effective September 19, 2013.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210, telephone: (202) 693–2222.

SUPPLEMENTARY INFORMATION: In a series of **Federal Register** notices, the Agency announced its requests to OMB to renew its current extensions of approvals for various information collection (paperwork) requirements in its safety and health standards pertaining to, general industry, shipyard employment, and the construction industry (i.e., 29 CFR parts 1910, 1915, and 1926), and regulations containing procedures for handling of retaliation complaints. In these **Federal Register** announcements, the Agency provided 60-day comment periods for the public to respond to OSHA's burden hour and cost estimates.

In accordance with PRA–95 (44 U.S.C. 3501–3520), OMB renewed its approval for these information collection requirements, and assigned OMB control numbers to these requirements. The table below provides the following information for each of these information collection requirements approved by OMB: the title of the **Federal Register** notice; the **Federal Register** reference (date, volume, and leading page); OMB's Control Number; and the new expiration date.

Title of the information collection request	Date of **Federal Register** publication, **Federal Register** reference, and OSHA Docket No.	OMB control No.	Expiration date
1,2-Dibromo-3-Chloropropane (DBCP) Standard (29 CFR 1910.1044).	04/06/2012, 77 FR 20850, Docket No. 2012–0010	1218–0101	11/30/2015
1,3-Butadiene Standard (29 CFR 1910.1051)	07/06/2012, 77 FR 40087, Docket No. OSHA–2012–0027.	1218–0170	02/29/2016
4,4′-Methylenedianiline for General Industry (29 CFR 1910.1050).	01/30/2013, 78 FR 6350, Docket No. OSHA–2012–0040.	1218–0184	06/30/2016
4,4′-Methylenedianiline for Construction (29 CFR 1926.60).	11/16/2012, 77 FR 68849, Docket No. OSHA–2012–0031.	1218–0183	05/31/2016
Asbestos in Shipyards Standard (29 CFR 1915.1001)	04/02/2012, 77 FR 19737, Docket No. OSHA–2012–0009.	1218–0195	11/30/2015
Benzene (29 CFR 1910.1028)	02/28/2013, 78 FR 13707, Docket No. 2013–0008	1218–0129	06/30/2016
Blasting and the Use of Explosives (29 CFR part 1926, subpart U).	02/17/2012, 77 FR 9703, Docket No. OSHA–2011–0747.	1218–0217	08/31/2015
Cadmium in Construction Standard (29 CFR 1926.1127).	03/06/2012, 77 FR 13357, Docket No. OSHA–2012–0004.	1218–0186	08/31/2015
Cadmium in General Industry (29 CFR 1910.1027)	03/06/2012, 77 FR 13359, Docket No. OSHA–2012–0005.	1218–0185	08/31/2015
Electrical Protective Equipment (29 CFR 1910.137), and Electric Power Generation, Transmission, and Distribution (29 CFR 1910.269).	01/23/2013, 78 FR 4873, Docket No. OSHA–2013–0003.	1218–0190	06/30/2016

Title of the information collection request	Date of **Federal Register** publication, **Federal Register** reference, and OSHA Docket No.	OMB control No.	Expiration date
Hazardous Waste Operations and Emergency Response (HAZWOPER) (29 CFR 1910.120).	04/30/2012, 77 FR 25500, Docket No. OSHA–2011–0862.	1218–0202	11/30/2015
Hexavalent Chromium Standards for General Industry (29 CFR 1910.1026), Shipyard Employment (29 CFR 1915.1026), and Construction (29 CFR 1926.1126).	10/09/2012, 77 FR 61431, Docket No. OSHA–2012–0034.	1218–0252	05/31/2016
Inorganic Arsenic Standard (29 CFR 1910.1018)	10/20/2011, 76 FR 65217, Docket No. OSHA–2011–0186.	1218–0104	03/31/2015
Lead in Construction Standard (29 CFR 1926.62)	08/10/2012, 77 FR 47883, Docket No. OSHA–2012–0014.	1218–0189	02/29/2016
Lead in General Industry (29 CFR 1910.1025)	08/10/2012, 77 FR 47882, Docket No. OSHA–2012–0013.	1218–0092	02/29/2016
Occupational Safety and Health Administration Strategic Partnership Programs for Worker Safety and Health (OSPP).	04/26/2012, 77 FR 24992, Docket No. OSHA–2011–0861.	1218–0244	12/31/2015
Personal Protective Equipment (PPE) for General Industry (29 CFR part 1910 subpart I).	01/30/2013, 78 FR 6352, Docket No. OSHA–2013–0004.	1218–0205	06/30/2016
Personal Protective Equipment (PPE) for Shipyard Employment (29 CFR Part 1915, subpart I).	12/05/2012, 77 FR 72411, Docket No. OSHA–2012–0038.	1218–0215	05/31/2016
Process Safety Management of Highly Hazardous Chemicals (PSM) (29 CFR 1910.119).	11/06/2012, 77 FR 66638, Docket No. OSHA–2012–0039.	1218–0200	05/31/2016
Reports of Injuries to Employees Operating Mechanical Power Presses (29 CFR 1910.217(g)).	05/25/2012, 77 FR 31396, OSHA–2012–0017	1218–0070	10/31/2015
Temporary Labor Camps (29 CFR 1910.142)	05/25/2012, 77 FR 31395, OSHA No. 2012–0012	1218–0096	10/31/2015
Walking-Working Surfaces Standard (29 CFR part 1910, subpart D).	02/13/2013, 78 FR 10212, Docket No. OSHA–2013–0002.	1218–0199	06/30/2016

In accordance with 5 CFR 1320.5(b), an agency cannot conduct, sponsor, or require a response to a collection of information unless the collection displays a valid OMB control number and the agency informs respondents that they need not respond to the collection of information unless it displays a valid OMB control number.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is 44 U.S.C. 3506 *et seq.* and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on September 16, 2013.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2013–22823 Filed 9–18–13; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Proposed Extension of Existing Collection; Comment Request: Division of Longshore and Harbor Workers' Compensation

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)] This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Workers' Compensation (OWCP) is soliciting comments concerning the proposed collection: Employer's First Report of Injury or Occupational Disease (LS–202) and Employer's Supplementary Report of Accident or Occupational Illness (LS–210). A copy of the proposed information collection request can be obtained by contacting the office listed below in the address section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before November 18, 2013.

ADDRESSES: Ms. Yoon Ferguson, U.S. Department of Labor, 200 Constitution Ave. NW., Room S–3323, Washington, DC 20210, telephone (202) 693–0701, fax (202) 693–1449, Email *ferguson.yoon@dol.gov.* Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs administers the Longshore and Harbor Workers' Compensation Act. The Act provides benefits to workers injured in maritime employment on the navigable waters of the United States and adjoining area customarily used by an employee in loading, unloading, repairing, or building a vessel. The LS–202 is used by employers initially to report injuries that have occurred which are covered under the Longshore Act and its related statutes. The LS–210 is used to report additional periods of lost time from work. This information collection is currently approved for use through January 31, 2014.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

II. Current Actions

The Department of Labor seeks the extension of approval of this information collection in order to ensure that employers are complying with the reporting requirements of the Act and to ensure that injured claimants receive all compensation benefits to which they are entitled.

Agency: Office of Workers' Compensation Programs.

Type of Review: Extension.

Title: Request for Earnings Information.

OMB Number: 1240–0003.

Agency Number: LS–202 and LS–210.

Affected Public: Business or other for-profit, Not-for-profit institution.

Form	Time to complete (minutes)	Frequency of response	Number of respondents	Number of responses	Hours burden
LS–202	15	Occasion	28,130	28,130	7,033
LS–210	15	Occasion	699	699	175
Totals			28,829	28,829	7,208

Total Respondents: 28,829.

Total Annual Responses: 28,829.

Estimated Total Burden Hours: 7,208.

Estimated Time per Response: 15 minutes.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $14,126.00.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: September 10, 2013.

Yoon Ferguson,

Agency Clearance Officer, Office of Workers' Compensation Programs, US Department of Labor.

[FR Doc. 2013–22637 Filed 9–18–13; 8:45 am]

BILLING CODE 4510–CF–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 13–100]

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 USPN 6,485,963, Growth Stimulation of Biological Cells and Tissue by Electromagnetic Fields and Uses Theorof, NASA Case No. MSC–22633–1; and USPN 6,673,597, Growth Stimulation of Biological Cells and Tissue by Electromagnetic Fields and Uses Thereof, NASA Case No. MSC–22633–2 to GRoK Technologies, LLC, having its principal place of business in Houston, Texas. 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 Chief Counsel, NASA Johnson Space Center, 2101 NASA Parkway, Houston, Texas 77058, Mail Code AL; Phone (281) 483–3021; Fax (281) 483–6936.

FOR FURTHER INFORMATION CONTACT: Ted Ro, Intellectual Property Attorney, Office of Chief Counsel, NASA Johnson Space Center, 2101 NASA Parkway, Houston, Texas 77058, Mail Code AL; Phone (281) 244–7148; Fax (281) 483–6936. 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. 2013–22727 Filed 9–18–13; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 13–104]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: September 19, 2013.

FOR FURTHER INFORMATION CONTACT: Mark W. Homer, Patent Counsel, NASA Management Office—JPL, 4800 Oak Grove Drive, Mail Stop 180–200, Pasadena, CA 91109; telephone (818) 354–7770.

NASA Case No.: NPO–48539–1: Neutral Mounting of Whispering Gallery Mode Resonators for Suppression of Acceleration-Induced Frequency Fluctuations;

NASA Case No.: NPO–47300–2: Textured Silicon Substrate Anode for LI Ion Battery.

Sumara M. Thompson-King,

Deputy General Counsel.

[FR Doc. 2013–22723 Filed 9–18–13; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 13–102]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: September 19, 2013.

FOR FURTHER INFORMATION CONTACT: Robert H. Earp, III, Patent Attorney, Glenn Research Center at Lewis Field, Code 21–14, Cleveland, OH 44135; telephone (216) 433–5754; fax (216) 433–6790.

NASA Case No.: LEW–18949–1: Advanced High Temperature and Fatigue Resistant Environmental Barrier Coating Bond Coat Systems for SiC/SiC Ceramic Matrix Composites;

NASA Case No.: LEW–18844–1: Electrospun Nanofiber Coating of Fiber Materials: A Composite Toughening Approach;

NASA Case No.: LEW–18849–1: Paired Threaded Film Cooling Holes for Improved Turbine Film Cooling;

NASA Case No.: LEW–18960–1: Dry Snorkel Cold Immersion Suit for Hypothermia Prevention;

NASA Case No.: LEW–18903–1: Modeling and Simulation of a Solar Electric Propulsion Vehicle in Near-Earth Vicinity Including So0lar Array Degradation;

NASA Case No.: LEW–18934–1: Conditionally Active Min-Max Limit Regulators;

NASA Case No.: LEW–18964–1: High Temperature Lightweight Self-Healing Ceramic Composites for Aircraft Engine Applications;

NASA Case No.: LEW–18325–2: External Magnetic Field Reduction Techniquie for Advanced Stirling Radioisotope Generator;

NASA Case No.: LEW–18858–1: V-Cess: A Novel Flow Control Method Using A Shaped Recess;

NASA Case No.: LEW–18890–1: Suppression of Unwanted Noise and Howl in a Test Configureation Where a Jet Exhaust is Discharged into a Duct.

Sumara M. Thompson-King,

Deputy General Counsel.

[FR Doc. 2013–22725 Filed 9–18–13; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 13–106]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: September 19, 2013.

FOR FURTHER INFORMATION CONTACT: Randy Heald, Patent Counsel, Kennedy Space Center, Mail Code CC–A, Kennedy Space Center, FL 32899; telephone (321) 867–7214; fax (321) 867–1817.

NASA Case No.: KSC–13588: Multi-Dimensional Damage Detection for Flat Surfaces;

NASA Case No.: KSC–13366: Self-Healing Polymer Materials for Wire Insulation, Polyimides, Flat Surfaces, and Inflatable Structures.

Sumara M. Thompson-King,

Deputy General Counsel.

[FR Doc. 2013–22721 Filed 9–18–13; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 13–103]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: September 19, 2013.

FOR FURTHER INFORMATION CONTACT: Bryan A. Geurts, Patent Counsel, Goddard Space Flight Center, Mail Code 140.1, Greenbelt, MD 20771–0001; telephone (301) 286–7351; fax (301) 286–9502.

NASA Case No.: GSC–15953–2: SpaceCube Demonstration Platform.

Sumara M. Thompson-King,

Deputy General Counsel.

[FR Doc. 2013–22724 Filed 9–18–13; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 13–107]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: September 19, 2013.

FOR FURTHER INFORMATION CONTACT: Robin W. Edwards, Patent Counsel, Langley Research Center, Mail Stop 30, Hampton, VA 23681–2199; telephone (757) 864–3230; fax (757) 864–9190.

NASA Case No.: LAR–18065–1: Variable Acceleration Force Calibration System;

NASA Case No.: LAR–18127–1: A Modified Surface Having Low Adhesion Properties to Mitigate Insect Residue Adhesion;

NASA Case No.: LAR–18160–1: Tension Stiffened and Tendon Actuated Manipulator and a Hinge for Use Therein.

Sumara M. Thompson-King,

Deputy General Counsel.

[FR Doc. 2013–22720 Filed 9–18–13; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 13–101]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: September 19, 2013.

FOR FURTHER INFORMATION CONTACT: Robert M. Padilla, Patent Counsel, Ames Research Center, Code 202A–4, Moffett Field, CA 94035–1000; telephone (650) 604–5104; fax (650) 604–2767.

NASA Case No.: ARC–16211–1: Optimum Solar Conversion Cell Configurations;

NASA Case No.: ARC–16292–1: Nanosensor Cell Phone for Detecting Chemicals and Concentrations;

NASA Case No.: ARC–16707–1–CIP: Methods for Purifying Enzymes for Mycoremediation.

Sumara M. Thompson-King,

Deputy General Counsel.

[FR Doc. 2013–22726 Filed 9–18–13; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 13–105]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark office, and are available for licensing.

DATES: September 19, 2013.

FOR FURTHER INFORMATION CONTACT: Edward K. Fein, Patent Counsel, Johnson Space Center, Mail Code AL, 2101 NASA Parkway, Houston, TX 77058, (281) 483–4871; (281) 483–6936 [Facsimile].

NASA Case No.: MSC–25349–1: Robonaut Teleoperation System.

Sumara M. Thompson-King,

Deputy General Counsel.

[FR Doc. 2013–22722 Filed 9–18–13; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 13–108]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: September 19, 2013.

FOR FURTHER INFORMATION CONTACT: James J. McGroary, Patent Counsel, Marshall Space Flight Center, Mail Code LS01, Huntsville, AL 35812; telephone (256) 544–0013; fax (256) 544–0258.

NASA Case No.: MFS–32944–1: Method and System for Weakening Shock Wave Strength at Leading Edge Surfaces of Vehicle in Supersonic Atmospheric Flight;

NASA Case No.: MFS–32737–1–CIP: Hermetic Seal Leak Detection Apparatus;

NASA Case No.: MFS–32830–1–CIP: Friction and Wear Management Using Solvent Partitioning of Hydrophilic-Surface-Interactive Chemicals Contained in Boundary Layer-Targeted Emulsions.

Sumara M. Thompson-King,

Deputy General Counsel.

[FR Doc. 2013–22719 Filed 9–18–13; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meeting

TIME AND DATES: The Members of the National Council on Disability (NCD) will hold a quarterly meeting on Monday, October 7, 9:00 a.m.–5:15 p.m. (GMT), and Tuesday, October 8, 2013, 9:00 a.m.–12:15 p.m. (GMT).

PLACE: The meeting will occur in Topeka, Kansas at the Kansas State House in the Old Supreme Court Chambers, located at SW 10th and SW Jackson, Topeka, KS 66612. The quarterly meeting is available to the public to attend in-person or by phone. Those attending in person should be prepared to process through Kansas State House security upon entrance. Those interested in joining the meeting by phone in a listen-only capacity (with the exception of the public comment period) may access the proceedings by phone by using the following call-in number: 1–888–430–8691; Passcode/Conference ID: 6186170. If asked, the call host's name is Jeff Rosen.

MATTERS TO BE CONSIDERED: The Council will receive reports from its standing committees; and receive panel presentations from policy experts on the topics of living with a disability in rural America, Kansas legislation on the rights of parents with disabilities, the Kansas Employment First initiative, and finally, on the topic of KanCare implementation. The Council will also receive public comment exclusively from Kansans on Day 1 and from all other interested parties on Day 2.

AGENDA: The times provided below are approximations for when each agenda item is anticipated to be discussed (all times CMT):

Monday, October 7

9:00–9:30 a.m.—Call to Order and Welcome
9:30–10:00 a.m.—Committee Reports (Audit and Finance; Governance; Policy Development and Program Evaluation)
10:00–11:30 a.m.—Policy Panel and Discussion—Panel 1: Living with a Disability in Rural America
11:30 a.m.–1:00 p.m.—Break for Lunch
1:00–2:30 p.m.—Policy Panel and Discussion—Panel 2: Kansas Legislation for Parents with Disabilities
2:30–4:00 p.m.—Policy Panel and Discussion—Panel 3: Kansas Employment First
4:00–4:15 p.m.—Break
4:15–5:15 p.m.—Kansas Public Comments (phone and in-person; all topics; this public comment period is intended for Kansans only; all those who plan to make public comment are asked to please register their intent to comment in advance. Please see details below. A general public comment is open to all other interested parties on Day 2 of the Council meeting)
5:15 p.m.—Adjourn

Tuesday, October 8

9:00–9:30 a.m.—Call to Order and Welcome
9:30–11:00 a.m.—Policy Panel and Discussion—Panel 4: KanCare Implementation
11:00–11:15 a.m.—Break
11:15–11:45 a.m.—Public Comment (phone and in-person; all topics)
11:45 a.m.–12:15 p.m.—Council Business continued
12:15 p.m.—Council Meeting Adjourns

PUBLIC COMMENT REGISTRATION: To better facilitate NCD's public comment

periods, any individual interested in providing public comment will be asked to register their intent to provide comment in advance by sending an email to *PublicComment@ncd.gov* with the subject line ''Public Comment, Topeka, KS'' with your name, organization, state, and topic of comment included in the body of your email. Full-length written public comments may also be sent to that email address. All emails to register for public comment at the October quarterly meeting must be received by Friday, October 4, 2013. Priority will be given on both days to those individuals who are in-person to provide their comments. Those commenters on the phone will be called on according to the list of those registered via email. Due to time constraints, NCD asks all commenters to limit their comments to three minutes.

CONTACT PERSON FOR MORE INFORMATION: Anne Sommers, NCD, 1331 F Street NW., Suite 850, Washington, DC 20004; 202–272–2004 (V), 202–272–2074 (TTY).

ACCOMMODATIONS: A CART streamtext link has been arranged for each day of the board meeting. For Monday, beginning at 9:00 a.m., CMT, the web link to access CART is *http://www.streamtext.net/text.aspx?event=100713NCD1000am.* For Tuesday, beginning at 9:00 a.m., CMT, the web link to access CART is *http://www.streamtext.net/text.aspx?event=100813NCD1000am.* Those who plan to attend the meeting in-person and require accommodations should notify NCD as soon as possible to allow time to make arrangements.

Please note: To help reduce exposure to fragrances for those with multiple chemical sensitivities, NCD requests that all those attending the meeting in person please refrain from wearing scented personal care products such as perfumes, hairsprays, colognes, and deodorants.

Dated: September 17, 2013.

Rebecca Cokley,

Executive Director.

[FR Doc. 2013–22912 Filed 9–17–13; 4:15 pm]

BILLING CODE 6820–MA–P

NATIONAL TRANSPORTATION SAFETY BOARD

Plan for Generic Information Collection Activity: Submission for OMB Review; Comment Request

AGENCY: National Transportation Safety Board (NTSB).

ACTION: Notice.

SUMMARY: The NTSB is announcing it is submitting a plan for an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for approval, in accordance with the Paperwork Reduction Act. This ICR Plan describes various questionnaires the NTSB plans to use to obtain feedback from witnesses who observe crashes, accidents, and/or incidents in all modes of transportation. Feedback from such witnesses, including those who are survivors of crashes and accidents, is important to the NTSB in fulfilling its obligation of determining the probable cause of transportation events, and in recommending changes to mitigate the effects of future transportation events. This Notice informs the public that it may submit to the NTSB comments concerning the agency's proposed plan for information collection.

DATES: Submit written comments regarding this proposed plan for the collection of information by November 18, 2013.

ADDRESSES: Respondents may submit written comments on the collection of information to the National Transportation Safety Board, Office of General Counsel, 490 East L'Enfant Plaza SW., Washington, DC 20594.

FOR FURTHER INFORMATION CONTACT: David Tochen, NTSB General Counsel, at (202) 314–6080.

SUPPLEMENTARY INFORMATION: In accordance with OMB regulations that require this Notice for proposed ICRs, as well as OMB guidance concerning generic approval of plans for information collections, the NTSB herein notifies the public that it may submit comments on this proposed ICR to the NTSB. 5 CFR 1320.10(a). Section 1320.10(a) requires this ''notice directing requests for information, including copies of the proposed collection of information and supporting documentation, to the [NTSB].'' Pursuant to § 1320.10(a), the NTSB will provide a copy of this notice to OMB.

A. NTSB Witness and Passenger Questionnaires Are Appropriate for Generic Approval

On May 28, 2010, Administrator, Office of Information and Regulatory Affairs (OIRA), OMB, issued a memorandum to the Heads of Executive Departments and Agencies, and Independent Regulatory Agencies, providing instructions concerning how agencies can obtain generic OMB clearances for information collections in certain circumstances. *Paperwork Reduction Act—Generic Clearances,* available at *http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/PRA_Gen_ICRs_5-28-2010.pdf.* The memorandum states as follows concerning the appropriateness of obtaining such clearances:

> A generic ICR is a request for OMB approval of a plan for conducting more than one information collection using very similar methods when (1) the need for and the overall practical utility of the data collection can be evaluated in advance, as part of the review of the proposed plan, but (2) the agency cannot determine the details of the specific individual collections until a later time.

The NTSB's need to obtain information immediately following a transportation event it is investigating under 49 U.S.C. 1131 is critical. When numerous witnesses observe a transportation crash, accident or incident, the most effective and timely manner in which the NTSB can obtain first-hand observations is via distributing questionnaires to all witnesses the NTSB can locate.

This type of information collection is appropriate for generic approval under the applicable OMB guidance. Based on its investigation of previous transportation events, the NTSB can attest to the utility and value of collecting information via witness questionnaires. By distributing such questionnaires, the NTSB will gather information concerning where the witness was located at the time of the event, whether the witness needed medical attention, and what type of assistance the witness may have received during and immediately following the event. Responses to such questions may help the NTSB in determining the probable cause of the accident or incident, and will likely also assist the NTSB in issuing safety recommendations to mitigate the effects of future transportation mishaps and may help ensure the effectiveness of its family assistance activities.

The NTSB tailors each questionnaire to ensure it requests information specific to the particular event the NTSB is investigating. Consistent with the OMB guidance concerning generic approvals, the NTSB will not be able to finalize draft questionnaires specific to each accident or incident until the event has occurred. Often, questionnaires include a diagram of the aircraft, rail car, bus, vessel, or other vehicle involved in the event, and requests the respondent pinpoint his or her location by drawing on the diagram. In addition, the questionnaire may include questions concerning life preservers or other

safety devices and equipment or other evacuation aspects specific to over-water events, if the accident or incident involved such a circumstance. These types of questions are obviously unique to the specific investigation, and impossible to know prior to the occurrence of the accident or incident. Overall, the types of information the NTSB will solicit in its witness questionnaires is appropriate for a generic approval for the information collection.

B. Supporting Statement

The applicable OMB memorandum instructs agencies to provide specific information in the supporting statements describing the information collections. In particular, the supporting statements should include the following:

- The method of collection and, if statistical methods will be used, a discussion of the statistical methodology;
- The category (or categories) of respondents;
- The estimated ''burden cap,'' i.e., the maximum number of burden hours (per year) for the specific information collections, and against which burden will be charged for each collection actually used;
- The agency's plans for how it will use the information collected;
- The agency's plans to obtain public input regarding the specific information collections (i.e., consultation); and
- The agency's internal procedures to ensure that the specific collections comply with the PRA, applicable regulations, and the terms of the generic clearance.

Id. at 2.

1. Method of Collection

The NTSB will collect the information by transmitting the questionnaire to witnesses of the event, including surviving passengers. Depending on the circumstances, such transmission may occur via hand delivery, electronic mail, postal mail, or express mail, or a combination of methods. Respondents will be provided instructions concerning how to return questionnaires to the NTSB investigator who distributed them. The NTSB may create an electronic system on its Web page that provides the agency with the ability to verify whether the respondent was a passenger or a witness to the event. If the NTSB is able to create such a system, the agency may elect to request respondents log in and complete an electronic, web-based questionnaire. While such a system is not available at present, the NTSB nevertheless notes this idea, in case it creates and utilizes such a system in the future.

The NTSB will not use statistical methodology in reaching any conclusions based on the questionnaires. Instead, the NTSB merely will note the total number of respondents in any factual reports for which it uses the questionnaires.

Respondents'completion of the questionnaire is voluntary, and the NTSB generally will not contact them more than once to request completion of the questionnaire.

2. Category of Respondents

In its questionnaires, the NTSB will generally seek information from two categories of respondents: eyewitnesses who were not passengers of the conveyance involved in the transportation accident or incident; and witnesses who were onboard as passengers of the conveyance involved. In most cases, the NTSB will distribute the questionnaires to passengers, as NTSB investigators often interview eyewitnesses verbally at the site of an accident or incident, rather than soliciting information from them on a written instrument. However, in some cases, the NTSB may become aware of the existence of many people who observed the transportation event, and therefore choose to solicit information from them on a questionnaire, rather than attempting to interview each eyewitness personally. Therefore, the majority of people to whom the NTSB will distribute the questionnaires will be passengers who survived the transportation event.

3. Maximum Burden Hours

In its 2012 Annual Report to Congress, the NTSB stated it launched on eight major accidents and 252 regional or ''field'' accidents.[1] The NTSB will most likely distribute the questionnaires to passengers involved in, and/or witnesses who observe, major accidents. Some NTSB regional investigations may require use of the questionnaires, but often, fewer passengers and/or witnesses will observe regional accidents and therefore be able to offer feedback on a questionnaire. As a result, in general, the NTSB estimates it may use a questionnaire for approximately half of its regional accident launches, which would total 130 accident investigations. Of these investigations, the NTSB may request information on the questionnaire from approximately 10 passengers and/or witnesses, to reach a total of 1,300 individuals who may receive a questionnaire.

The NTSB seeks to emphasize these estimations are approximate, as they are depend on the number of accidents or incidents that occur, and how many passengers and/or witnesses may be available to complete the questionnaire. For example, in 2012, the NTSB did not launch to investigate any major aviation accidents. However, in July 2013, the NTSB sent a team to investigate the crash landing of Asiana flight 214, and thereafter received emergency approval from OIRA to send a questionnaire to each of the 288 surviving passengers. Likewise, the NTSB conducts investigations into accidents and incidents involving other modes of transportation, and the frequency of such investigations is unpredictable. The unpredictable nature of transportation accidents and the impossibility of determining in advance how many witnesses and/or passengers might be available to provide the NTSB with information indicates the NTSB's estimations concerning annual burden hours are approximate.

4. Use of the Information Collected

Witnesses' and passengers' input concerning their recollections of the events preceding, during, and immediately following the transportation accident or incident are extremely important to the NTSB. The NTSB creates discipline-specific ''groups'' for each investigation, and such groups are tasked with investigating a specific aspect of the transportation event. Often, the NTSB creates a survival factors group, which investigates how the circumstances of an accident or incident affected the likelihood of passengers and crewmembers surviving the event. This group also examines what, if any, changes could occur to improve the likelihood of survival and/or mitigate the effects of the accident or incident.

In practical terms, the NTSB uses the information it collects in completed questionnaires by identifying trends in responses to the questions on the questionnaires. For example, if a majority of respondents indicate they experienced hardship in evacuating an aircraft, rail car, bus, vessel, or other vehicle following an accident due to problems with the evacuation route or emergency door, the NTSB would note this data in its factual report summarizing the questionnaires. The NTSB may then utilize this identification of the trend to make a safety recommendation to improve evacuation methods and thereby

[1] National Transportation Safety Board 2012 Annual Report to Congress, *available at http://www.ntsb.gov/doclib/agency_reports/2012Annual%20Report.pdf.*

improve transportation safety and likelihood of survival. Similarly, if a majority of respondents who are eyewitnesses to a transportation accident or incident report observing a specific unusual aspect immediately prior to the transportation event, this information may assist the NTSB with determining the probable cause of the accident or incident. For example, eyewitnesses who complete a questionnaire and state they observed smoke from a train's engine or from a specific part of an aircraft before a crash can provide information to help the NTSB focus its investigation and determine the probable cause.

Overall, the information the NTSB will receive from completed questionnaires is important to the NTSB. The NTSB will use the information to improve transportation by determining the probable cause of the accident or incident, mitigating the effects of the accident or incident, issuing safety recommendations, fulfilling its family assistance responsibilities, or all of these activities.

5. Public Input Regarding the Information Collected

The NTSB does not generally obtain public input concerning the scope of, or specific questions on, the witness or passenger questionnaires it uses. However, the NTSB utilizes a party process for each accident investigation.[2] Through this process, NTSB investigators who seek to use a witness and/or passenger questionnaire to obtain information from witnesses and/or passengers may consult with party participants who are assisting with the investigation, and gather input to improve the questionnaire. If an NTSB investigator believes a party participant's feedback would improve the questionnaire concerning a particular question, the investigator may change the questionnaire and recommend this change be retained for future investigations. Overall, the NTSB engages in consultation with party participants, in the interest of improving the questionnaire.

6. Internal Procedures

Lastly, the OMB memorandum describing generic clearances recommends agencies describe the procedures it will undertake to ensure information collections to which the generic clearance applies will comply with the Paperwork Reduction Act, applicable regulations, and the terms provided in the generic clearance. The NTSB Office of General Counsel plans to provide internal guidance to agency personnel, consisting of this publication, as well as the OMB memorandum discussing generic clearances, once upon OMB approval of the clearance. The internal guidance will include specific instructions concerning use of witness and passenger questionnaires, and explain the applicable provisions of the Paperwork Reduction Act and its implementing regulations. The NTSB will also ensure its modal office directors are aware of the generic clearance, and its terms, and direct investigators to contact the NTSB Office of General Counsel to coordinate the dissemination of witness and/or passenger questionnaires. Given the small size of the NTSB, the agency believes it will be able to communicate the terms of compliance with the Paperwork Reduction Act to all investigators who may need to solicit feedback from witnesses and/or passengers via questionnaires.

C. Description of Burden

The NTSB has carefully reviewed previous questionnaires it has used to obtain information from witnesses and passengers. The NTSB assures the public that these questionnaires have used plain, coherent, and unambiguous terminology in its requests for information. In addition, the questionnaires are not duplicative of other agencies' collections of information, because in most instances, the NTSB, by statute, maintains priority over other agencies during a transportation accident investigation; therefore, any information collection that another agency might undertake must be approved in advance by the NTSB investigator-in-charge (IIC). The IIC would not approve an information collection that is duplicative of the witness/passenger questionnaire when the NTSB has already sought feedback on the questionnaire.

In general, the NTSB believes the questionnaires will impose a minimal burden on respondents: the NTSB estimates that each respondent will spend approximately 30 to 45 minutes in completing the questionnaire. The NTSB estimates that a maximum of 650 respondents per year would complete a questionnaire. Although the NTSB may distribute questionnaires to perhaps as many as 1,300 people, historic response rates indicate only 50 percent of the questionnaires will be returned completed. However, the NTSB again notes this number will vary, given the unpredictable nature of the frequency of transportation accidents.

D. Request for Comments

In accordance with 44 U.S.C. 3506(c)(2)(A), the NTSB seeks feedback from the public concerning this proposed plan for information collection. In particular, the NTSB asks the public to evaluate whether the proposed collection of information is necessary; to assess the accuracy of the NTSB's burden estimate; to comment on how to enhance the quality, utility, and clarity of the information to be collected; and to comment on how the NTSB might minimize the burden of the collection of information.

The NTSB will carefully consider all feedback it receives in response to this notice. As described above, obtaining the information the NTSB seeks on these questionnaires in a timely manner is important to NTSB investigations; therefore, obtaining approval from OIRA for these collections of information on a generic basis is a priority for the NTSB.

Deborah A.P. Hersman,

Acting Chairman.

[FR Doc. 2013–22636 Filed 9–18–13; 8:45 am]

BILLING CODE 7533–01–P

[2] *See* 49 CFR 831.11; *see also* NTSB Aviation Investigation Manual, Major Team Investigations (Nov. 2002), *available at http://www.ntsb.gov/doclib/manuals/MajorInvestigationsManual.pdf.*

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0216]

U.S. Nuclear Regulatory Commission Planned for Monitoring Activities for the Saltstone Disposal Facility at the Savannah River Site, Revision 1

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance; availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is announcing the availability of ''U.S. Nuclear Regulatory Commission Plan for Monitoring Disposal Actions Taken by the U.S. Department of Energy at the Savannah River Site Saltstone Disposal Facility in Accordance With the National Defense Authorization Act for Fiscal Year 2005, Revision 1,'' (NDAA) dated September 2013.

ADDRESSES: Please refer to Docket ID NRC–2013–0216 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–2013–0216. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For

technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The Salstone Disposal Facility Monitoring Plan, Revision 1, is available in ADAMS under Accession No. ML13100A113. The letter to Mr. Mark A. Gilbertson, (DOE) is also in ADAMS under Accession No. ML13100A081.

• *NRC's Public Document Room (PDR):* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Harry Felsher, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6559; and email: *Harry.Felsher@nrc.gov.*

SUPPLEMENTARY INFORMATION: The document describes the NRC staff's planned activities in carrying out its responsibilities for monitoring DOE's waste disposal activities at the Saltstone Disposal Facility (SDF) at the Savannah River Site, in accordance with the NDAA for Fiscal Year 2005. The NRC staff developed a Technical Evaluation Report (TER) for the SDF in December 2005, as part of the NRC consultation with DOE in its waste determination. In the 2005 TER, NRC documented the results of its review and concluded that there was reasonable assurance that the applicable criteria of NDAA could be met, provided certain assumptions made in the DOE analyses were verified via monitoring. Taking into consideration the assumptions, conclusions, and recommendations in the 2005 TER, DOE issued the final waste determination in January 2006. In 2007, NRC issued Revision 0 of the SDF Monitoring Plan based on the 2005 NRC TER and the DOE final waste determination. In 2009, DOE submitted a revised performance assessment to NRC. After its review, NRC issued a new TER in April 2012. In the 2012 TER, NRC concluded that it did not have reasonable assurance that salt waste disposal at the SDF met the performance objectives in 10 CFR Part 61, specifically § 61.41. In the issued document, the NRC staff identified specific areas that it intends to monitor in assessing DOE's compliance with the performance objectives. The document describes what the NRC staff intends to do in each of those areas, as well as other activities that will be performed to allow a complete assessment of compliance with the performance objectives. In finalizing the document, the NRC staff considered comments and input from the State of South Carolina.

Dated at Rockville, Maryland, this 11th day of September, 2013.

For the U.S. Nuclear Regulatory Commission.

Aby S. Mohseni,

Deputy Director, Environmental Protection and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2013–22802 Filed 9–18–13; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70389; File No. SR–NYSEArca–2013–87]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Proposing To Modify the Manner in Which It Calculates Volume, Liquidity and Quoting Thresholds Applicable to Billing on the Exchange in Relation to a Systems Issue Experienced by the NASDAQ UTP Securities Information Processor on August 22, 2013, Which Impacted Trading Across All Markets

September 13, 2013.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 4, 2013, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the manner in which it calculates volume, liquidity and quoting thresholds applicable to billing on the Exchange in relation to a systems issue experienced by the NASDAQ UTP Securities Information Processor (''NASDAQ UTP SIP'') on August 22, 2013, which impacted trading across all markets (the ''August 22, 2013 systems issue''). 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify the manner in which it calculates volume, liquidity and quoting thresholds applicable to billing on the Exchange in relation to the August 22, 2013 systems issue, which impacted trading across all markets.

As a result of the August 22, 2013 systems issue, the NASDAQ Stock Market LLC (''NASDAQ'') halted trading in Tape C securities (i.e., NASDAQ-listed securities) for more than three hours, resulting in a more than 40% decrease in trading volume in Tape C securities and a more than 20% decrease in trading volume across all listed equity securities (i.e., Tape A, B and C securities) as compared to U.S. consolidated average daily volume (''CADV'') for the previous trading days in August 2013.[4] The Exchange also

[4] *See* NASDAQ press release, *available at http://globenewswire.com/news-release/2013/08/22/568741/10045917/en/UPDATE-NASDAQ-OMX-Issues-Statement-on-the-Securities-Information-Processor.html.* For purposes of this proposal,

Continued

believes that the trading halt impacted the ability of ETP Holders, including Market Makers, to demonstrate typical trading, quoting and liquidity in their assigned securities, leading to decreased quoting and trading volume compared to average daily volume (''ADV'') and CADV for the previous trading days in August 2013.

As provided in the Exchange's Schedule of Fees and Charges for Exchange Services (''Equities Fee Schedule''), several of the Exchange's transaction fees and credits are based on trading, quoting and liquidity thresholds that ETP Holders must satisfy in order to qualify for the particular rates (i.e., percentage of CADV and ADV thresholds). The Exchange believes that the halting of trading that resulted from the August 22, 2013 systems issue may impact the ability of ETP Holders to meet these thresholds during August 2013.[5] The Exchange therefore proposes to exclude August 22, 2013 from any CADV or ADV calculation described in the Equities Fee Schedule in order to reasonably ensure that an ETP Holder that would otherwise qualify for a particular threshold during August 2013, and the corresponding transaction rate, would not be negatively impacted by the August 22, 2013 systems issue.

The proposed change is not otherwise intended to address any other issues relating to fees and the Exchange is not aware of any problems that ETP Holders would have in complying with the proposed change. The Exchange notes that NASDAQ is similarly excluding August 22, 2013 trading volume from pricing tier calculations.[6]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[8] 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.

The Exchange believes that the proposed rule change is reasonable because excluding August 22, 2013 from any CADV or ADV calculation described in the Equities Fee Schedule would reasonably ensure that an ETP Holder that would otherwise qualify for a particular threshold during August 2013, and the corresponding transaction rate, would not be negatively impacted by the August 22, 2013 systems issue. The Exchange also believes that the proposed rule change is equitable and not unfairly discriminatory because the trading halt on NASDAQ, which lasted more than three hours, resulted in significant decreases in trading volume and also impacted the ability of ETP Holders on the Exchange, including Market Makers, to demonstrate typical trading, quoting and liquidity in their assigned securities, leading to decreased quoting and trading volume compared to ADVs and CADVs for the previous trading days in August 2013. Therefore, excluding August 22, 2013 from any CADV or ADV calculation described in the Equities Fee Schedule would reasonably ensure than any market participant on the Exchange would not be negatively impacted by the August 22, 2013 systems issue with respect to billing on the Exchange. The proposed rule change is also equitable and not unfairly discriminatory because it would result in all market participants on the Exchange being treated equally by excluding August 22, 2013 from any CADV or ADV calculation described in the Equities Fee Schedule.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition. For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[9] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would treat all market participants on the Exchange equally by excluding August 22, 2013 from any CADV or ADV calculation described in the Equities Fee Schedule. Moreover, the Exchange believes that the proposed change would enhance competition between competing marketplaces by enabling the Exchange to exclude August 22, 2013 from any CADV or ADV calculation described in the Equities Fee Schedule, which is consistent with the manner by which NASDAQ has announced that it will be treating trading volumes from August 22, 2013 in pricing tier calculations.[10]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[13] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal will allow the Exchange to immediately implement the proposed change, thereby reducing the potential for confusion among member organizations and the public about how the Exchange will calculate certain volume, liquidity and quoting thresholds related to billing for activity on the Exchange during August 22, 2013. The Commission believes that the requested waiver will also assist the

''NASDAQ'' refers to all NASDAQ OMX U.S. equity and option markets, including NASDAQ, NASDAQ OMX PHLX LLC (''Phlx''), and NASDAQ OMX BX, Inc. (''BX'').

[5] The Exchange notes that it does not perform the calculations necessary to determine whether these thresholds have been met until after the particular billing month has ended.

[6] *See* NASDAQ Equity Trader Alert #2013–78, *available at http://www.nasdaqtrader.com/TraderNews.aspx?id=ETA2013-78*.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4) and (5).

[9] 15 U.S.C. 78f(b)(8).

[10] *See supra* note 5.

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

Exchange in determining transaction fees and credits for member organizations in a timely manner after the end of the billing month of August 2013. Therefore, the Commission designates the proposal operative upon filing.[15]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[16] of the Act 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–NYSEArca–2013–87 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2013–87. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2013–87, and should be submitted on or before October 10, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–22788 Filed 9–18–13; 8:45 am]

BILLING CODE 8011–01–P

[15] For purposes only of waiving the 30-say operative delay, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78s(b)(2)(B).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

PacWest Equities, Inc.; Order of Suspension of Trading

September 17, 2013.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of PacWest Equities, Inc. (''PacWest'') because of questions regarding the accuracy of assertions by PacWest in public statements regarding the company's business operations and assets. PacWest, a Company that has made no public filings with the Commission, is a Nevada corporation based in Las Vegas, Nevada. It is quoted on OTC Link under the symbol PWEI.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. e.d.t. on September 17, 2013 through 11:59 p.m. e.d.t., on September 30, 2013.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–22910 Filed 9–17–13; 4:15 pm]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 8475]

Advisory Committee on International Postal and Delivery Services; Membership Renewals

AGENCY: Department of State.

ACTION: Notice; Membership renewals.

SUMMARY: The 2006 Postal Accountability and Enhancement Act (Pub. L. 109–435) directed the State Department to create and manage a Federal Advisory Committee to provide advice to State with respect to the formulation, coordination, and oversight of foreign policy related to international postal and private-sector delivery services. The Advisory Committee on International Postal and Delivery Services was created in accordance with the Federal Advisory Committee Act (Pub. L. 92–463).

The Advisory Committee's Charter provides that Committee members should be appointed by the Assistant Secretary of the Department of State's Bureau of International Organization Affairs. It also provides that the term of membership should be two years, except that the Assistant Secretary may, at his or her discretion, remove or replace members at any time, and that members may be reappointed by the Assistant Secretary.

As the two-year terms for the current members of the Advisory Committee will expire in December 2013, the Designated Federal Officer of the Advisory Committee on International Postal and Delivery Services has opened the application process for those interested in becoming members of the Advisory Committee, or in being re-appointed as members.

Requirements: Members of the Advisory Committee on International Postal and Delivery Services attend meetings approximately two to three times per year, located in the Washington, DC metropolitan area. Members of the Committee are users, consultants, providers or experts on international postal and delivery services. Members are not compensated for their service. Members cannot currently be registered federal lobbyists.

Applications: Membership Applications for the Advisory Committee on International Postal and

Delivery Services can be obtained online at the Advisory Committee's Web site at *www.state.gov/p/io/ipp/c25478.htm.* If you have any questions regarding the Advisory Committee or the application process, please contact Helen Grove, *GroveHA@state.gov.*

Deadline: All applications for membership should be submitted to Mr. Robert Downes, the Designated Federal Officer, by Monday, September 30, close of business. Applications can be sent to Mr. Downes at *DownesRR@state.gov,* with a copy to Ms. Grove, *GroveHA@state.gov.*

For further information, please contact Ms. Helen Grove of the Office of Global Systems (IO/GS), Bureau of International Organization Affairs, U.S. Department of State, at (202) 647–1044 or by email at *GroveHA@state.gov.*

Dated: September 10, 2013.

Robert Downes,

Designated Federal Officer, Department of State.

[FR Doc. 2013–22815 Filed 9–18–13; 8:45 am]

BILLING CODE 4710–19–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) Transport Airplane and Engine (TAE) Subcommittee to discuss TAE issues.

DATES: The meeting is scheduled for Wednesday, October 2, 2013, starting at 9:00 a.m. Eastern Daylight Time. The public must make arrangements by September 27, 2013, to present oral statements at the meeting.

ADDRESSES: The Boeing Company, 1200 Wilson Boulevard, Room 234, Arlington, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Ralen Gao, Office of Rulemaking, ARM–209, FAA, 800 Independence Avenue SW., Washington, DC 20591, Telephone (202) 267–3168, FAX (202) 267–5075, or email at *ralen.gao@faa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. 2), notice is given of an ARAC meeting to be held October 2, 2013.

The agenda for the meeting is as follows:

- Opening Remarks, Review Agenda and Minutes
- FAA Report
- ARAC Report
- Transport Canada Report
- EASA Report
- Flight Controls Working Group Report
- Airworthiness Assurance Working Group Report
- Engine Harmonization Working Group Report
- Flight Test Harmonization Working Group Report
- Any Other Business
- Action Items Review

Attendance is open to the public, but will be limited to the availability of meeting room space. Please confirm your attendance with the person listed in the **FOR FURTHER INFORMATION CONTACT** section no later than September 27, 2013. Please provide the following information: Full legal name, country of citizenship, and name of your industry association, or applicable affiliation. If you are attending as a public citizen, please indicate so.

The FAA will arrange for teleconference service for individuals wishing to join in by teleconference if we receive notice by September 27, 2013. For persons participating by telephone, please contact the person listed in **FOR FURTHER INFORMATION CONTACT** by email or phone for the teleconference call-in number and passcode. Anyone calling from outside the Arlington, VA, metropolitan area will be responsible for paying long-distance charges.

The public must make arrangements by September 27, 2013, to present oral statements at the meeting. Written statements may be presented to the Subcommittee at any time by providing 25 copies to the person listed in the **FOR FURTHER INFORMATION CONTACT** section or by providing copies at the meeting. Copies of the documents to be presented to the Subcommittee may be made available by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

If you need assistance or require a reasonable accommodation for the meeting or meeting documents, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC on September 13, 2013.

Lirio Liu,

Designated Federal Officer.

[FR Doc. 2013–22749 Filed 9–18–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

91st Meeting: RTCA Special Committee 159, Global Positioning Systems (GPS)

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

ACTION: Meeting Notice of RTCA Special Committee 159, RTCA Special Committee 159, Global Positioning Systems (GPS).

SUMMARY: The FAA is issuing this notice to advise the public of the ninety-first meeting of the RTCA Special Committee 159, Global Positioning Systems (GPS)

DATES: The meeting will be held October 7–11, 2013 from 9:00 a.m.–5:00 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 330–0652/(202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 159. The agenda will include the following:

Working Group Sessions

October 7

- Working Group 2C, GPS/Inertial, ARINC & A4A Rooms

October 8

- Working Group 2, GPS/WAAS, McIntosh-NBAA Room and Colson Board Room

October 9

- Working Group 2, GPS/WAAS, ARINC & A4A Rooms, Afternoon, 1:00 p.m.–5:00 p.m., Working Group 4, GPS/Precision Landing Guidance

October 10

- 9:00 a.m.–3:00 p.m., Working Group 4, GPS/GPS/Precision Landing Guidance MacIntosh-NBAA Room and Colson Board Room

• 9:00 a.m.–12:00 p.m., Working Group 7, GPS/Antennas, ARINC & A4A Room, Afternoon, 3:00 p.m.–5:00 p.m., SAPT Presentation, MacIntosh-NBAA Room and Colson Board Room.

October 11—MacIntosh-NBAA Room and Colson Board Room

• Chairman's Introductory Remarks.
• Approval of Summary of the Ninetieth Meeting held March 15, 2013, RTCA Paper No. 197–13/SC159–1009.
• Review Working Group (WG) Progress and Identify Issues for Resolution.
• GPS/3nd Civil Frequency (WG–1)
• GPS/WAAS (WG–2)
• GPS/GLONASS (WG–2A)
• GPS/Inertial (WG–2C)
• GPS/Precision Landing Guidance (WG–4)
• GPS/Airport Surface Surveillance (WG–5)
• GPS/Interference (WG–6)
• GPS/Antennas (WG–7)
• Review of EUROCAE Activities.
• Briefing—DOT's GPS Adjacent Band Compatibility Plan
• Assignment/Review of Future Work
• Other Business.
• Date and Place of Next Meeting.
• Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 10, 2013.

Paige Williams,

Management Analyst, NextGen, Business Operations Group, Federal Aviation Administration.

[FR Doc. 2013–22859 Filed 9–18–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Program Management Committee; Meeting

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

ACTION: Notice of RTCA Program Management Committee meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Program Management Committee.

DATES: The meeting will be held October 8, 2013 from 8:30 a.m.–1:30 a.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a Program Management Committee meeting. The agenda will include the following:

October 8, 2013

• Welcome and Introductions.
• Review/Approve Meeting Summary.
• August 12, 2013, RTCA Paper no. 203–13/PMC–1129.
• Publication Consideration/Approval.
• Final Draft, New Document, Aeronautical Mobile Airport Communications System (AeroMACS) Profile, RTCA Paper No. 199–13/PMC–1125, prepared by SC–223
• Final Draft, New Document, Minimum Operational Performance Standards (MOPS) for the Aeronautical Mobile Airport Communication System (AeroMACS), RTCA Paper No. 200–13/PMC–1126, prepared by SC–223.
• Final Draft, Revised Document, DO–230C—Integrated Security System Standard for Airport Access Control, RTCA Paper No. 204–13/PMC–1130, prepared by SC–224.
• Final Draft, New Document, Minimum Operational Performance Standards for Small and Medium Sized Rechargeable Lithium Batteries and Battery Systems, RTCA Paper No. 202–13/PMC–1127, prepared by SC–225.
• Integration and Coordination Committee (ICC).
• Action Item Review.
• SC–228—Minimum Performance Standards for Unmanned Aircraft Systems—Discussion—Revised Terms of Reference.
• PMC Ad Hoc—Standards Overlap and Alignment—Discussion—Status.
• PMC Ad Hoc—Part 23 ARC Report—Areas/Recommendations for RTCA Support—Discussion—Status.
• RTCA Policy on Propriety Information—Discussion.
• Discussion.
• SC–206—Aeronautical Information Services (AIS) and Meteorological Data Link Services—Discussion—Revised Terms of Reference.
• SC–222—Inmarsat AMS(R)S—Discussion—Revised Terms of Reference.
• NAC—Status Update.
• FAA Actions Taken on Previously Published Documents—Report.
• Special Committees—Chairmen's Reports and Active Inter-Special Committee Requirements Agreements (ISRA)—Review.
• European/EUROCAE Coordination—Status Update.
• Other Business.
• Schedule for Committee Deliverables and Next Meeting Date.
• Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 11, 2013.

Paige Williams,

Management Analyst, NextGen, Business Operations Group, Federal Aviation Administration.

[FR Doc. 2013–22861 Filed 9–18–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Eighth Meeting: RTCA Special Committee 226, Audio Systems and Equipment

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

ACTION: Meeting Notice of RTCA Special Committee 226, Audio Systems and Equipment.

SUMMARY: The FAA is issuing this notice to advise the public of the eighth meeting of the RTCA Special Committee 226, Audio Systems and Equipment.

DATES: The meeting will be held October 8–10, 2012 from 9:00 a.m.–5:00 p.m.

ADDRESSES: The meeting will be held at RTCA, 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 330–0652/(202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.* In addition, Sophie Bouquet may be contacted

directly at (202) 330–0663, email: *sbousquet@rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 226. The agenda will include the following:

- Welcome and Administrative Remarks
- Introductions
- Agenda Overview
- Review FRAC comment
- Solicit proposals for further changes to DO–214 per FRAC comment
- Incorporate all changes into DO–214 draft
- Final review of DO–214 and draft updates/changes
- Committee to approve final document for release to the PMC
- Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 10, 2013.

Paige Williams,

Management Analyst, NextGen, Business Operations Group, Federal Aviation Administration.

[FR Doc. 2013–22855 Filed 9–18–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2008–0221]

Order Limiting Operations at Newark Liberty International Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of limited waiver of the slot usage requirement.

SUMMARY: This action grants with conditions a limited waiver of the slot usage requirement for operating authorizations (slots) at Newark Liberty International Airport (EWR) due to construction at the airport during the summer 2014 scheduling season. This waiver applies only to EWR slots for the following days and local times: (1) March 30 through June 15 for 0600–2259 slots; (2) Mondays through Saturdays from June 16 through September 19 for 0600–0629 slots; (3) Sundays from June 22 through September 14 for 0600–0859 slots; and (4) September 20 through October 25 for 0600–2259 slots.

DATES: Effective upon publication. The deadlines for temporary slot returns under this waiver are January 15, 2014, for slots from March 30 through July 31, 2014, and July 1, 2014, for slots from August 1 through October 25, 2014.

FOR FURTHER INFORMATION CONTACT: Robert Hawks, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–7143; email: *rob.hawks@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Port Authority of New York and New Jersey (Port Authority) will resurface EWR runway 4L/22R in 2014. This will require closing the runway from April 1 through June 1 and from September 20 through September 30, 2014. Runway 11/29 will close June 1 through 15 for construction on the intersection with runway 4L/22R. Runway 4L/22R will be open during that period with reduced runway length. Night and weekend closures of runway 4L/22R are planned until late 2014.

The FAA, Port Authority, and airport stakeholders have been meeting for several months to review the construction plans and schedules, assess the potential operational impacts, and identify mitigation options.

FAA Analysis

Under the Order limiting operations at EWR, slots must be used at least 80 percent of the time. This rule is expected to accommodate routine weather and other cancellations under all but the most unusual circumstances. Slots not meeting the minimum usage requirement will not receive historical precedence for the following corresponding scheduling season.[1] The FAA may grant a waiver from the slot usage requirement in highly unusual and unpredictable conditions that are beyond a carrier's control and affect a carrier's operations for a period of five or more consecutive days. However, the FAA does not routinely grant general waivers to the usage requirement except under the most unusual circumstances.

The FAA has determined that the projected operational, congestion, and delay impacts of the 2014 EWR runway construction meet the requirements for a temporary waiver of the slot usage requirement. Considering the throughput impacts during construction, reducing operations to minimize congestion and delays is in the public interest. Carriers that temporarily reduce flights and elect to temporarily return slots to the FAA rather than transfer them for another carrier's use should not be penalized by permanently losing the authority to operate.

FAA Decision

In consideration of the foregoing, the FAA has determined to issue a limited slot usage waiver for the summer 2014 scheduling season. This waiver applies only to EWR slots for the following days and local times: (1) March 30 through June 15 for 0600–2259 slots; (2) Mondays through Saturdays from June 16 through September 19 for 0600–0629 slots; (3) Sundays from June 22 through September 14 for 0600–0859 slots; and (4) September 20 through October 25 for 0600–2259 slots.[2] To obtain a waiver for a specific slot held, a carrier must temporarily return to the FAA slots that it will not operate during the waiver period. The carrier will retain historical precedence for these temporarily returned slots. These temporary slot returns permit the FAA to plan for days on which construction closures and resulting operational impacts occur. If the closure dates change due to weather, the FAA will apply the waiver, including retroactively, if a carrier notifies the FAA that the temporarily returned slots will not be operated on any new closure dates.

The FAA recognizes that some carriers may need additional time to finalize fall schedules or may make adjustments in fall schedules based on experiences during the spring construction. Accordingly, the FAA will allow an additional slot return date to allow for better planning by carriers. For slots from March 30 through July 31, 2014, the temporary slot return deadline is Wednesday, January 15, 2014. For slots from August 1 through October 25, 2014, the temporary slot return deadline is Tuesday, July 1, 2014. Temporary slot returns should be submitted to the Slot Administration Office by email at *7-awa-slotadmin@faa.gov.* These return notifications should indicate they are subject to this waiver.

[1] 78 FR 28280, 28281 (May 14, 2013).

[2] The FAA is granting the waiver until the end of the scheduling season rather than only for the September 20–30 runway closure. It may not be practical for carriers to resume some suspended flights in October.

Issued in Washington, DC, on September 13, 2013.

Mark W. Bury,

Acting Assistant Chief Counsel for International Law, Legislation, and Regulations.

[FR Doc. 2013–22813 Filed 9–18–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly notice of Passenger Facility Charge (PFC) approvals and disapprovals. In March 2013, there were three applications approved. This notice also includes information on two applications, one approved in January 2013 and the other approved in February 2013, inadvertently left off the January 2013 and February 2013 notices, respectively. Additionally, three approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

PUBLIC AGENCY: Hattiesburg-Laurel Regional Airport Authority, Moselle, Mississippi.

Kevin APPLICATION NUMBER: 13–07–C–00–PIB.

APPLICATION TYPE: Impose and use a PFC.

PFC LEVEL: $4.50.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $172,569.

EARLIEST CHARGE EFFECTIVE DATE: May 1, 2013.

ESTIMATED CHARGE EXPIRATION DATE: August 1, 2015.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: None.

BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION AND USE:

Security fence rehabilitation.
Seal coat runway/taxiway overlay/blast pad.
Directional sign installation and replacement.
Taxiway B extension/completion.
Extend terminal building.
Rehabilitate aircraft rescue and firefighting fire station.
Wildlife hazard assessment and plan.
Security vehicle(s)—two.
Emergency access road—phases 1 through 4.
Terminal floor rehabilitation.
Sewage treatment plant loan payoff.
Airfield sign panel replacement.
Fence modification.
Obstruction removal.
Airfield lighting and surface rehabilitation.
Parking and entrance improvements.
Runway/taxiway/apron markings.
Aircraft rescue and firefighting vehicle.
Terminal access road overlay.
Move precision approach path indicator controls.
Rehabilitate terminal heating, ventilation and air conditioning system.
Access control system upgrade.

BRIEF DESCRIPTION OF DISAPPROVED PROJECTS:

Digital video recorder upgrade.
Fuel efficient off-road vehicle.

DETERMINATION: Disapproved. Each project was determined to not meet the requirements of § 158.15(b).

BRIEF DESCRIPTION OF WITHDRAWN PROJECTS:

Expand terminal apron.
Expand and construct additional terminal parking lot.
Disadvantaged Business Enterprise plan.

Date of Withdrawal: January 23, 2013.

DECISION DATE: January 24, 2013.

FOR FURTHER INFORMATION CONTACT: Jonathan Linquist, Jackson Airports District Office, (601) 664–9893.

PUBLIC AGENCY: Shenandoah Valley Regional Airport Commission, Weyers Cave, Virginia.

APPLICATION NUMBER: 13–03–C–00–SHD.

APPLICATION TYPE: Impose and use a PFC.

PFC LEVEL: $4.50.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $310,554.

EARLIEST CHARGE EFFECTIVE DATE: July 1, 2013.

ESTIMATED CHARGE EXPIRATION DATE: December 1, 2017.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: All air taxi/commercial operators filing or requested to file FAA Form 1800–31.

DETERMINATION: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Shenandoah Valley Regional Airport.

BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION AND USE:

Air carrier and general aviation apron rehabilitation—design.
Air carrier and general aviation apron rehabilitation—design reimbursement.
Air carrier and general aviation apron rehabilitation—construction.
Rehabilitate and expand auto parking lot—design.
Airfield lighting control—design.
Aircraft rescue and firefighting gear.
Air carrier roof rehabilitation—phase 1.
Rehabilitation and expand auto parking lot—construction.
Air carrier roof rehabilitation—phase 2 (skylights).

DECISION DATE: February 26, 2013.

FOR FURTHER INFORMATION CONTACT: Jeffrey Breeden, Washington Airports District Office, (703) 661–1363.

PUBLIC AGENCY: Metropolitan Nashville Airport Authority, Nashville, Tennessee.

APPLICATION NUMBER: 13–18–C–00–BNA.

APPLICATION TYPE: Impose and use a PFC.

PFC LEVEL: $4.50.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $1,975,000.

EARLIEST CHARGE EFFECTIVE DATE: June 1, 2017.

ESTIMATED CHARGE EXPIRATION DATE: August 1, 2017.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: Air carriers with enplaned passengers using air taxi/commercial operators operating at Nashville International Airport (BNA) that: (1) Have less than one percent of passengers boardings; or (2) have less than 25,000 enplaned passengers in calendar year 2011; or (3) provide unscheduled service at BNA.

DETERMINATION: Disapproved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for more than 1 percent of the total annual enplanements at BNA.

BRIEF DESCRIPTION OF PROJECT APPROVED FOR COLLECTION AND USE AT A $4.50 PFC LEVEL: Reconstruct taxiways B and T3.

BRIEF DESCRIPTION OF PROJECT APPROVED FOR COLLECTION AND USE AT A $3.00 PFC LEVEL: Outbound baggage and check-in counter replacement.

BRIEF DESCRIPTION OF WITHDRAWN PROJECT: Improve storm water collection and treatment system.

DATE OF WITHDRAWAL: December 12, 2012.

DECISION DATE: March 6, 2013.

FOR FURTHER INFORMATION CONTACT: Cynthia Wills, Memphis Airports District Office, (901) 322–8190.

PUBLIC AGENCY: Tri-Cities Airport Commission, Blountville, Tennessee.

APPLICATION NUMBER: 13–05–C–00–TRI.

APPLICATION TYPE: Impose and use a PFC.

PFC LEVEL: $4.50.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $892,216.

EARLIEST CHARGE EFFECTIVE DATE: January 1, 2015.

ESTIMATED CHARGE EXPIRATION DATE: February 1, 2016.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: Non-scheduled/on-demand air taxi operators filing FAA Form 1800–31 and operating at Tri-Cities Regional Airport (TRI).

DETERMINATION: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at TRI.

BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION AND USE:

Runway 27 runway safety area displaced threshold.
Aircraft rescue and firefighting equipment replacement.
Terminal ramp access control improvements.
Runway 27 runway safety area property acquisition.
Runway 5/23 pavement rehabilitation.
PFC administrative costs.

DECISION DATE: March 8, 2013.

FOR FURTHER INFORMATION CONTACT: Cynthia Wills, Memphis Airports District Office, (901) 322–8190.

PUBLIC AGENCY: Palm Beach County Department of Airports, West Palm Beach, Florida.

APPLICATION NUMBER: 13–14–U–00–PBI.

APPLICATION TYPE: Use PFC revenue.

PFC LEVEL: $4.50.

TOTAL PFC REVENUE APPROVED FOR USE IN THIS DECISION: $1,300,000.

CHARGE EFFECTIVE DATE: April 1, 2010.

CHARGE EXPIRATION DATE: October 1, 2016.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: No change from previous decision.

BRIEF DESCRIPTION OF PROJECT APPROVED FOR USE: North Palm Beach County General Aviation Airport wetland mitigation credits.

DECISION DATE: March 20, 2013.

FOR FURTHER INFORMATION CONTACT: Susan Moore, Orlando Airports District Office, (407) 812–6331.

AMENDMENTS TO PFC APPROVALS

Amendment No., city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
13–18–C–01–BNA, Nashville, TN	03/11/13	$1,975,000	$1,975,000	08/01/17	08/01/17
09–15–C–01–MKE, Milwaukee, WI	03/13/13	25,068,451	29,166,661	07/01/22	09/01/22
09–06–C–01–PBG, Plattsburg, NY	03/21/13	732,355	725,923	12/01/12	12/01/12

Issued in Washington, DC, on September 11, 2013.

Joe Hebert,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 2013–22814 Filed 9–18–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2013–44]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before October 9, 2013.

ADDRESSES: You may send comments identified by Docket Number FAA–2013–0758 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Katherine L. Haley, ARM–203, Federal Aviation Administration, Office of Rulemaking, 800 Independence Ave. SW., Washington, DC 20591; email *Katherine.L.Haley@faa.gov;* (202) 493–5708. This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on September 13, 2013.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2013–0758.

Petitioner: Embry-Riddle Aeronautical University.

Section of 14 CFR Affected: 14 CFR 61.160 (b)(3)(i) and (ii).

Description of Relief Sought: Embry-Riddle Aeronautical University (Embry-Riddle) is requesting relief for students who matriculated into the university's Aeronautical Science degree program before the start of the 2012 academic year, who subsequently completed their instrument and/or commercial training under part 142 at Embry-Riddle to be eligible for the restricted privileges airline transport pilot (ATP) certificate in accordance with § 61.160(b) and (d).

[FR Doc. 2013–22748 Filed 9–18–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Submission Deadline for Schedule Information for O'Hare International Airport, San Francisco International Airport, John F. Kennedy International Airport, and Newark Liberty International Airport for the Summer 2014 Scheduling Season

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

ACTION: Notice of submission deadline.

SUMMARY: Under this notice, the FAA announces the submission deadline of October 10, 2013, for summer 2014 flight schedules at Chicago's O'Hare International Airport (ORD), San Francisco International Airport (SFO), New York's John F. Kennedy International Airport (JFK), and Newark Liberty International Airport (EWR) in accordance with the International Air Transport Association (IATA) Worldwide Slot Guidelines. The deadline coincides with the schedule submission deadline for the IATA Slots Conference for the summer 2014 scheduling season.

SUPPLEMENTARY INFORMATION: The FAA has designated ORD as an IATA Level 2 airport, SFO as a Level 2 airport, JFK as a Level 3 airport, and EWR as a Level 3 airport. Scheduled operations at JFK and EWR are currently limited by FAA Orders until a final Slot Management and Transparency Rule for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport (RIN 2120–AJ89) becomes effective but not later than October 24, 2014.[1]

The FAA is primarily concerned about planned passenger and cargo operations during peak hours, but carriers may submit schedule plans for the entire day. At ORD, the peak hours are 0700 to 2100 Central Time (1200 to 0200 UTC), at SFO from 0600 to 2300 Pacific Time (1300 to 0600 UTC), and at EWR and JFK from 0600 to 2300 Eastern Time (1000 to 0300 UTC). Carriers should submit schedule information in sufficient detail including, at minimum, the operating carrier, flight number, scheduled time of operation, frequency, and effective dates. IATA standard schedule information format and data elements (Standard Schedules Information Manual or SSIM) may be used.

The U.S. summer scheduling season for these airports is from March 30, 2014, through October 25, 2014, in recognition of the IATA northern summer period. The FAA understands there may be differences in slot times due to different U.S. daylight saving time dates and will accommodate these differences to the extent possible.

At EWR, there will be runway construction in summer 2014 that will impact airport operations and runway capacity. Runway 4L/22R will close from April 1 through June 1, 2014, and from September 20 through September 30, 2014. Runway 11/29 will close June 1 through 15, 2014, for construction at the intersection of runway 4L/22R. Runway 4L/22R will be open during that period with reduced length. Nighttime and weekend closures of Runway 4L/22R will occur until late 2014. Modeling suggests that delay impacts may be significant at the typical demand levels, especially when available runways or adverse weather conditions limit capacity. The Port Authority of New York and New Jersey, the FAA, and stakeholders have been meeting to determine ways to improve operations and mitigate delays to the extent possible. The FAA has issued a limited waiver of the minimum slot usage requirement to encourage carriers to temporarily reduce operations without losing historical precedence for slots. The FAA will work with carriers to potentially retime flights to less congested periods. Slots for new flights will be limited to off-peak times to avoid adding to congestion during the construction.

[1] Operating Limitations at John F. Kennedy International Airport, 73 FR 3510 (Jan. 18, 2008) as amended 78 FR 28276 (May 14, 2013); Operating Limitations at Newark Liberty International Airport, 73 FR 29550 (May 21, 2008) as amended 78 FR 28280 (May 14, 2013).

At SFO, there will be runway construction in summer 2014. Runways 1R/19L and 1L/19R will close from May 17 through September 28, 2014. FAA modeling suggests modest delay increases and operational impacts based on existing schedules and projected airport runway capacity during the construction. The airport operator, FAA, and stakeholders have been meeting regularly to identify ways to improve efficiency, develop operational plans, and mitigate delays to the extent possible. Currently, the peak demand period at SFO is approximately 0900 to 1400 Pacific Time. In order to reduce potential congestion and delays, carriers are encouraged to consider other hours for new summer 2014 flights and limit plans for new flights. Carriers may also consider whether it is possible to reschedule some flights to less congested hours, use larger aircraft or frequency adjustments in some markets, and temporarily reduce schedules. The FAA will work with carriers through the Level 2 schedule facilitation process to identify ways to reduce congestion.

DATES: Schedules must be submitted no later than October 10, 2013.

ADDRESSES: Schedules may be submitted by mail to the Slot Administration Office, AGC–200, Office of the Chief Counsel, 800 Independence Avenue SW., Washington, DC 20591; facsimile: 202–267–7277; or by email to: *7-AWA-slotadmin@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Robert Hawks, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone number: 202–267–7143; fax number: 202–267–7971; email: *rob.hawks@faa.gov.*

Issued in Washington, DC, on September 13, 2013.

Mark W. Bury,

Acting Assistant Chief Counsel for International Law, Legislation, and Regulations.

[FR Doc. 2013–22810 Filed 9–18–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2000–8398; FMCSA–2001–9258; FMCSA–2003–14504; FMCSA–2005–20027; FMCSA–2005–20560]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 5 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective August 30, 2013. Comments must be received on or before October 21, 2013.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [Docket No. FMCSA–2000–8398; FMCSA–2001–9258; FMCSA–2003–14504; FMCSA–2005–20027; FMCSA–2005–20560], using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 5 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 5 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Edmund J. Barron (PA)
Darryl D. Cassatt (IA)
Roger K. Cox (NJ)
Myron D. Dixon (TX)
Thomas E. Howard (IN)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 5 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (65 FR 78256; 66 FR 16311; 66 FR 17743; 66 FR 33990; 68 FR 13360; 68 FR 19598; 68 FR 33570; 68 FR 35772; 70 FR 2701; 70 FR 16887; 70 FR 17504; 70 FR 25878; 70 FR 30997; 70 FR 33937; 70 FR 37891; 72 FR 27624; 72 FR 32705; 72 FR 34062; 74 FR 26464; 74 FR 26471; 76 FR 34133; 76 FR 34135). Each of these 5 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a

particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by October 21, 2013.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 5 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: September 9, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–22775 Filed 9–18–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–5748; FMCSA–2000–8398; FMCSA–2005–20560; FMCSA–2006–26653; FMCSA–2007–0071; FMCSA–2008–0398]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 19 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective September 9, 2013. Comments must be received on or before October 21, 2013.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [Docket No. FMCSA–1999–5748; FMCSA–2000–8398; FMCSA–2005–20560; FMCSA–2006–26653; FMCSA–2007–0071; FMCSA–2008–0398], using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 19 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 19 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Michael W. Anderson (NM)
Michael R. Bradford (MD)
Denise M. Engle (GA)
Wade M. Hillmer (MN)
Clifford E. Masink (OH)
Felix L. McLean (NM)
John P. Perez (FL)
Scott K. Richardson (OH)
Kyle C. Shover (NJ)
Robert G. Springer (IL)
William E. Beckley (MD)
John J. Caricola, Jr. (NC)
Michael A. Hildebrand (PA)
Michael W. Jensen (CA)
Michael J. McGregan (FL)

Willie E. Nichols (FL)
Jeffrey W. Pike, Jr. (MN)
Jose C. Sanchez-Sanchez (WY)
Charles H. Smith (IN)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 19 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (64 FR 40404; 64 FR 66962; 65 FR 78256; 66 FR 16311; 67 FR 17102; 68 FR 13360; 70 FR 14747; 70 FR 17504; 70 FR 25878; 70 FR 30997; 72 FR 8417; 72 FR 27624; 72 FR 34062; 72 FR 36099; 73 FR 6242; 73 FR 16950; 74 FR 7097; 74 FR 15584; 74 FR 19270; 74 FR 20523; 74 FR 26466; 74 FR 26471; 76 FR 37173). Each of these 19 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by October 21, 2013.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 19 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: September 10, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–22771 Filed 9–18–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 88 (Sub-No. 13X)]

Bessemer and Lake Erie Railroad Company—Abandonment Exemption—in Allegheny County, PA

Bessemer and Lake Erie Railroad Company (B & LE) [1] has filed a verified notice of exemption under 49 CFR Part 1152 subpart F–*Exempt Abandonments* to abandon approximately 0.79 miles of rail line between milepost 0.31 (east of Pearl Ave.) and milepost 1.10 (at the western edge of Pillow Ave.), near Harwick, Allegheny County, Pa. The line traverses United States Postal Service Zip Codes 15024 and 15049.

B & LE has certified that: (1) No local traffic has moved over the line for at least two years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 19, 2013, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2]

[1] B & LE is a wholly owned indirect subsidiary of Canadian National Railway Company.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C. 2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by September 30, 2013. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 9, 2013, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to B & LE's representative: Audrey L. Brodrick, Fletcher & Sippel LLC, 29 N. Wacker Dr., Suite 920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

B & LE has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by September 24, 2013. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at (800) 877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), B & LE shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by B & LE's filing of a notice of consummation by September 19, 2014, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: September 16, 2013.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Raina S. White,

Clearance Clerk.

[FR Doc. 2013–22820 Filed 9–18–13; 8:45 am]

BILLING CODE 4915–01–P

[3] Each OFA must be accompanied by the filing fee, which is currently set at $1,600. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 290 (Sub-No. 341X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Polk County, Iowa

Norfolk Southern Railway Company (NSR) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon approximately 0.6 miles of non-contiguous rail line segments in Des Moines, Polk County, Iowa, as follows: (1) Approximately 0.3 miles of rail line extending between milepost SD 336.8 at SE 26th Ct. and milepost SD 337.1 at Scott Ave. (the eastern segment); and (2) approximately 0.3 miles of rail line extending between milepost SD 339.3 at E 6th Street and milepost SD 339.6 near E. 1st Street and the Des Moines River (the western segment).[1] The line traverses United States Postal Service Zip Codes 50309 and 50317.

NSR has certified that: (1) No local traffic has moved over the line segments for at least two years; (2) no overhead traffic has moved over the line segments for at least two years, and if there were any overhead traffic, it could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line segments (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line segments either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

[1] According to NSR, the line segments are part of the same rail line but are separated by an approximately 2.0-mile middle line segment, which will not be abandoned and which will continue to connect with other rail lines.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 19, 2013, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by September 30, 2013. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 9, 2013, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to NSR's representative: Robert A. Wimbish, Baker & Miller PLLC, 2401 Pennsylvania Ave. NW., Suite 300, Washington, DC 20037.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

NSR has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by September 24, 2013. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at (800) 877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line segments. If consummation has not been effected by NSR's filing of a notice of consummation by September 19, 2014,

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C. 2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which is currently set at $1,600. *See* 49 CFR 1002.2(f)(25).

and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: September 16, 2013.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Derrick A. Gardner,

Clearance Clerk.

[FR Doc. 2013–22794 Filed 9–18–13; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 290 (Sub-No. 357X)]

Norfolk Southern Railway Company—Discontinuance of Service Exemption—in Monroe County, Mich.

Norfolk Southern Railway Company (NSR) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue service over an approximately 1.7-mile line of railroad extending between milepost XV 0.0 and milepost XV 1.7, in Monroe County, Mich. (the Line). The Line traverses United States Postal Service Zip Code 48161.

NSR has certified that: (1) No local traffic has moved over the Line for at least two years; (2) no overhead traffic has moved over the Line for at least two years, and that overhead traffic, if there were any, could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending before the Surface Transportation Board or before any U.S. District Court or has been decided in favor of the complainant within the two-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 USC 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) to subsidize continued rail service has been received, this exemption will be effective on October 19, 2013, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA to subsidize continued rail service under 49 CFR 1152.27(c)(2) [1] must be filed by September 30, 2013.[2] Petitions to reopen must be filed by October 9, 2013, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to NSR's representative: Robert A. Wimbish, Baker & Miller PLLC, 2401 Pennsylvania Ave. NW., Suite 300, Washington, DC 20037.

If the notice contains false or misleading information, the exemption is void *ab initio.*

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: September 16, 2013.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Derrick A. Gardner,

Clearance Clerk.

[FR Doc. 2013–22795 Filed 9–18–13; 8:45 am]

BILLING CODE 4915–01–P

[1] Each OFA must be accompanied by the filing fee, which is currently set at $1,600. *See* 49 CFR 1002.2(f)(25).

[2] Because applicants are seeking to discontinue service, not to abandon the Line, trail use/rail banking and public use conditions are not appropriate. Likewise, no environmental or historic documentation is required here under 49 CFR 1105.6(c) and 49 CFR 1105.8(b), respectively.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 16, 2013.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before October 21, 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.*

Internal Revenue Service (IRS)

OMB Number: 1545–XXXX.

Type of Review: New Collection.

Title: IRS Customer Satisfaction Surveys.

Form: N/A.

Abstract: We are requesting a three-year approval to conduct 41 specific customer satisfaction and opinion surveys, which will allow the Agency to continue to use a data-driven approach to understanding customer satisfaction at the Internal Revenue Service (IRS). Collecting, analyzing, and using customer opinion data is a vital component of IRS's Balanced Measures Approach, as mandated by Internal Revenue Service Reform and Restructuring Act of 1998 and Executive Order 12862.

Affected Public: The information collected from taxpayers, practitioners, and a few small entities, will help ensure that users of IRS programs and services have an effective, efficient, and satisfying experience. In regard to online services, this feedback will provide insights into customer preferences for online information and services on IRS.gov that will meet their needs to resolve inquiries and their accounts on their own. This collection of feedback will contribute directly to the improvement of content and services provided online.

Estimated Total Burden Hours: 150,000.

Dawn Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2013–22798 Filed 9–18–13; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0222]

Agency Information Collection (Application for Standard Government Headstone or Marker for Installation in a Private or State Veterans' Cemetery) Activities Under OMB Review

AGENCY: National Cemetery Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the National Cemetery Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 21, 2013.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0222'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0222.''

SUPPLEMENTARY INFORMATION:

Titles:

a. Application for Standard Government Headstone or Marker for Installation in a Private or State Veterans' Cemetery, VA Form 40–1330.

b. Claim for Government Medallion for Installation in a Private Cemetery, VA Form 40–1330M.

OMB Control Number: 2900–0222.

Type of Review: Extension of a currently approved collection.

Abstracts:

a. The next of kin or other responsible parties of deceased Veterans complete VA Form 40–1330 to apply for Government provided headstones or markers for unmarked graves.

b. A family member complete VA Form 40–1330M to apply for a Government medallion to be affixed to privately purchased headstone or marker for a deceased Veteran buried in a private cemetery.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The Federal Register Notice with a 60-day comment period soliciting comments on this collection of information was published on June 7, 2013 at page 34429.

Affected Public: Individuals or Households.

Estimated Annual Burden: 93,500 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 374,000.

Dated: September 16, 2013.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, U.S. Department of Veterans Affairs.

[FR Doc. 2013–22770 Filed 9–18–13; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Department of the Treasury

Internal Revenue Service

26 CFR Parts 1 and 602

Guidance Regarding Deduction and Capitalization of Expenditures Related to Tangible Property; Final Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9636]

RIN 1545–BE18

Guidance Regarding Deduction and Capitalization of Expenditures Related to Tangible Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that provide guidance on the application of sections 162(a) and 263(a) of the Internal Revenue Code (Code) to amounts paid to acquire, produce, or improve tangible property. The final regulations clarify and expand the standards in the current regulations under sections 162(a) and 263(a). These final regulations replace and remove temporary regulations under sections 162(a) and 263(a) and withdraw proposed regulations that cross referenced the text of those temporary regulations. This document also contains final regulations under section 167 regarding accounting for and retirement of depreciable property and final regulations under section 168 regarding accounting for property under the Modified Accelerated Cost Recovery System (MACRS) other than general asset accounts. The final regulations will affect all taxpayers that acquire, produce, or improve tangible property. These final regulations do not finalize or remove the 2011 temporary regulations under section 168 regarding general asset accounts and disposition of property subject to section 168, which are addressed 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 September 19, 2013.

Applicability Dates: In general, these final regulations apply to taxable years beginning on or after January 1, 2014. However, certain rules apply only to amounts paid or incurred in taxable years beginning on or after January 1, 2014. For dates of applicability of the final regulations, see §§ 1.162–3(j), 1.162–4(c), 1.162–11(b)(2), 1.165–2(d), 1.167(a)–4(b), 1.167(a)–7(f), 1.167(a)–8(h), 1.168(i)–7(e), 1.263(a)–1(h), 1.263(a)–2(j), 1.263(a)–3(r), 1.263(a)–6(c), 1.263A–1(l), and 1.1016–3(j).

FOR FURTHER INFORMATION CONTACT: Concerning §§ 1.162–3, 1.162–4, 1.162–11, 1.263(a)–1, 1.263(a)–2, 1.263(a)–3, and 1.263(a)–6, Merrill D. Feldstein or Alan S. Williams, Office of Associate Chief Counsel (Income Tax and Accounting), (202) 622–4950 (not a toll-free call); Concerning §§ 1.165–2, 1.167(a)–4, 1.167(a)–7, 1.167(a)–8, 1.168(i)–7, 1.263A–1, and 1.1016–3, Kathleen Reed or Patrick Clinton, Office Associate Chief Counsel (Income Tax and Accounting), (202) 622–4930 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–2248. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

The collection of information in this regulation is in §§ 1.263(a)–1(f)(5), 1.263(a)–3(h)(6), and 1.263(a)–3(n)(2). This information is required in order for a taxpayer to elect to use the de minimis safe harbor, to elect to use the safe harbor for small taxpayers, and to elect to capitalize repair and maintenance costs. This information will inform the IRS that the taxpayer is electing to use these provisions, which allows taxpayers to obtain beneficial treatment for the amounts that qualify for these elections. The collection of information is voluntary to obtain a benefit under the final regulations. The likely respondents are business or other for-profit institutions, and small businesses or organizations.

Estimated total annual reporting burden: 1,100,000 hours.

Estimated annual burden hours per respondent varies from .25 hours to .5 hours, depending on individual circumstances, with an estimated average of .275 hours.

Estimated number of respondents: 4,000,000.

Estimated frequency of responses: Annually.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by section 6103.

Background

Section 263(a) provides that no deduction is allowed for (1) any amount paid out for new buildings or permanent improvements or betterments made to increase the value of any property or estate, or (2) any amount expended in restoring property or in making good the exhaustion thereof for which an allowance has been made. Final regulations previously issued under section 263(a) provided that capital expenditures included amounts paid or incurred to (1) add to the value, or substantially prolong the useful life, of property owned by the taxpayer, or (2) adapt the property to a new or different use. However, those regulations also provided that amounts paid or incurred for incidental repairs and maintenance of property within the meaning of section 162 and § 1.162–4 of the Income Tax Regulations are not capital expenditures under § 1.263(a)–1.

The determination of whether an expense may be deducted as a repair or must be capitalized generally requires an examination of all of a taxpayer's particular facts and circumstances. Moreover, the subjective nature of the existing standards described above has resulted in considerable controversy between taxpayers and the IRS over many years.

In 2006, in an effort to reduce the controversy in this area, the IRS and the Treasury Department published in the **Federal Register** August 21, 2006 (71 FR 48590) proposed amendments to the regulations under section 263(a) relating to amounts paid to acquire, produce, or improve tangible property. The IRS and the Treasury Department received numerous written comments in response to these proposed regulations. After considering these comments and the statements at the public hearing, in 2008 the IRS and the Treasury Department withdrew the 2006 proposed regulations and proposed new regulations in the **Federal Register** March 10, 2008 (73 FR 12838). The IRS and the Treasury Department also received many written comments and held a public hearing on the 2008 proposed regulations. On December 27, 2011, the IRS and the Treasury Department published temporary regulations in the **Federal Register** regarding the deduction and capitalization of expenditures related to tangible property (TD 9564; 76 FR 81060), withdrew the 2008 proposed regulations, and published new proposed regulations that cross referenced the text of the 2011 temporary regulations. The 2011 temporary regulations initially applied

to taxable years beginning on or after January 1, 2012. The IRS and the Treasury Department received numerous written comments in response to the 2011 temporary and proposed regulations and held a public hearing on May 9, 2012. After considering these comments and the statements at the public hearing, the IRS and the Treasury Department published Notice 2012–73 (2012–51 IRB 713), on November 20, 2012, announcing that, to assist taxpayers in their transitions to the 2011 temporary regulations and final regulations, the IRS and the Treasury Department would change the applicability date of the 2011 temporary regulations to taxable years beginning on or after January 1, 2014, while permitting taxpayers to choose to apply the 2011 temporary regulations to taxable years beginning on or after January 1, 2012, and before the applicability date of the final regulations. The Notice also alerted taxpayers that the IRS and the Treasury Department intended to publish final regulations in 2013 and expected the final regulations to apply to taxable years beginning on or after January 1, 2014, but that the final regulations would permit taxpayers to apply its provisions to taxable years beginning on or after January 1, 2012. On December 17, 2012, the Treasury Department and the IRS published technical amendments to TD 9564, which amended the applicability date of the 2011 temporary regulations to taxable years beginning on or after January 1, 2014, while permitting taxpayers to choose to apply the 2011 temporary regulations to taxable years beginning on or after January 1, 2012, and before the applicability date of the final regulations. See **Federal Register** (77 FR 74583).

After considering all of the comments and the statements made at the public hearing on the 2011 temporary and proposed regulations, the IRS and the Treasury Department are removing the 2011 temporary regulations under sections 162, 165, 167, 263(a), 263A, 1016, and § 1.168(i)–7 and are issuing final regulations. The IRS and the Treasury Department are also removing the 2011 proposed regulations and are issuing new proposed regulations regarding the disposition of property subject to section 168. The proposed regulations are set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

Explanation of Provisions

I. Overview

Section 263(a) generally requires the capitalization of amounts paid to acquire, produce, or improve tangible property. Section 162 allows a deduction for all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including the costs of certain supplies, repairs, and maintenance. These final regulations provide a general framework for distinguishing capital expenditures from supplies, repairs, maintenance, and other deductible business expenses. The final regulations retain many of the provisions of the 2011 temporary and proposed regulations (2011 temporary regulations), which in many instances incorporated standards from case law and other existing authorities under sections 162 and 263(a). The final regulations also modify several sections of the 2011 temporary regulations in response to comments received and to clarify and simplify the rules while achieving results that are consistent with the case law. The final regulations adopt the same general format as the 2011 temporary regulations, where § 1.162–3 provides rules for materials and supplies, § 1.162–4 addresses repairs and maintenance, § 1.263(a)–1 provides general rules for capital expenditures, § 1.263(a)–2 provides rules for amounts paid for the acquisition or production of tangible property, and § 1.263(a)–3 provides rules for amounts paid for the improvement of tangible property. However, the final regulations refine and simplify some of the rules contained in the 2011 temporary regulations and create a number of new safe harbors. For example, the final regulations adopt a revised and simplified de minimis safe harbor under § 1.263(a)–1(f) and extend the safe harbor for routine maintenance under § 1.263(a)–3(i) to buildings. The final regulations also add a safe harbor for small taxpayers to the rules governing improvements to tangible property under § 1.263(a)–3. In addition, the final regulations refine several of the criteria for defining betterments and restorations to tangible property.

In addition, these regulations finalize certain temporary regulations under section 167 regarding accounting for and retirement of depreciable property and section 168 regarding accounting for MACRS property, other than general asset accounts. However, these regulations do not finalize the rules under § 1.168(i)–1T or § 1.168(i)–8T addressing the definition of disposition for property subject to section 168. Instead, to address significant changes in this area, revised regulations under section 168 are being proposed concurrently with these final regulations (and appear in the Proposed Rules section of this issue of the **Federal Register**).

II. Materials and Supplies Under § 1.162–3

Responding to generally favorable comments on the treatment of materials and supplies in the 2011 temporary regulations, the final regulations retain the framework and many of the rules set forth in the 2011 temporary regulations. In response to comments, however, the final regulations expand the definition of materials and supplies to include property that has an acquisition or production cost of $200 or less (increased from $100 or less), clarify application of the optional method of accounting for rotable and temporary spare parts, and simplify the application of the de minimis safe harbor of § 1.263(a)–1(f) to materials and supplies. The final regulations also define standby emergency spare parts and limit the application of the election to capitalize materials and supplies to only rotable, temporary, and standby emergency spare parts.

A. Definition of Materials and Supplies

Commenters requested that the dollar threshold for characterizing a unit of property as a material or supply be increased from property with an acquisition cost of $100 or less to property with an acquisition cost of $500 or $1,000. Specifically, commenters were concerned that the low $100 threshold would not capture many common supplies such as calculators and coffee makers. Balancing concerns over distortions to income that could result from increasing the acquisition cost to $500 (or more) with the need to include the typical materials and supplies ordinarily used by many taxpayers, the final regulations increase the $100 threshold to $200. In addition, the final regulations retain the language providing the IRS and the Treasury Department with the authority to change the amount of this threshold through published guidance.

Commenters also continued to question the effect of the 2011 temporary regulations on the treatment of standby emergency spare parts under Rev. Rul. 81–185 (1981–2 CB 59). To resolve questions in this area, the final regulations generally incorporate the definition of standby emergency spare parts provided in Rev. Rul. 81–185 into the definition of materials and supplies

and provide that these parts are eligible for the optional election to capitalize certain materials and supplies provided in § 1.162–3(d).

B. Election To Capitalize Certain Materials and Supplies

The 2011 temporary regulations retained the rule from the 2008 proposed regulations permitting a taxpayer to elect to capitalize and depreciate amounts paid for certain materials and supplies. Several comments noted that the requirement to elect to capitalize certain material and supply costs continued to be inconsistent with prior IRS pronouncements that distinguished certain depreciable property from materials and supplies. See, for example, Rev. Rul. 2003–37 (2003–1 CB 717) (permitting taxpayers to treat certain rotable spare parts used in a service business as depreciable assets); Rev. Rul. 81–185 (1981–2 CB 59) (concluding that major standby emergency spare parts are depreciable property); Rev. Rul. 69–201 (1969–1 CB 60) (holding that standby replacement parts used in pit mining business are items for which depreciation is allowable); Rev. Rul. 69–200 (1969–1 CB 60) (holding that flight equipment rotable spare parts and assemblies are tangible property for which depreciation is allowable while expendable flight equipment spare parts are materials and supplies); Rev. Proc. 2007–48 (2007–2 CB 110) (providing a safe harbor method of accounting to treat certain rotable spare parts as depreciable assets). In addition, several comments noted that the rule under the 2011 temporary regulations could lead to problematic results, such as permitting a component acquired to improve a unit of tangible property owned by the taxpayer to be treated as an asset and depreciated over a recovery period different from the unit of tangible property intended to be improved.

To address these concerns, the final regulations retain the rule permitting a taxpayer to elect to capitalize and depreciate amounts paid for certain materials and supplies but provide that this rule is only applicable to rotable, temporary, or standby emergency spare parts. By limiting the application of the rule to rotable, temporary, or standby emergency spare parts, the final regulations resolve the potentially problematic results arising in the 2011 temporary regulations. And while the final rule modifies Rev. Rul. 2003–37, Rev. Rul. 81–185, Rev. Rul. 69–200, and Rev. Rul. 69–201 to the extent that the regulations characterize certain tangible properties addressed in these rulings as materials and supplies, the treatment is consistent with the holdings of the revenue rulings, which permit taxpayers to treat rotable, temporary, or standby emergency spare parts as assets subject to the allowance for depreciation.

The final regulations also clarify the procedure for a taxpayer that wants to revoke the election to capitalize and depreciate certain materials and supplies. The taxpayer may revoke this election by filing a request for a letter ruling and obtaining the consent of the Commissioner of Internal Revenue to revoke this election. The Commissioner may grant a request to revoke this election if the taxpayer acted reasonably and in good faith, and the revocation will not prejudice the interests of the Government. In deciding whether to grant such a request, the Commissioner anticipates applying standards similar to the standards under § 301.9100–3 of this chapter for granting extensions of time for making regulatory elections.

Finally, one commenter requested that the rules governing materials and supplies be modified to address the cost of acquiring or producing rotable spare parts that a taxpayer leases to customers in the ordinary course of the taxpayer's leasing business. This commenter requested that the final regulations clarify that these leased rotable spare parts are included in the definition of rotable and temporary spare parts and that a taxpayer may elect to capitalize and depreciate these leased rotable spare parts under the materials and supplies rules. Under the 2011 temporary regulations, the definition of rotable and temporary spare parts includes only components acquired to maintain, repair, or improve a unit of property owned, leased, or serviced by the taxpayer. This definition of rotable and temporary spare parts does not include components that the taxpayer leases to its customers and that are unrelated to other property owned, leased to other parties, or serviced by the taxpayer. The final regulations do not expand the definition of rotable and temporary spare parts to include leased rotable spare parts. The IRS and the Treasury Department believe that these parts are outside the scope of regulations governing materials and supplies.

C. Optional Method for Rotable and Temporary Spare Parts

One commenter requested that the final regulations remove the requirement that the optional method for rotable and temporary spare parts, if elected, be used for all of a taxpayer's rotable and temporary spare parts in the same trade or business. Recognizing that taxpayers may have pools of rotable or temporary parts that are treated differently for financial statement purposes, the final regulations modify this rule. The final regulations provide that a taxpayer that uses the optional method for rotable and temporary spare parts for Federal tax purposes must use the optional method for all of the pools of rotable and temporary spare parts used in the same trade or business for which the optional method is used for the taxpayer's books and records. Thus, a taxpayer generally is not required to use the optional method for those pools of rotable or temporary spare parts for which it does not use the optional method in its books and records for the trade or business. However, if a taxpayer chooses to use the optional method for any pool of rotable or temporary spare parts for which the taxpayer does not use the optional method in its books and records for the trade or business, then the taxpayer must use the optional method for all its pools of rotable and temporary spare parts in that trade or business.

Commenters also requested that the optional method for rotable and temporary spare parts be treated as the default method of accounting for rotable and temporary spare parts, instead of treating rotable and temporary spare parts as used and consumed in the taxable year when disposed. Many taxpayers do not use the optional method of accounting for rotable and temporary spare parts, and that method requires a degree of record keeping that would be overly burdensome for all taxpayers. Therefore, the final regulations do not adopt this suggestion and continue to generally treat rotable and temporary spare parts as materials and supplies that are used and consumed in the taxable year when disposed of by the taxpayer, unless the taxpayer chooses a different treatment under § 1.162–3.

D. Materials and Supplies Under the de Minimis Safe Harbor

There were numerous comments on the application of the de minimis rule provided in the 2011 temporary regulations to materials and supplies under §§ 1.162–3T(f) (election to apply de minimis rule to materials and supplies) and 1.263(a)–2T(g) (general de minimis rule) and the interaction between the two sections. In response to these comments, the final regulations more clearly coordinate the two provisions as addressed below in the discussion of the de minimis safe harbor.

E. Property Treated as Materials and Supplies in Published Guidance

Several commenters questioned the effect of the 2011 temporary regulations on prior published guidance that permits taxpayers to treat certain property as materials and supplies. For example, Rev. Proc. 2002–12 (2002–1 CB 374) allows a taxpayer to treat smallwares as materials and supplies that are not incidental under § 1.162–3. Similarly, Rev. Proc. 2002–28 (2002–1 CB 815) allows a qualifying small business taxpayer to treat certain inventoriable items in the same manner as materials and supplies that are not incidental under § 1.162–3. The final regulations do not supersede, obsolete, or replace these revenue procedures to the extent they deem certain property to constitute materials and supplies under § 1.162–3. This designated property continues to qualify as materials and supplies under the final regulations, because the definition of material and supplies includes property that is identified as materials and supplies in published guidance.

III. Repairs Under § 1.162–4

The 2011 temporary regulations provided that amounts paid for repairs and maintenance to tangible property are deductible if the amounts paid are not required to be capitalized under § 1.263(a)–3. The IRS and the Treasury Department received no comments on this regulation. The final regulations retain the rule from the 2011 temporary regulations. In addition, the final regulations add a cross reference to § 1.263(a)–3(n), the new election to capitalize amounts paid for repair and maintenance consistent with the taxpayer's books and records, discussed later in this preamble.

IV. De Minimis Safe Harbor Under §§ 1.263(a)–1(f) and 1.162–3(f)

A. De Minimis Safe Harbor Ceiling

The 2011 temporary regulations required a taxpayer to capitalize amounts paid to acquire or produce a unit of real or personal property, including the related transaction costs. However, § 1.263(a)–2T(g) provided a de minimis exception permitting a taxpayer to deduct certain amounts paid for tangible property if the taxpayer had an applicable financial statement, had written accounting procedures for expensing amounts paid for such property under specified dollar amounts, and treated such amounts as expenses on its applicable financial statement. Under § 1.263(a)–2T(g)(1)(iv), a taxpayer's de minimis deduction for the taxable year was limited to a ceiling: the greater of (1) 0.1 percent of the taxpayer's gross receipts for the taxable year as determined for Federal income tax purposes, or (2) 2 percent of the taxpayer's total depreciation and amortization expense for the taxable year as determined on the taxpayer's applicable financial statement.

The IRS and the Treasury Department received a significant number of comments addressing the de minimis safe harbor provided in § 1.263(a)–2T(g). Nearly all comments raised concerns about the administrative burden the ceiling would place on taxpayers, noting that taxpayers would be required to keep detailed accounts of amounts that they generally do not track because such amounts are expensed under their financial accounting capitalization policies. Thus, while the ceiling itself could be calculated relatively simply, the financial accounting systems employed by most taxpayers would not allow them to easily determine which costs the de minimis rule applied to and, therefore, whether or not applicable costs exceeded the ceiling. Commenters also pointed out that the operation of the ceiling requirement did not allow taxpayers to anticipate when they had reached the gross receipts or depreciation limitation or to identify assets that would be excluded under the de minimis rule during a taxable year, because the ceiling amount could only be calculated after the end of a taxable year. Commenters also highlighted the complexities inherent in the application of the ceiling requirement for consolidated groups. In many cases, commenters suggested that the administrative burden imposed would outweigh any potential tax benefit. Many commenters suggested that this problem be resolved by removing the ceiling altogether and permitting taxpayers to deduct for Federal income tax purposes amounts properly expensed under their financial accounting policies.

The final regulations adopt commenters' suggestions that the ceiling in the de minimis rule in the 2011 temporary regulations be eliminated and that amounts properly expensed under a taxpayer's financial accounting policies be deductible for tax purposes. To both address taxpayers' concerns and ensure that the de minimis safe harbor in the final regulations requires taxpayers to use a reasonable, consistent methodology that clearly reflects income for Federal income tax purposes, the ceiling in § 1.263(a)–2T(g)(1)(iv) has been replaced with a new safe harbor determined at the invoice or item level and based on the policies that the taxpayer utilizes for its financial accounting books and records. A taxpayer with an applicable financial statement may rely on the de minimis safe harbor under § 1.263(a)–1(f) of the final regulations only if the amount paid for property does not exceed $5,000 per invoice, or per item as substantiated by the invoice. The final regulations provide the IRS and the Treasury Department with the authority to change the safe harbor amount through published guidance.

Commenters also asked that the de minimis safe harbor be expanded to include not only amounts paid for property costing less than a certain dollar amount but also amounts paid for property having a useful life less than a certain period of time. The final regulations adopt this suggestion and provide that the de minimis safe harbor also applies to a financial accounting procedure that expenses amounts paid for property with an economic useful life of 12 months or less as long as the amount per invoice (or item) does not exceed $5,000. Such amounts are deductible under the de minims rule whether this financial accounting procedure applies in isolation or in combination with a financial accounting procedure for expensing amounts paid for property that does not exceed a specified dollar amount. Under either procedure, if the cost exceeds $5,000 per invoice (or item), then the amounts paid for the property will not fall within the de minimis safe harbor. In addition, an anti-abuse rule is provided to aggregate costs that are improperly split among multiple invoices.

B. Taxpayers Without an Applicable Financial Statement

The 2011 temporary regulations did not provide a de minimis safe harbor for taxpayers without an applicable financial statement, but the preamble requested comments addressing alternatives that would provide the IRS and the Treasury Department with assurance that a taxpayer is using a reasonable, consistent methodology that clearly reflects income. One commenter suggested that the definition of applicable financial statement be expanded to include financial statements subject to a compliance review under the rules of the American Institute of Certified Public Accountants' (AICPA) Statement of Standards for Accounting and Review Services. Numerous comments also requested that the de minimis rule be generally expanded to taxpayers without an applicable financial statement.

The final regulations include a de minimis rule for taxpayers without an

applicable financial statement. While careful consideration was given to the suggestion of relying on reviewed financial statements as defined in the AICPA's Statement of Standards for Accounting and Review Services, the final regulations do not adopt this standard. While the AICPA standard for reviewed financial statements ensures that the taxpayer's policies comply with the applicable financial accounting framework, the standard does not contemplate a review of the taxpayer's internal control, fraud risk, or accounting records. Thus, the standard does not provide sufficient assurance to the IRS that such policies are being followed and, accordingly, that the taxpayer is using a reasonable, consistent methodology that clearly reflects its income. However, the final regulations do provide a de minimis safe harbor for taxpayers without an applicable financial statement if accounting procedures are in place to deduct amounts paid for property costing less than a specified dollar amount or amounts paid for property with an economic useful life of 12 months or less. The de minimis safe harbor for taxpayers without an applicable financial statement provides a reduced per invoice (or item) threshold because there is less assurance that the accounting procedures clearly reflect income. A taxpayer without an applicable financial statement may rely on the de minimis safe harbor only if the amount paid for property does not exceed $500 per invoice, or per item as substantiated by the invoice. If the cost exceeds $500 per invoice (or item), then no portion of the cost of the property will fall within the de minimis safe harbor. Similar to the safe harbor for a taxpayer with an applicable financial statement, this provision provides the IRS and the Treasury Department with the authority to change the safe harbor amount through published guidance. In addition, an anti-abuse rule is provided to aggregate costs that are improperly split among multiple invoices.

Finally, for both taxpayers with applicable financial statements and taxpayers without applicable financial statements, the de minimis safe harbor is not intended to prevent a taxpayer from reaching an agreement with its IRS examining agents that, as an administrative matter, based on risk analysis or materiality, the IRS examining agents will not review certain items. It is not intended that examining agents must now revise their materiality thresholds in accordance with the de minimis safe harbor limitations provided in the final regulation. Thus, if examining agents and a taxpayer agree that certain amounts in excess of the de minimis safe harbor limitations are not material or otherwise should not be subject to review, that agreement should be respected, notwithstanding the requirements of the de minimis safe harbor. However, a taxpayer that seeks a deduction for amounts in excess of the amount allowed by the safe harbor has the burden of showing that such treatment clearly reflects income.

C. Safe Harbor Election

Commenters asked whether the de minimis rule in the 2011 temporary regulations was mandatory or elective and, if mandatory, requested a change to make the safe harbor elective. The final regulations adopt these suggestions and provide that the de minimis rule is a safe harbor, elected annually by including a statement on the taxpayer's timely filed original Federal tax return for the year elected. The final regulations provide that, if elected, the de minimis safe harbor must be applied to all amounts paid in the taxable year for tangible property that meet the requirements of the de minimis safe harbor, including amounts paid for materials and supplies that meet the requirements. In addition, the final regulations provide that a taxpayer may not revoke an election to use the de minimis safe harbor. An election to use the de minimis safe harbor may not be made through the filing of an application for change in accounting method.

D. Written Accounting Procedures

The 2011 temporary regulations required that to utilize the de minimis safe harbor, a taxpayer must have written accounting procedures in place at the beginning of the taxable year treating the amounts paid for property costing less than a certain dollar amount as an expense for financial accounting purposes. Commenters suggested that transition guidance be issued for taxpayers that did not have written accounting procedures in place at the beginning of 2012. Alternatively, one commenter suggested that taxpayers be allowed to make the drafting of a written accounting procedure retroactive to the beginning of 2012.

The final regulations do not adopt these suggestions for transition relief. Although the publication of the 2011 temporary regulations late in the calendar year (December 27, 2011) likely prevented taxpayers without written accounting procedures at that time from implementing such procedures prior to the beginning of the 2012 taxable year, the provisions of the 2011 temporary regulations are elective for taxable years beginning prior to January 1, 2014. In addition, the final regulations are not applicable until taxable years beginning on or after January 1, 2014. Therefore, taxpayers without written accounting procedures that choose to elect the de minimis safe harbor for their 2014 taxable years should have sufficient time to consider and draft appropriate procedures prior to the applicability date of the final regulations. Moreover, the de minimis safe harbor is intended to provide recordkeeping simplicity to taxpayers by allowing them to follow an established financial accounting policy for federal tax purposes, and allowing retroactive application is inconsistent with such purpose.

E. Application to Consolidated Group Members

Several comments noted that the rule for use of a consolidated group's applicable financial statement failed to consider situations in which taxpayers are included on a consolidated applicable financial statement but are not members in an underlying consolidated group for Federal income tax purposes. Comments requested that taxpayers in this situation be permitted to rely on the financial policies of the group that apply to them as well as the group's consolidated applicable financial statement to satisfy the requirements of the de minimis rule. The final regulations adopt this suggestion and provide that if a taxpayer's financial results are reported on the applicable financial statement for a group of entities, then the group's applicable financial statement may be treated as the applicable financial statement of the taxpayer. Furthermore, in this situation, the written accounting procedures provided for the group and utilized for the group's applicable financial statement may be treated as the written accounting procedures of the taxpayer.

F. Transaction and Other Additional Costs

The preamble to the 2011 temporary regulations provided that the de minimis rule did not apply to amounts paid for labor and overhead incurred in repairing or improving property. Commenters pointed out that the preamble did not provide any policy reason for excluding labor and overhead costs from the de minimis rule and that the exclusion would require rules to allocate additional invoice costs, such as freight and installation costs, between

tangible property costs and labor and overhead costs, requiring additional recordkeeping by taxpayers. Additionally, one commenter pointed out that the de minimis rule in the 2011 temporary regulations did not expressly provide for an exclusion of labor and overhead costs. Commenters requested that additional costs included on an invoice for tangible property be included within the scope of the de minimis rule.

The final regulations adopt the commenters' suggestions, in part, and clarify the treatment under the de minimis safe harbor of transaction costs and other additional costs of acquiring and producing property subject to the safe harbor. To simplify the application of the de minimis rule to tangible property, the final regulations provide that a taxpayer electing to apply the de minimis safe harbor is not required to include in the cost of the tangible property the additional costs of acquiring or producing such property if these costs are not included in the same invoice as the tangible property. However, the final regulations also provide that a taxpayer electing to apply the de minimis safe harbor must include in the cost of such property all additional costs (for example, delivery fees, installation services, or similar costs) of acquiring or producing such property if these costs are included on the same invoice with the tangible property. If an invoice includes amounts paid for multiple tangible properties and the invoice includes additional invoice costs related to the multiple properties, then the taxpayer must allocate the additional invoice costs to each property using a reasonable method. The final regulations specify that a reasonable allocation method includes, but is not limited to, specific identification, a pro rata allocation, or a weighted average method based on each property's relative cost. The final regulations also clarify that additional costs consist of the transaction costs (that is, the facilitative costs under § 1.263(a)–2(f)) of acquiring or producing the property and the costs under § 1.263(a)–2(d) for work performed prior to the date that the unit of tangible property is placed in service.

G. Materials and Supplies

The IRS and Treasury Department received numerous comments on the application of the de minimis rule to materials and supplies under § 1.162–3T of the 2011 temporary regulations. Under the 2011 temporary regulations, taxpayers were permitted to select materials and supplies to be expensed under the de minimis rule provided that these materials and supplies satisfied all requirements of the de minimis rule, including the ceiling. Many comments raised concerns about the administrative burdens associated with identifying and allocating materials and supplies between the de minimis rule and the general rules for materials and supplies in a manner that would not exceed the de minimis rule ceiling. In many cases, commenters suggested that the administrative burden imposed would outweigh any potential tax benefit. Thus, commenters requested revisions to the de minimis rule to reduce taxpayers' administrative burden of complying with the 2011 temporary regulations.

To simplify application of the de minimis safe harbor, the final regulations require that the de minimis safe harbor be applied to all eligible materials and supplies (other than rotable, temporary, and standby emergency spare parts subject to the election to capitalize or rotable and temporary spare parts subject to the optional method of accounting for such parts) if the taxpayer elects the de minimis safe harbor under § 1.263(a)-1(f). Unlike the 2011 temporary regulations rule permitting taxpayers to select materials and supplies for application of the de minimis safe harbor, the requirement in the final regulations to apply the de minimis safe harbor, if elected, to all eligible materials and supplies simplifies the application of the de minimis rule and reduces the administrative burden on the IRS. Taxpayers that do not elect the de minimis safe harbor provided in the final regulations for the taxable year must treat their amounts paid for materials and supplies in accordance with the rules provided in § 1.162–3.

H. Coordination With Section 263A

Commenters asked for clarification on the interaction of the de minimis rule with section 263A. Several comments asked whether the application of the de minimis rule resulted in property with an unadjusted basis of zero, which would then be subject to section 263A, or, alternatively, whether section 263A required taxpayers to capitalize the cost of property subject to section 263A, regardless of whether the de minimis rule applied.

The final regulations clarify the interaction between the two provisions. The final regulations provide that amounts paid for tangible property eligible for the de minimis safe harbor may, nonetheless, be subject to capitalization under section 263A if the amounts paid for this tangible property comprise the direct or allocable indirect costs of other property produced by the taxpayer or property acquired for resale.

In general, under section 263A, if property is held for future production, taxpayers must capitalize direct and indirect costs allocable to such property (for example, purchasing, storage, and handling costs), even though production has not begun. If property is not held for production, indirect costs incurred prior to the beginning of the production period must be allocated to the property and capitalized if, at the time the costs are incurred, it is reasonably likely that production will occur at some future date. Thus, for example, a manufacturer must capitalize the costs of storing and handling raw materials before the raw materials are committed to production. In addition, § 1.263A–1T(e)(2)(i) provides that indirect material costs include the cost of materials that are not an integral part of specific property produced and the cost of materials that are consumed in the ordinary course of performing production or resale activities that cannot be identified or associated with particular units of property.

Therefore, if tangible property is acquired with the expectation of being used in the production of other property, and it is reasonably likely that production will occur at some future date, section 263A may apply to capitalize the cost of the property acquired. Thus, for example, if a taxpayer acquires a component part, the cost of which is otherwise eligible for the de minimis safe harbor, but the component part is installed, or expected to be installed in the future, in the taxpayer's manufacturing equipment used to produce property for sale, under section 263A, the cost of the component part must be capitalized as an indirect cost of property produced by the taxpayer. On the other hand, if property is acquired without the expectation of being used in the production of property and the taxpayer elects and properly applies the de minimis rule to the amount paid for property in the taxable year, if expectations change in a subsequent taxable year and the property is actually used in production, then section 263A will not require capitalization of the cost of the property at the time the expectation changes or when the property is used in production.

I. Change in Accounting Procedures Not Change in Method of Accounting

Several commenters questioned whether a change in a taxpayer's financial accounting procedures (for example, its financial accounting capitalization policy) is a change in

method of accounting for de minimis expenses to which the provisions of sections 446 and 481 and the accompanying regulations apply. The final regulations provide that the use of the de minimis safe harbor is a taxable year election and may not be made by the filing of an application for a change in method of accounting. Thus, if a taxpayer meets the requirements for the safe harbor, which requires, in part, having written accounting procedures in place at the beginning of the taxable year and treating amounts paid for property as an expense in accordance with those procedures, then a change in the procedures, by itself, is not a change in accounting method. For example, if a taxpayer's written financial accounting capitalization policy at the beginning of 2014 states that amounts paid for property costing less than $200 will be treated as an expense, and the taxpayer changes its written policy as of the beginning of 2015 to treat amounts paid for property costing less that $500 as an expense, the taxpayer is not required to file an application for its 2015 taxable year to change its method of accounting for applying the de minimis safe harbor or determining amounts paid to acquire or produce tangible property under § 1.263(a)–1(f).

V. Amounts Paid To Acquire or Produce Tangible Property Under § 1.263(a)–2

Section 1.263(a)–2T of the 2011 temporary regulations provided rules for applying section 263(a) to amounts paid to acquire or produce a unit of real or personal property. In general, the final regulations retain the rules from the 2011 temporary regulations, including general requirements to capitalize amounts paid to acquire or produce a unit of real or personal property, requirements to capitalize amounts paid to defend or perfect title to real or personal property, and rules for determining the extent to which taxpayers must capitalize transaction costs related to the acquisition of property. In the final regulations, the de minimis safe harbor has been moved to § 1.263(a)–1(f) to reflect its broader application to amounts paid for tangible property, including amounts paid for improvements and materials and supplies, except as otherwise provided under section 263A.

The 2011 temporary regulations provided that a taxpayer must, in general, capitalize amounts paid to facilitate the acquisition or production of real or personal property. To alleviate controversy between taxpayers and the IRS, the 2011 temporary regulations included a list of inherently facilitative amounts. In addition, the 2011 temporary regulations provided that costs relating to activities performed in the process of determining whether to acquire real property and which real property to acquire generally are deductible pre-decisional costs unless they are described in the regulations as inherently facilitative costs. The 2011 temporary regulations also provided that inherently facilitative amounts allocable to real or personal property are capital expenditures related to such property, even if such property is not eventually acquired or produced.

Commenters requested that the requirement to capitalize facilitative costs be removed as overbroad. Commenters also stated that it was inappropriate to provide a special rule that depends on the nature of the property acquired (real property or personal property) and inappropriate to require capitalization of inherently facilitative amounts allocable to property not acquired. Other commenters recommended that the list describing inherently facilitative amounts be revised to exclude activities that are dependent on the type of service provider (for example, a broker), rather than being based on a specific activity (for example, securing an appraisal). One commenter asked for clarification regarding the treatment of a broker's commission if the commission was contingent on the buyer's successful acquisition of real property but a portion of the broker's activities were performed in investigating the acquisition.

The final regulations generally retain the 2011 temporary regulation rules addressing facilitative amounts. As in the 2011 temporary regulations, the final regulations include the special rule for the acquisition of real property providing that, except for amounts specifically identified as inherently facilitative, an amount paid by a taxpayer in the process of investigating or otherwise pursuing the acquisition of real property does not facilitate the acquisition if it relates to activities performed in the process of determining whether to acquire real property and which real property to acquire. The final regulations do not expand the deduction of such pre-decisional, investigatory costs to personal property because, unlike real property acquisitions, personal property acquisitions do not typically raise issues of whether the transaction costs should be characterized as deductible business expansion costs rather than costs to acquire a specific property. In addition, personal property acquisitions do not typically provide clear evidence establishing the timing of decisions. Thus, such a rule could generate significant controversy over unduly small amounts.

Moreover, the final regulations retain the list of inherently facilitative costs that generally must be capitalized as transaction costs. However, in response to comments, the final regulations clarify the meaning of finders' fees and brokers' commissions and provide a definition of contingency fees. The final regulations provide that for purposes of § 1.263(a)–2, a contingency fee is an amount paid that is contingent on the successful closing of the acquisition of real or personal property. The final regulations also clarify that contingency fees facilitate the acquisition of the property ultimately acquired and are not allocable to real or personal property not acquired. Therefore, if a real estate broker's commission is contingent on the successful closing of the acquisition of real property, the amount paid as the broker's commission inherently facilitates the acquisition of the property acquired and, therefore, must be capitalized as part of the basis of such property. However, no portion of the broker's contingency fee is allocable to real property that the taxpayer did not acquire. In addition, the final regulations retain the rule that inherently facilitative amounts allocable to real or personal property are capital expenditures related to such property, even if such property is not eventually acquired or produced. As discussed in the preamble to the 2008 proposed regulations, the IRS and the Treasury Department believe that this rule is consistent with established authorities. See, for example, *Sibley, Lindsay & Curr Co.* v. *Commissioner,* 15 T.C. 106 (1950), *acq.,* 1951–1 CB 3. The final regulations also clarify that, except for contingency fees as discussed above, inherently facilitative amounts allocable to property not acquired may be allocated to those properties and recovered in accordance with the applicable provisions of the Code, including sections 165, 167, and 168.

VI. Amounts Paid To Improve Property Under § 1.263(a)–3

A. Overview

Comments received with respect to the rules under the 2011 temporary regulations for determining whether an amount improves, betters, or restores property largely focused on the application of the rules to building property, the lack of a safe harbor for routine maintenance for building property, the standards to be applied in determining whether a betterment has

occurred, the treatment of post-casualty expenditures under the restoration standards, and the standards to be applied in determining whether a replacement of a major component or substantial structural part has occurred.

The final regulations generally retain the rules of the 2011 temporary regulations for determining the unit of property and for determining whether there is an improvement to a unit of property. The final regulations also retain the simplifying conventions set out in the 2011 temporary regulations, including the routine maintenance safe harbor and the optional regulatory accounting method. In addition, in response to the comments, the final regulations modify the 2011 temporary regulations in several areas. The concerns raised by commenters and the relevant changes to the 2011 temporary regulations are discussed in this preamble.

B. Determining the Unit of Property

The 2011 temporary regulations generally defined the unit of property as consisting of all the components of property that are functionally interdependent, but provided special rules for determining the unit of property for buildings, plant property, and network assets. The 2011 temporary regulations also provided special rules for determining the units of property for condominiums, cooperatives, and leased property, and for the treatment of improvements (including leasehold improvements). The final regulations retain the unit of property rules contained in the 2011 temporary regulations.

The 2011 temporary regulations generally defined a building as a unit of property, but required the application of the improvement standards to the building structure and the enumerated building systems. A number of comments objected to the requirement that the taxpayer perform the improvement analysis at the building structure and system level. The comments stated that such treatment is inconsistent with the treatment of other complex property under the 2011 temporary regulations, is inconsistent with the treatment of building property under depreciation rules, and fails to take into account the relative importance of the various building systems. Several comments requested that the building, including its structural components, should be treated as the unit of property for applying the improvement rules to buildings. Other commenters pointed out that a functional interdependence standard, used in the 2011 temporary regulations for non-building property and applied by the courts and the IRS for determining when components of a single property are placed in service for cost recovery purposes, may be a more consistent general standard for identifying the relevant property upon which to apply the improvement analysis.

Like plant property, buildings are complex properties composed of numerous component parts that perform discrete and major functions or operations. Unlike plant property, however, where the discrete and major functions or operations are not consistent from plant to plant, the discrete and major functions or operations performed from building to building are frequently similar. The building system definitions set forth in the 2011 temporary regulations are based on well understood costing standards that have been routinely applied to buildings for many years for valuations, cost accounting, and financial reporting. To help ensure that the improvement standards are applied equitably and consistently across building property, the final regulations continue to apply the improvement rules to both the building structure and the defined building systems. To the extent the particular facts and circumstances of a subset of buildings used in one or more industries present unique challenges to application of the building structure or building system definitions, taxpayers are encouraged to request guidance under the Industry Issue Resolution (IIR) procedures.

C. Unit of Property for Leasehold Improvements

The 2011 temporary regulations provide rules for determining the unit of property for leased property and for determining the unit of property for leasehold improvements. The IRS and the Treasury Department received no written comments on these rules, and the final regulations retain the rules from the 2011 temporary regulations, with some clarifications. Under the rule in the 2011 temporary regulations, a question could arise regarding the property to be analyzed for determining whether an improvement to a lessee improvement constitutes an improvement to the lessee's property. In this context, the 2011 temporary regulations suggested that the taxpayer must determine whether there has been an improvement to the lessee improvement by itself, rather than by applying the improvement standards to the general unit of property rules for leased buildings or for leased property other than buildings. The final regulations clarify that for purposes of determining whether an amount paid by a lessee constitutes a leasehold improvement, the unit of property and the improvement rules are applied in accordance with the rules for leased buildings (or leased portions of building) under § 1.263(a)–3(e)(2)(v) or for leased property other than buildings under § 1.263(a)–3(e)(3)(iv). Thus, for example, if a lessee pays an amount for work on an addition that it previously made to a leased building, the taxpayer determines whether the work performed constitutes an improvement to the entire leased building structure, not merely to the addition. The final regulations also clarify that when a lessee or lessor improvement is comprised of a building erected on leased property, then the unit of property for the building and the application of the improvement rules are determined under the provisions for buildings, rather than under the provisions for leased buildings.

D. Special Rules for Determining Improvement Costs

1. Costs Incurred During an Improvement

The 2011 temporary regulations did not prescribe rules related to the ''plan of rehabilitation'' doctrine as traditionally described in the case law. The judicially-created plan of rehabilitation doctrine provides that a taxpayer must capitalize otherwise deductible repair or maintenance costs if they are incurred as part of a general plan of rehabilitation, modernization, and improvement to the property. See, for example, *Moss* v. *Commissioner,* 831 F.2d 833 (9th Cir. 1987); *United States* v. *Wehrli,* 400 F.2d 686 (10th Cir. 1968); *Norwest Corp.* v. *Commissioner,* 108 T.C. 265 (1997). The 2011 temporary regulations did not restate the plan of rehabilitation doctrine but, rather, used the language of the section 263A rule providing that a taxpayer must capitalize both the direct costs of an improvement as well as the indirect costs that directly benefit or are incurred by reason of the improvement. The 2011 temporary regulations also included an exception to this provision for an individual residence, which permitted an individual taxpayer to capitalize repair and maintenance costs incurred at the time of a substantial residential remodel.

The final regulations retain the rules from the 2011 temporary regulations and continue to provide that indirect costs, such as repair and maintenance costs, that do not directly benefit and that are not incurred by reason of an improvement are not required to be

capitalized under section 263(a), regardless of whether they are incurred at the same time as an improvement. In addition, in response to comments requesting examples of the application of this standard, the final regulations add this analysis to several examples. By providing a standard based on the section 263A language, the final regulations set out a clear rule for determining when otherwise deductible indirect costs must be capitalized as part of an improvement to property and obsolete the plan of rehabilitation doctrine to the extent that the court-created doctrine provides different standards.

2. Removal Costs

The 2011 temporary regulations did not provide a separate rule for the treatment of removal costs. Rather, the 2011 temporary regulations addressed component removal costs as an example of a type of indirect cost that must be capitalized if the removal costs directly benefit or are incurred by reason of an improvement. The preamble to the 2011 temporary regulations stated that the costs of removing a component of a unit of property should be analyzed in the same manner as any other indirect cost (such as a repair cost) incurred during a repair or an improvement to property. Therefore, the preamble concluded, if the cost of removing a component of a unit of property directly benefitted or was incurred by reason of an improvement to the unit of property, the cost must be capitalized. The preamble to the 2011 temporary regulations also noted that the 2011 temporary regulations were not intended to affect the holding of Rev. Rul. 2000–7 (2000–1 CB 712) as it applied to the cost of removing an entire unit of property. Under Rev. Rul. 2000–7, a taxpayer is not required to capitalize the cost of removing a retired depreciable asset under section 263(a) or section 263A, even when the retirement and removal occur in connection with the installation of a replacement asset. Rev. Rul. 2000–7 reasoned that the costs of removing a depreciable asset generally have been allocable to the removed asset and, thus, generally have been deductible when the asset is retired. See §§ 1.165–3(b); 1.167(a)–1(c); 1.167(a)–11(d)(3)(x); Rev. Rul. 74–455 (1974–2 CB 63); Rev. Rul. 75–150 (1975–1 CB 73).

Commenters acknowledged the preamble language but observed that the 2011 temporary regulations did not explicitly state that the costs incurred to remove an entire unit of property are not required to be capitalized, even when incurred in connection with the installation of a replacement asset. Commenters requested that the final regulations include this explicit conclusion. Commenters also asked whether the principles of Rev. Rul. 2000–7 would apply to allow the deduction of removal costs when the taxpayer disposes of a component of a unit of property and the taxpayer takes into account the adjusted basis of the component in realizing loss. Commenters also questioned whether a taxpayer would be required to capitalize component removal costs if these costs were an indirect cost of a restoration (for example, the replacement of a component when the taxpayer has properly deducted a loss for that component) rather than a betterment to the underlying unit of property.

The final regulations provide a specific rule clarifying the treatment of removal costs in these contexts. The final regulations state that if a taxpayer disposes of a depreciable asset (including a partial disposition under Prop. Reg. § 1.168(i)–1(e)(2)(ix) September 19, 2013, or Prop. Reg. § 1.168(i)–8(d) (September 19, 2013)) for Federal tax purposes and has taken into account the adjusted basis of the asset or component of the asset in realizing gain or loss, the costs of removing the asset or component are not required to be capitalized under section 263(a). The final regulations also provide that if a taxpayer disposes of a component of a unit of property and the disposal is not a disposition for Federal tax purposes, then the taxpayer must deduct or capitalize the costs of removing the component based on whether the removal costs directly benefit or are incurred by reason of a repair to the unit of property or an improvement to the unit of property. In addition, the final regulations provide several examples illustrating these principles.

E. Safe Harbor for Small Taxpayers

The 2011 temporary regulations did not provide any special rules for small taxpayers to assist them in applying the general rules for improvements to buildings. One commenter stated that small taxpayers generally do not have the administrative means or sufficient documentation or information to apply the improvement rules to their building structures and systems as required under the 2011 temporary regulations. Therefore, the commenter requested that an annual dollar threshold, such as $10,000, be established for buildings with an initial cost of $1,000,000 or less and that taxpayers be permitted to deduct annual amounts spent on the building if they did not exceed the threshold amount. In response to this request, the final regulations include a safe harbor election for building property held by taxpayers with gross receipts of $10,000,000 or less (''a qualifying small taxpayer''). The final regulations permit a qualifying small taxpayer to elect to not apply the improvement rules to an eligible building property if the total amount paid during the taxable year for repairs, maintenance, improvements, and similar activities performed on the eligible building does not exceed the lesser of $10,000 or 2 percent of the unadjusted basis of the building. Eligible building property includes a building unit of property that is owned or leased by the qualifying taxpayer, provided the unadjusted basis of the building unit of property is $1,000,000 or less. The final regulations provide the IRS and the Treasury Department with the authority to adjust the amounts of the safe harbor and gross receipts limitations through published guidance. The final regulations provide simple rules for determining the unadjusted basis of both owned and leased building units of property. In this situation, the final regulations also eliminate the need to separately analyze the building structure and the building systems, as required elsewhere in the improvement rules in the final regulations.

Under the safe harbor for small taxpayers, a taxpayer includes amounts not capitalized under the de minimis safe harbor election of § 1.263(a)–1(f) and under the routine maintenance safe harbor for buildings (discussed later in this preamble) to determine the annual amount paid for repairs, maintenance, improvements, and similar activities performed on the building. If the amount paid for repairs, maintenance, improvements, and similar activities performed on a building unit of property exceeds the safe harbor threshold for a taxable year, then the safe harbor is not applicable to any amounts spent during the taxable year. In that case, the taxpayer must apply the general rules for determining improvements, including the routine maintenance safe harbor for buildings. The taxpayer may also elect to apply the de minimis safe harbor under § 1.263(a)–1(f) to amounts qualifying under the de minimis safe harbor, regardless of the application of the safe harbor for small taxpayers.

The safe harbor for building property held small taxpayers may be elected annually on a building-by-building basis by including a statement on the taxpayer's timely filed original Federal tax return, including extensions, for the year the costs are incurred for the building. Amounts paid by the taxpayer

to which the taxpayer properly applies and elects the safe harbor are not treated as improvements to the building under § 1.263(a)–3 and may be deducted under § 1.162–1 or § 1.212–1, as applicable, in the taxable year that the amounts are paid or incurred, provided the amounts otherwise qualify for deduction under those sections. A taxpayer may not revoke an election to apply the safe harbor for small taxpayers.

F. Safe Harbor for Routine Maintenance

1. Buildings

The 2011 temporary regulations provided that the costs of performing certain routine maintenance activities for property other than a building or the structural components of a building are not required to be capitalized as an improvement. Under the routine maintenance safe harbor, an amount paid was deemed not to improve a unit of property if it was for the recurring activities that a taxpayer (or a lessor) expected to perform as a result of the taxpayer's (or the lessee's) use of the unit of property to keep the unit of property in its ordinarily efficient operating condition. The 2011 temporary regulations provided that the activities are routine only if, at the time the unit of property was placed in service, the taxpayer reasonably expected to perform the activities more than once during the period prescribed under sections 168(g)(2) and 168(g)(3) (the Alternative Depreciation System class life), regardless of whether the property was depreciated under the Alternative Depreciation System. The preamble to the 2011 temporary regulations explained that the routine maintenance safe harbor did not apply to building property, because the long class life for such property (40 years under section 168(g)(2)) arguably could allow major remodeling or restoration projects to be deducted under the safe harbor, regardless of the nature or extent of the work involved, and that deducting such costs would be inconsistent with case law. The 2011 temporary regulations provided several factors for taxpayers to consider in determining whether a taxpayer is performing routine maintenance, including the recurring nature of the activity, industry practice, manufacturers' recommendations, the taxpayer's experience, and the taxpayer's treatment of the activity on its applicable financial statement.

Comments on the routine maintenance safe harbor generally requested that the safe harbor be extended to building property. One commenter stated that because the improvement standards under the 2011 temporary regulations must now be applied to the building structure and each building system separately, these components are more analogous to section 1245 property, which qualifies for the routine maintenance safe harbor. Commenters suggested that using a period shorter than a building's class life, such as 20 years, could alleviate the IRS and the Treasury Department's concern that the cost of true improvements would not be properly capitalized if the safe harbor were extended to buildings. Another commenter argued that the distinction between building property and non-building property for purposes of the safe harbor is arbitrary because, in many respects, retail buildings are similar to other complex property, such as aircraft, which are not excluded from the safe harbor.

In response to these comments, the final regulations contain a safe harbor for routine maintenance for buildings. The inclusion of a routine maintenance safe harbor for buildings is expected to alleviate some of the difficulties that could arise in applying the improvement standards for certain restorations to building structures and building systems. To balance commenters' suggestions of using a shorter period, such as 20 years, with the concerns expressed in the preamble to the 2011 temporary regulations, the final regulations use 10 years as the period of time in which a taxpayer must reasonably expect to perform the relevant activities more than once. While periods longer than 10 years were considered, the use of a period much longer than 10 years would, contrary to current authority, permit the costs of many major remodeling and restoration projects to be deducted under the safe harbor, regardless of the nature or extent of the work involved.

2. Other Changes

The final regulations make several additional changes and clarifications to the safe harbor for routine maintenance, which are applicable to both buildings and other property. First, the regulations confirm that routine maintenance can be performed any time during the life of the property provided that the activities qualify as routine under the regulation. Second, for purposes of determining whether a taxpayer is performing routine maintenance, the final regulations remove the taxpayer's treatment of the activity on its applicable financial statement from the factors to be considered. Taxpayers may have several different reasons for capitalizing maintenance activities on their applicable financial statements, and such treatment may not be indicative of whether the activities are routine. Third, the final regulations clarify the applicability of the routine maintenance safe harbor by adding three items to the list of exceptions from the routine maintenance safe harbor: (1) Amounts paid for a betterment to a unit of property, (2) amounts paid to adapt a unit of property to a new or different use, and (3) amounts paid for repairs, maintenance, or improvement of network assets. The first two exceptions were included in the general rule for the safe harbor in the 2011 temporary regulations, but were not clearly stated as exceptions. The exception for network assets was added because of the difficulty in defining the unit of property for network assets and the preference for resolving issues involving network assets through the IIR program. Finally, the exception relating to amounts paid for property for which a taxpayer has taken a basis adjustment resulting from a casualty loss is slightly modified to be consistent with the revised casualty loss restoration rule, which is discussed in this preamble.

3. Reasonable Expectation That Activities Will Be Performed More Than Once

A taxpayer's reasonable expectation of whether it will perform qualifying maintenance activities more than once during the relevant period will be determined at the time the unit of property (or building structure or system, as applicable) is placed in service. The final regulations modify the safe harbor for routine maintenance by adding that a taxpayer's expectation will not be deemed unreasonable merely because the taxpayer does not actually perform the maintenance a second time during the relevant period, provided that the taxpayer can otherwise substantiate that its expectation was reasonable at the time the property was placed in service. Thus, for a unit of property previously placed in service, whether the maintenance is actually performed more than once during the relevant period is not controlling for assessing the reasonableness of a taxpayer's original expectation. However, if a similar or identical unit of property is placed in service in a future tax year, the taxpayer's experience with the original property may be taken into account as a factor in assessing whether the taxpayer reasonably expects to perform the activities more than once during the relevant period for the similar or identical unit of property. The taxpayer's actual experience, therefore, may be used in assessing the

reasonableness of the taxpayer's expectation of the frequency of restoration or replacement at the time a new unit of property is placed in service, but hindsight should not be used to invalidate a taxpayer's reasonable expectation as established at the time the unit of property was first placed in service when subsequent events do not conform to the taxpayer's reasonable expectation.

4. Amounts Not Qualifying for the Routine Maintenance Safe Harbor

The final regulations clarify that amounts incurred for activities falling outside the routine maintenance safe harbor are not necessarily expenditures required to be capitalized under § 1.263(a)–3. Amounts incurred for activities that do not meet the routine maintenance safe harbor are subject to analysis under the general rules for improvements.

G. Betterments

1. Overview

The 2011 temporary regulations provided that an amount paid results in a betterment, and accordingly, an improvement, if it (1) ameliorates a material condition or defect that existed prior to the acquisition of the property or arose during the production of the property; (2) results in a material addition to the unit of property (including a physical enlargement, expansion, or extension); or (3) results in a material increase in the capacity, productivity, efficiency, strength, or quality of the unit of property or its output. As applied to buildings, an amount results in a betterment to the building if it results in a betterment to the building structure or any of the building systems.

The final regulations retain the provisions of the 2011 temporary regulations related to betterments with several refinements. Specifically, the final regulations reorganize and clarify the types of activities that constitute betterments to property. Also, the final regulations no longer phrase the betterment test in terms of amounts that *result in* a betterment. Rather, the final regulations provide that a taxpayer must capitalize amounts that are reasonably expected to materially increase the productivity, efficiency, strength, quality, or output of a unit of property or that are for a material addition to a unit of property. Elimination of the ''results in'' standard should reduce controversy for expenditures that span more than one tax year or when the outcome of the expenditure is uncertain when the expenditure is made.

2. Amelioration of Material Condition or Defect

Commenters requested that certain examples be clarified to distinguish more clearly between circumstances that require capitalization of amounts paid to ameliorate a material condition or defect and circumstances that do not require capitalization. One commenter requested that the final regulations include a rule that would provide for an allocation of expenditures between pre- and post-acquisition periods based on facts and circumstances if an expenditure both ameliorates a pre-existing condition and ameliorates normal wear and tear that results from the taxpayer's use of the property. With respect to whether amounts paid to ameliorate conditions are betterments, other comments reiterated suggestions provided in response to the 2008 proposed regulations, as described in the preamble to the 2011 temporary regulations.

The final regulations do not adopt the comments with respect to expenditures to ameliorate pre-existing conditions or defects. The facts and circumstances rule provided in the final regulations is consistent with established case law and represents an administrable standard for determining whether an improvement has occurred.

3. Material Addition or Increase in Productivity, Efficiency, Strength, Quality, or Output

Many commenters requested that the final regulations provide explanations and quantitative bright lines for determining the materiality of an addition to a unit of property or an increase in capacity, productivity, efficiency, strength, quality, or output of a unit of property. Additionally, commenters requested more explanation of terms such as productivity, quality, and output, and how such standards should be applied across a variety of different types of tangible property.

These suggestions were extensively considered, but the final regulations do not adopt the suggestions to establish quantitative bright lines. Quantitative bright lines, although objective, would produce inconsistent results given the broad array of factual settings where the betterment rules apply. Instead, the final regulations continue to rely on qualitative factors to provide fair and equitable treatment for all taxpayers in determining whether a particular cost constitutes a betterment.

The final regulations clarify, however, that not every single quantitative or qualitative factor listed in the betterment standard applies to every type of property. Whether any single factor applies to a particular unit of property depends on the nature of the property. For example, while amounts paid for work performed on an office building or a retail building may clearly comprise a physical enlargement or increase the capacity, efficiency, strength, or quality of such building under certain facts, it is unclear how to measure whether work performed on an office building or retail building increases the productivity or output of such buildings, as those terms are generally understood. Thus, the productivity and output factors would not generally apply to buildings. On the other hand, it is appropriate to evaluate many items of manufacturing equipment in terms of output or productivity as well as size, capacity, efficiency, strength, and quality. Accordingly, the final regulations clarify that the applicability of each quantitative and qualitative factor depends on the nature of the unit of property, and if an addition or increase in a particular factor cannot be measured in the context of a specific type of property, then the factor is not relevant in determining whether there has been a betterment to the property.

4. Application of Betterment Rule

Several commenters questioned the betterment rule in the 2011 temporary regulations that requires consideration of all facts and circumstances, including the treatment of the expenditures on a taxpayer's applicable financial statement. One commenter questioned whether the treatment of an expenditure on a taxpayer's applicable financial statement should be relevant in determining whether an amount paid results in a betterment and suggested removal of this factor from the facts and circumstances test provided in the 2011 temporary regulations. The IRS and the Treasury Department recognize that taxpayers may apply different standards for capitalizing amounts on their applicable financial statements and such standards may not be controlling for whether the activities are betterments for Federal tax purposes. Thus, the final regulations remove the taxpayer's treatment of the expenditure on its financial statement as a factor to be considered in performing a betterment analysis under the final regulations. In addition, the final regulations omit the reference to the taxpayer's facts and circumstances in determining whether amounts are paid for a betterment to the taxpayer's property. The IRS and the Treasury Department believe that an analysis of a taxpayer's particular facts and

circumstances is implicit in the application of all the final regulations governing improvements and need not be specifically provided in the application of the betterment rules.

The 2011 temporary regulations provided that, when an expenditure is necessitated by a particular event, the determination of whether an expenditure is for the betterment of a unit of property is made by comparing the condition of the property immediately after the expenditure with the condition of the property immediately prior to the event necessitating the expenditure. The IRS and the Treasury Department received comments requesting that the final regulations clarify the application of the appropriate comparison rule for determining whether an expenditure is for a betterment of a unit of property. The final regulations retain this general rule but clarify that the rule applies when the event necessitating the expenditure is either normal wear and tear or damage to the unit of property during the taxpayer's use of the property. Thus, the final regulations clarify that the appropriate comparison rule focuses on events affecting the condition of the property and not on business decisions made by taxpayers. In addition, the final regulations confirm that the rule does not apply to wear, tear, or damage that occurs prior to the taxpayer's acquisition or use of the property. In these situations, the amelioration of a material condition or defect rule may apply.

5. Retail Store Refresh or Remodels

A substantial number of comments were received with respect to the betterment examples in the 2011 temporary regulations that address retail store refresh or remodel projects, requesting the addition of quantitative bright lines and the inclusion of additional detail in the examples.

As discussed previously in this preamble, the final regulations do not adopt the suggestions to provide quantitative bright lines in applying the betterment rules. However, the final regulations include additional detail in a number of the examples, including the examples related to building refresh or remodels, illustrating distinctions between betterments and maintenance activities when a taxpayer undertakes multiple simultaneous activities on a building. To the extent the rules in the final regulations present situations that might be addressed through the IIR program, taxpayers may pursue additional guidance through the IIR process.

H. Restorations

1. Overview

The 2011 temporary regulations provided that an amount is paid to restore, and therefore improve, a unit of property if it meets one of six tests: (1) it is for the replacement of a component of a unit of property and the taxpayer has properly deducted a loss for that component (other than a casualty loss under § 1.165–7); (2) it is for the replacement of a component of a unit of property and the taxpayer has properly taken into account the adjusted basis of the component in realizing gain or loss resulting from the sale or exchange of the component; (3) it is for the repair of damage to a unit of property for which the taxpayer has properly taken a basis adjustment as a result of a casualty loss under section 165, or relating to a casualty event described in section 165 (''casualty loss rule''); (4) it returns the unit of property to its ordinarily efficient operating condition if the property has deteriorated to a state of disrepair and is no longer functional for its intended use; (5) it results in the rebuilding of the unit of property to a like-new condition after the end of its class life; or (6) it is for the replacement of a major component or a substantial structural part of the unit of property (''major component rule'').

The IRS and the Treasury Department received a number of comments regarding the 2011 temporary regulations restoration rules. The final regulations generally retain the restoration standards set forth in the 2011 temporary regulations but revise both the major component rule and the casualty loss rule in response to comments.

2. Replacement of a Major Component or Substantial Structural Part

a. Definition of Major Component and Substantial Structural Part

The 2011 temporary regulations provided that an amount paid for the replacement of a major component or substantial structural part of a unit of property is an amount paid to restore (and, therefore, improve) the unit of property. The determination of whether a component or part was ''major'' or ''substantial'' depended on the facts and circumstances, including both qualitative and quantitative factors.

Commenters expressed concern that the lack of a bright-line test or additional definitions would result in uncertainty and disputes in applying the restoration rules contained in the 2011 temporary regulations. Several commenters stated that the standards provided in the 2011 temporary regulations were too subjective, and numerous commenters requested that the final regulations reintroduce a bright-line definition of what constitutes a major component or substantial structural part for purposes of applying the restoration standards, particularly with regard to buildings. Several commenters suggested that a fixed percentage of a building should be defined as the major component. In addition, commenters asked for clarifying guidance or more examples, arguing that the major component test of the 2011 temporary regulations uses broad, undefined, and subjective terms.

The final regulations retain the substantive rules of the 2011 temporary regulations, but clarify the definition of major component, and, more significantly, add a new definition for major components and substantial structural parts of buildings. Although the IRS and the Treasury Department considered several bright-line tests, none were found to fairly, equitably, and in a readily implementable manner distinguish between expenditures that constitute restorations and expenditures that constitute deductible repairs or maintenance consistent with the case law and administrative rulings in the area.

In many cases, particularly with regard to buildings, establishing a clear threshold, such as 30 percent of a defined amount, would be unworkable. Largely due to the complex nature of the property involved and the fact that units of property include assets placed in service in multiple taxable years, applying a fixed percentage to a building structure or a building system in a way that creates a consistent and equitable result proved exceedingly intricate and complex, thereby failing to achieve the simplifying objective of a bright line test. The final regulations, therefore, do not adopt any of the bright-line tests suggested.

b. General Rule for Major Component and Substantial Structural Part

To provide additional guidance for determining what constitutes a major component or substantial structural part, the final regulations clarify the distinction between a major component and a substantial structural part. Specifically, the final regulations separate ''major component,'' which focuses on the function of the component in the unit of property, from ''substantial structural part,'' which focuses on the size of the replacement component in relation to the unit of property. The final regulations define a major component as a part or

combination of parts that performs a discrete and critical function in the operation of the unit of property. The final regulations define a substantial structural part as a part or combination of parts that comprises a large portion of the physical structure of the unit of property.

In response to comments, the final regulations retain, but also clarify, the exception to the major component rule. The 2011 temporary regulations provided that the replacement of a minor component, even though such component might affect the function of the unit of property, generally would not, by itself, constitute a major component. The exception was meant to apply to relatively minor components, such as a switch, which generally performs a discrete function (turning property on and off) and is critical to the operation of a unit of property (that is, property will not run without it). To provide additional clarification regarding this exception, the final regulations clarify that an incidental component of a unit of property, even though such component performs a discrete and critical function in the operation of the unit of property, generally will not, by itself, constitute a major component.

c. Major Component and Substantial Structural Part of Buildings

The final regulations address the request for additional clarity regarding the definition of major component for buildings by adding a new definition for major components and substantial structural parts of buildings. In the case of buildings, the final regulations provide that an amount is for the replacement of a major component or substantial structural part if the replacement includes a part or combination of parts that (1) comprises a major component or a significant portion of a major component of the building structure or any building system, or (2) comprises a large portion of the physical structure of the building structure or any building system.

While the definition of major component for buildings introduces an additional level of analysis (a significant portion of a major component) that must be applied in determining whether an amount spent on a building constitutes a restoration, the rule provides an analytical framework and reaches conclusions that are generally consistent with the case law. Therefore, in practice this framework should be readily applicable for amounts spent on buildings. In combination with the addition of a routine maintenance safe harbor for buildings, the modifications to the section 168 disposition regulations, the safe harbor for small taxpayers, and the addition and revision of many examples, the revised definition of major component for buildings should relieve much of the controversy in determining whether the replacement of a major component or a substantial structural part of a unit of property is an amount paid to restore a building.

3. Casualty Loss Rule

The 2011 temporary regulations provided that an amount is paid to restore a unit of property if it is for the repair of damage to the unit of property for which the taxpayer has properly taken a basis adjustment as a result of a casualty loss under section 165, or relating to a casualty event described in section 165 (''casualty loss rule''). Capitalization of restoration costs is required under the casualty loss rule, even when the amounts paid for the repair exceed the adjusted basis remaining in the property and regardless of whether the amounts may otherwise qualify as repair costs. The 2011 temporary regulations recognized a taxpayer's ability to deduct a casualty loss under section 165 or, to the extent eligible, to deduct the repair expense associated with the casualty damage. But the 2011 temporary regulations did not permit a taxpayer to deduct both amounts arising from the same event in the same taxable year.

Commenters requested that the final regulations eliminate the casualty loss rule. Commenters argued that recognition of a casualty loss under section 165 is irrelevant in determining whether the costs to restore the damage resulting from a casualty should be capitalized, and the 2011 temporary regulations should not deny one tax benefit (the ability to deduct repair costs) based on a taxpayer's realization of another tax benefit (the ability to deduct a casualty loss). Similarly, commenters argued that the Code allows both a casualty loss and a repair deduction, and the IRS and the Treasury Department had not offered any justification for denying a deduction for the cost to repair damaged property only because the taxpayer has taken a casualty loss deduction. Commenters argued that the 2011 temporary regulations penalize taxpayers that have suffered a casualty as a result of property damage. Commenters suggested that the casualty loss rule in the 2011 temporary regulations results in similarly situated taxpayers being treated differently, based on whether an asset has adjusted basis at the time of a casualty event. As an alternative to eliminating the casualty loss rule, commenters requested that the final regulations allow a taxpayer to elect to forego recognizing the casualty loss and making a corresponding adjustment to basis to avoid application of the casualty loss rule.

The casualty loss rule in 2011 temporary regulations was based on the capitalization rule provided in section 263(a)(2), which states that no deduction shall be allowed for any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made. When property has been damaged in a casualty and a loss for such property has been claimed, amounts paid to replace the damaged property are incurred to restore property for which an allowance has been made. Thus, under section 263(a)(2), when the basis in replaced property has been recovered by the taxpayer, capitalization of the replacement property is appropriate.

Recognizing that such a rule can provide harsh results for a taxpayer with valuable property with low adjusted basis that is destroyed in a casualty event, considerable consideration was given to the suggestion that the regulations provide an election to forgo a casualty loss deduction. Ultimately, however, it was concluded that the IRS and the Treasury Department do not have the authority to permit taxpayers to electively avoid the basis adjustment requirement imposed by section 1016(a). Section 1016(a) states that ''a proper adjustment in respect of the property shall in all cases be made for . . . losses, or other items, properly chargeable to capital account. . .'' Therefore, even if a taxpayer could choose to forgo claiming a loss for property damage under section 165, section 1016 requires an adjustment to the basis of the property because a loss properly could be claimed.

In response to commenters' suggestions, the final regulations revise the casualty loss rule to permit a deduction, where otherwise permissible, for amounts spent in excess of the adjusted basis of the property damaged in a casualty event. Thus, a taxpayer is still required to capitalize amounts paid to restore damage to property for which the taxpayer has properly recorded a basis adjustment, but the costs required to be capitalized under the casualty loss rule are limited to the excess of (1) the taxpayer's basis adjustments resulting from the casualty event, over (2) the amount paid for restoration of damage to the unit of property that also constitutes a restoration under the other criteria of

§ 1.263(a)–3(k)(1) (excluding the casualty loss rule). Casualty-related expenditures in excess of this limitation are not treated as restoration costs under § 1.263(a)–3(k)(1)(iii) and may be properly deducted if they otherwise constitute ordinary and necessary business expenses (for example, repair and maintenance expenses) under section 162. The final regulations contain several examples illustrating the casualty loss rule, including one example that demonstrates the operation of the new limitation on amounts required to be capitalized.

4. Salvage Value Exception

Under the 2011 temporary regulations, a restoration includes amounts paid for the replacement of a component of a unit of property when the taxpayer has properly deducted a loss for that component (other than a casualty loss under § 1.165–7) and for the replacement of a component of a unit of property when the taxpayer has properly taken into account the adjusted basis of the component in realizing gain or loss resulting from the sale or exchange of the component. In response to comments, the final regulations retain these rules but provide an exception for property that cannot be depreciated to an adjusted basis of zero due to the application of salvage value (for example, property placed in service before 1981, and post-1980 assets that do not qualify for the Accelerated Cost Recovery System of former section 168 (ACRS) or MACRS). When a loss is properly deducted or the adjusted basis of the component is realized from a sale or exchange, and the amount of loss or basis adjustment is attributable only to the remaining salvage value (the amount a taxpayer is expected to receive in cash or trade-in allowance upon disposition of an asset at the end of its useful life) as computed for Federal income tax purposes, a taxpayer is not required to treat amounts paid for the replacement of the component as a restoration under § 1.263(a)–3(k)(1)(i) or (k)(1)(ii). Amounts subject to this exception must be evaluated under other provisions of the regulations to determine if the amounts are paid to improve tangible property.

5. Rebuild to Like-New Condition

The 2011 temporary regulations provided that a unit of property is rebuilt to a like-new condition if it is brought to the status of new, rebuilt, remanufactured, or similar status under the terms of any federal regulatory guideline or the manufacturer's original specifications. Commenters asked for clarification on whether comprehensive maintenance programs, conducted according to manufacturer's original specifications, constitute rebuilding a unit of property to like-new condition. The final regulations adopt the standard provided in the 2011 temporary regulations but clarify that generally a comprehensive maintenance program, even though substantial, does not return a unit of property to like-new condition.

I. Adaptation to a New or Different Use

The 2011 temporary regulations required a taxpayer to capitalize amounts paid to adapt a unit of property to a new or different use (that is, a use inconsistent with the taxpayer's intended ordinary use at the time the property was originally placed in service by the taxpayer). As applied to buildings, the new or different use standard is applied separately to the building structure and its building systems. Commenters requested clarification of the adaptation rules and additional examples. Commenters also asked that, for specific industries, the regulations provide that changes to facilities in response to a change in product mix, a reallocation of floor space, the need to rebrand, or the introduction of a new product line do not constitute a new or different use.

The final regulations retain the substantive rules of the 2011 temporary regulations but add additional examples to illustrate the rules. The final regulations provide that if an amount adapts the unit of property in a manner inconsistent with the taxpayer's intended ordinary use of the property when placed in service, the amount must be capitalized as an adaptation of the unit of property to a new or different use. In response to comments, two new examples address circumstances in which part of a retail building unit of property is converted to provide new services or products. However, providing tailored guidance for specific industries or specific types of property (for example, retail sales facilities) is not appropriate for broadly applicable guidance. Specific industry guidance is better addressed through the IIR program.

VII. Optional Regulatory Accounting Method

The 2011 temporary regulations provided an optional regulatory method, which permitted certain regulated taxpayers to follow the method of accounting they used for regulatory accounting purposes in determining whether an amount paid improves property. For purposes of the optional method, a taxpayer in a regulated industry is a taxpayer subject to the regulatory accounting rules of the Federal Energy Regulatory Commission (FERC), the Federal Communications Commission (FCC), or the Surface Transportation Board (STB). A taxpayer that uses the regulatory accounting method does not apply the rules under sections 162, 212, or 263(a) in determining whether amounts paid to repair, maintain, or improve property are capital expenditures or deductible expenses. Section 263A continues to apply to costs required to be capitalized to property produced by the taxpayer or to property acquired for resale.

The IRS and the Treasury Department received no comments on this methodology, and the final regulations retain the rule from the 2011 temporary regulations, with one modification. The final regulations modify the description of the regulatory accounting method to clarify that, for purposes of determining whether an amount is for a capital expenditure, an eligible taxpayer must apply the method of accounting that it is required to follow by FERC, FCC, or STB (whichever is applicable).

VIII. Election To Capitalize Repair and Maintenance Costs

The 2011 temporary regulations did not contain an election for taxpayers to capitalize expenditures made with respect to tangible property that would otherwise be deductible under these regulations. Commenters requested that, to reduce uncertainty in applying subjective standards and to reduce administrative burden, the final regulations include an election to capitalize repair and maintenance expenditures as improvements if the taxpayer treats such costs as capital expenditures for financial accounting purposes. In response to these comments as well as in recognition of the significant administrative burden reduction achieved by permitting a taxpayer to follow for Federal income tax purposes the capitalization policies used for its books and records, the final regulations permit a taxpayer to elect to treat amounts paid during the taxable year for repair and maintenance to tangible property as amounts paid to improve that property and as an asset subject to the allowance for depreciation, as long as the taxpayer incurs the amounts in carrying on a trade or business and the taxpayer treats the amounts as capital expenditures on its books and records used for regularly computing income. Under the final regulations, a taxpayer that elects this treatment must apply the election to all amounts paid for repair and maintenance to tangible property that it treats as capital expenditures on its

books and records in that taxable year. A taxpayer making the election must begin to depreciate the cost of such improvements when the improvements are placed in service by the taxpayer under the applicable provisions of the Code and regulations. The election is made by attaching a statement to the taxpayer's timely filed original Federal tax return (including extensions) for the taxable year in which the improvement is placed in service. Once made, the election may not be revoked.

A taxpayer that capitalizes repair and maintenance costs under the election is still eligible to apply the de minimis safe harbor, the safe harbor for small taxpayers, and the routine maintenance safe harbor to repair and maintenance costs that are not treated as capital expenditures on its books and records.

IX. Applicability Dates

The final regulations generally apply to taxable years beginning on or after January 1, 2014. However, certain provisions of the final regulations only apply to amounts paid or incurred in taxable years beginning on or after January 1, 2014. For example, the de minimis safe harbor election under § 1.263(a)–1(f) only applies to amounts paid or incurred for tangible property after January 1, 2014, for taxable years beginning on or after January 1, 2014.

Alternatively, a taxpayer may generally choose to apply the final regulations to taxable years beginning on or after January 1, 2012. For taxpayers choosing this early application, certain provisions of the final regulations only apply to amounts paid or incurred in taxable years beginning on or after January 1, 2012. For example, for these taxpayers, the de minimis safe harbor election only applies to amounts paid or incurred for tangible property after January 1, 2012, for taxable years beginning on or after January 1, 2012.

For taxpayers choosing to apply the final regulations to taxable years beginning on or after January 1, 2012, or where applicable, to amounts paid or incurred in taxable years beginning on or after January 1, 2012, the final regulations provide transition relief for taxpayers that did not make the certain elections (for example, the election to apply the de minimis safe harbor or the election to apply the safe harbor for small taxpayers) on their timely filed original Federal tax return for their 2012 or 2013 taxable year (the applicable taxable year). Specifically, for taxable years beginning on or after January 1, 2012, and ending on or before September 19, 2013, a taxpayer is permitted to make these elections by filing an amended Federal tax return (including any applicable statements) for the applicable taxable year on or before 180 days from the due date including extensions of the taxpayer's Federal tax return for the applicable taxable year, notwithstanding that the taxpayer may not have extended the due date.

Finally, a taxpayer may also choose to apply the 2011 temporary regulations to taxable years beginning on or after January 1, 2012, and before January 1, 2014. For taxpayers choosing to apply the temporary regulations to these taxable years, certain provisions of the temporary regulations only apply to amounts paid or incurred in taxable years beginning on or after January 1, 2012, and before January 1, 2014.

X. Change in Method of Accounting

The IRS and the Treasury Department received several comments regarding the procedures that a taxpayer should utilize to change its method of accounting to comply with the regulations. Several commenters favored the use of a cut-off method, primarily for reasons of administrative convenience. However, other commenters asserted that any change in method of accounting must include a section 481(a) adjustment.

The final regulations provide that, except as otherwise stated, a change to comply with the final regulations is a change in method of accounting to which the provisions of sections 446 and 481 and the accompanying regulations apply. A taxpayer seeking to change to a method of accounting permitted in the final regulations must secure the consent of the Commissioner in accordance with § 1.446–1(e) and follow the administrative procedures issued under § 1.446–1(e)(3)(ii) for obtaining the Commissioner's consent to change its accounting method. In general, a taxpayer seeking a change in method of accounting to comply with these regulations must take into account a full adjustment under section 481(a).

The imposition of a section 481(a) adjustment for a change in method of accounting to conform to the final regulations provides for a uniform and consistent rule for all taxpayers and ultimately reduces the administrative burdens on taxpayers and the IRS in enforcing the requirements of section 263(a). Although the IRS and the Treasury Department recognize that requiring a section 481(a) adjustment may place a burden on taxpayers to calculate reasonable adjustments, taxpayers have shown a willingness and ability to make these calculations in requesting method changes after the publication of the 2008 proposed regulations and after the publication of the 2011 temporary regulations. In addition, taxpayers and the IRS routinely reach agreements on calculation methodologies and amounts.

Separate procedures will be provided under which taxpayers may obtain automatic consent for a taxable year beginning on or after January 1, 2012, to change to a method of accounting provided in the final regulations. Although a taxpayer seeking a change in method of accounting to comply with these regulations generally must take into account a full adjustment under section 481(a), it is anticipated that for the specific situation where a taxpayer seeks to change to a method of accounting that is applicable only to amounts paid or incurred in taxable years beginning on or after January 1, 2014, a limited section 481(a) adjustment will apply, taking into account only amounts paid or incurred in taxable years beginning on or after January 1, 2014, or at a taxpayer's option, amounts paid or incurred in taxable years beginning on or after January 1, 2012.

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.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these final regulations will not have a significant economic impact on a substantial number of small entities. This regulation affects all small business taxpayers. While a collection of information is required by this regulation in §§ 1.263(a)–1(f)(5), 1.263(a)–2(h)(6), and 1.263(a)–3(n), this collection will not have a significant economic impact on small entities. This information is required for a taxpayer to elect to use the de minimis safe harbor, to elect a safe harbor for determining the treatment of amounts related to buildings owned or leased by small taxpayers, and to elect to capitalize certain repair and maintenance costs. These elections were provided in the regulations in response to comment letters submitted on behalf of small business taxpayers requesting that these types of provisions be added to the regulations to assist small businesses. All of these elections are voluntary,

beneficial, and were designed to simplify the application of sections 162 and 263(a) to small taxpayers. The provisions require a taxpayer to file a statement with the taxpayer's timely filed original tax return to inform the IRS that the taxpayer is electing to use these provisions. The estimated time to prepare a statement should not exceed 15 minutes, and the filing of the statement allows the taxpayer to receive the beneficial treatment for the amounts that qualify for the statement. Based on these facts, a regulatory flexibility analysis under Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Statement of Availability for IRS Documents

For copies of recently issued revenue procedures, revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin or Cumulative Bulletin, please visit the IRS Web site at *http://www.irs.gov*.

Drafting Information

The principal authors of these regulations are Merrill D. Feldstein and Kathleen Reed, Office of the Associate Chief Counsel (Income Tax and Accounting). Other personnel from the IRS and the Treasury Department have participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Record and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.162–3 is revised to read as follows:

§ 1.162–3 Materials and supplies.

(a) *In general*—(1) *Non-incidental materials and supplies.* Except as provided in paragraphs (d), (e), and (f) of this section, amounts paid to acquire or produce materials and supplies (as defined in paragraph (c) of this section) are deductible in the taxable year in which the materials and supplies are first used in the taxpayer's operations or are consumed in the taxpayer's operations.

(2) *Incidental materials and supplies.* Amounts paid to acquire or produce incidental materials and supplies (as defined in paragraph (c) of this section) that are carried on hand and for which no record of consumption is kept or of which physical inventories at the beginning and end of the taxable year are not taken, are deductible in the taxable year in which these amounts are paid, provided taxable income is clearly reflected.

(3) *Use or consumption of rotable and temporary spare parts.* Except as provided in paragraphs (d), (e), and (f) of this section, for purposes of paragraph (a)(1) of this section, rotable and temporary spare parts (defined under paragraph (c)(2) of this section) are first used in the taxpayer's operations or are consumed in the taxpayer's operations in the taxable year in which the taxpayer disposes of the parts.

(b) *Coordination with other provisions of the Internal Revenue Code.* Nothing in this section changes the treatment of any amount that is specifically provided for under any provision of the Internal Revenue Code (Code) or regulations other than section 162(a) or section 212 and the regulations under those sections. For example, see § 1.263(a)–3, which requires taxpayers to capitalize amounts paid to improve tangible property and section 263A and the regulations under section 263A, which require taxpayers to capitalize the direct and allocable indirect costs, including the cost of materials and supplies, of property produced by the taxpayer and property acquired for resale. See also § 1.471–1, which requires taxpayers to include in inventory certain materials and supplies.

(c) *Definitions*—(1) *Materials and supplies.* For purposes of this section, *materials and supplies* means tangible property that is used or consumed in the taxpayer's operations that is not inventory and that—

(i) Is a component acquired to maintain, repair, or improve a unit of tangible property (as determined under § 1.263(a)–3(e)) owned, leased, or serviced by the taxpayer and that is not acquired as part of any single unit of tangible property;

(ii) Consists of fuel, lubricants, water, and similar items, reasonably expected to be consumed in 12 months or less, beginning when used in the taxpayer's operations;

(iii) Is a unit of property as determined under § 1.263(a)–3(e) that has an economic useful life of 12 months or less, beginning when the property is used or consumed in the taxpayer's operations;

(iv) Is a unit of property as determined under § 1.263(a)–3(e) that has an acquisition cost or production cost (as determined under section 263A) of $200 or less (or other amount as identified in published guidance in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter); or

(v) Is identified in published guidance in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter) as materials and supplies for which treatment is permitted under this section.

(2) *Rotable and temporary spare parts.* For purposes of this section, rotable spare parts are materials and supplies under paragraph (c)(1)(i) of this section that are acquired for installation on a unit of property, removable from that unit of property, generally repaired or improved, and either reinstalled on the same or other property or stored for later installation. Temporary spare parts are materials and supplies under paragraph (c)(1)(i) of this section that are used temporarily until a new or repaired part can be installed and then are removed and stored for later installation.

(3) *Standby emergency spare parts.* Standby emergency spare parts are materials and supplies under paragraph (c)(1)(i) of this section that are—

(i) Acquired when particular machinery or equipment is acquired (or later acquired and set aside for use in particular machinery or equipment);

(ii) Set aside for use as replacements to avoid substantial operational time loss caused by emergencies due to particular machinery or equipment failure;

(iii) Located at or near the site of the installed related machinery or equipment so as to be readily available when needed;

(iv) Directly related to the particular machinery or piece of equipment they serve;

(v) Normally expensive;

(vi) Only available on special order and not readily available from a vendor or manufacturer;

(vii) Not subject to normal periodic replacement;

(viii) Not interchangeable in other machines or equipment;

(x) Not acquired in quantity (generally only one is on hand for each piece of machinery or equipment); and

(xi) Not repaired and reused.

(4) *Economic useful life*—(i) *General rule.* The economic useful life of a unit of property is not necessarily the useful life inherent in the property but is the period over which the property may reasonably be expected to be useful to the taxpayer or, if the taxpayer is engaged in a trade or business or an activity for the production of income, the period over which the property may reasonably be expected to be useful to the taxpayer in its trade or business or for the production of income, as applicable. See § 1.167(a)-1(b) for the factors to be considered in determining this period.

(ii) *Taxpayers with an applicable financial statement.* For taxpayers with an applicable financial statement (as defined in paragraph (c)(4)(iii) of this section), the economic useful life of a unit of property, solely for the purposes of applying the provisions of paragraph (c)(4)(iii) of this section, is the useful life initially used by the taxpayer for purposes of determining depreciation in its applicable financial statement, regardless of any salvage value of the property. If a taxpayer does not have an applicable financial statement for the taxable year in which a unit of property was originally acquired or produced, the economic useful life of the unit of property must be determined under paragraph (c)(4)(i) of this section. Further, if a taxpayer treats amounts paid for a unit of property as an expense in its applicable financial statement on a basis other than the useful life of the property or if a taxpayer does not depreciate the unit of property on its applicable financial statement, the economic useful life of the unit of property must be determined under paragraph (c)(4)(i) of this section. For example, if a taxpayer has a policy of treating as an expense on its applicable financial statement amounts paid for a unit of property costing less than a certain dollar amount, notwithstanding that the unit of property has a useful life of more than one year, the economic useful life of the unit of property must be determined under paragraph (c)(4)(i) of this section.

(iii) *Definition of applicable financial statement.* The taxpayer's applicable financial statement is the taxpayer's financial statement listed in paragraphs (c)(4)(iii)(A) through (C) of this section that has the highest priority (including within paragraph (c)(4)(iii)(B) of this section). The financial statements are, in descending priority—

(A) A financial statement required to be filed with the Securities and Exchange Commission (SEC) (the 10–K or the Annual Statement to Shareholders);

(B) A certified audited financial statement that is accompanied by the report of an independent certified public accountant (or in the case of a foreign entity, by the report of a similarly qualified independent professional), that is used for—

(*1*) Credit purposes;

(*2*) Reporting to shareholders, partners, or similar persons; or

(*3*) Any other substantial non-tax purpose; or

(C) A financial statement (other than a tax return) required to be provided to the federal or a state government or any federal or state agency (other than the SEC or the Internal Revenue Service).

(5) *Amount paid.* For purposes of this section, in the case of a taxpayer using an accrual method of accounting, the terms *amount paid* and *payment* mean a liability incurred (within the meaning of § 1.446–1(c)(1)(ii)). A liability may not be taken into account under this section prior to the taxable year during which the liability is incurred.

(6) *Produce.* For purposes of this section, *produce* means construct, build, install, manufacture, develop, create, raise, or grow. This definition is intended to have the same meaning as the definition used for purposes of section 263A(g)(1) and § 1.263A–2(a)(1)(i), except that improvements are excluded from the definition in this paragraph (c)(6) and are separately defined and addressed in § 1.263(a)–3. Amounts paid to produce materials and supplies are subject to section 263A.

(d) *Election to capitalize and depreciate certain materials and supplies*—(1) *In general.* A taxpayer may elect to treat as a capital expenditure and to treat as an asset subject to the allowance for depreciation the cost of any rotable spare part, temporary spare part, or standby emergency spare part as defined in paragraph (c)(3) or (c)(4) of this section. Except as specified in paragraph (d)(2) of this section, an election made under this paragraph (d) applies to amounts paid during the taxable year to acquire or produce any rotable, temporary, or standby emergency spare part to which paragraph (a) of this section would apply (but for the election under this paragraph (d)). Any property for which this election is made shall not be treated as a material or a supply.

(2) *Exceptions.* A taxpayer may not elect to capitalize and depreciate under paragraph (d) of this section any amount paid to acquire or produce a rotable, temporary, or standby emergency spare part defined in paragraph (c)(3) or (c)(4) of this section if—

(i) The rotable, temporary, or standby emergency spare part is intended to be used as a component of a unit of property under paragraph (c)(1)(iii), (iv), or (v) of this section;

(ii) The rotable, temporary, or standby emergency spare part is intended to be used as a component of a property described in paragraph (c)(1)(i) and the taxpayer cannot or has not elected to capitalize and depreciate that property under this paragraph (d); or

(iii) The amount is paid to acquire or produce a rotable or temporary spare part and the taxpayer uses the optional method of accounting for rotable and temporary spare parts under paragraph (e) to of this section.

(3) *Manner of electing.* A taxpayer makes the election under paragraph (d) of this section by capitalizing the amounts paid to acquire or produce a rotable, temporary, or standby emergency spare part in the taxable year the amounts are paid and by beginning to recover the costs when the asset is placed in service by the taxpayer for the purposes of determining depreciation under the applicable provisions of the Internal Revenue Code and the Treasury Regulations. See § 1.263(a)–2 for the treatment of amounts paid to acquire or produce real or personal tangible property. A taxpayer must make this election in its timely filed original Federal tax return (including extensions) for the taxable year the asset is placed in service by the taxpayer for purposes of determining depreciation. See §§ 301.9100–1 through 301.9100–3 of this chapter for the provisions governing extensions of time to make regulatory elections. In the case of an S corporation or a partnership, the election is made by the S corporation or partnership, and not by the shareholders or partners. A taxpayer may make an election for each rotable, temporary, or standby emergency spare part that qualifies for the election under this paragraph (d). A taxpayer may revoke an election made under this paragraph (d) with respect to a rotable, temporary, or standby emergency spare part only by filing a request for a private letter ruling and obtaining the Commissioner's consent to revoke the election. The Commissioner may grant a request to revoke this election if the taxpayer acted reasonably and in good faith and the revocation will not prejudice the interests of the Government. See generally § 301.9100–3 of this chapter. The manner of electing and revoking the election to capitalize under this paragraph (d) may be modified through

guidance of general applicability (see §§ 601.601(d)(2) and 601.602 of this chapter). An election may not be made or revoked through the filing of an application for change in accounting method or, before obtaining the Commissioner's consent to make the late election or to revoke the election, by filing an amended Federal tax return.

(e) *Optional method of accounting for rotable and temporary spare parts*—(1) *In general.* This paragraph (e) provides an optional method of accounting for rotable and temporary spare parts (the optional method for rotable parts). A taxpayer may use the optional method for rotable parts, instead of the general rule under paragraph (a)(3) of this section, to account for its rotable and temporary spare parts as defined in paragraph (c)(2) of this section. A taxpayer that uses the optional method for rotable parts must use this method for all of its pools of rotable and temporary spare parts used in the same trade or business and for which it uses this method for its books and records. If a taxpayer uses the optional method for rotable and temporary spare parts for pools of rotable or temporary spare parts for which the taxpayer does not use the optional method for its book and records, then the taxpayer must use the optional method for all its pools of rotable spare parts in the same trade or business. The optional method for rotable parts is a method of accounting under section 446(a). Under the optional method for rotable parts, the taxpayer must apply the rules in this paragraph (e) to each rotable or temporary spare part (part) upon the taxpayer's initial installation, removal, repair, maintenance or improvement, reinstallation, and disposal of each part.

(2) *Description of optional method for rotable parts*—(i) *Initial installation.* The taxpayer must deduct the amount paid to acquire or produce the part in the taxable year that the part is first installed on a unit of property for use in the taxpayer's operations.

(ii) *Removal from unit of property.* In each taxable year in which the part is removed from a unit of property to which it was initially or subsequently installed, the taxpayer must—

(A) Include in gross income the fair market value of the part; and

(B) Include in the basis of the part the fair market value of the part included in income under paragraph (e)(2)(ii)(A) of this section and the amount paid to remove the part from the unit of property.

(iii) *Repair, maintenance, or improvement of part.* The taxpayer may not currently deduct and must include in the basis of the part any amounts paid to maintain, repair, or improve the part in the taxable year these amounts are paid.

(iv) *Reinstallation of part.* The taxpayer must deduct the amounts paid to reinstall the part and those amounts included in the basis of the part under paragraphs (e)(2)(ii)(B) and (e)(2)(iii) of this section, to the extent that those amounts have not been previously deducted under this paragraph (e)(2)(iv), in the taxable year that the part is reinstalled on a unit of property.

(v) *Disposal of the part.* The taxpayer must deduct the amounts included in the basis of the part under paragraphs (e)(2)(ii)(B) and (e)(2)(iii) of this section, to the extent that those amounts have not been previously deducted under paragraph (e)(2)(iv) of this section, in the taxable year in which the part is disposed of by the taxpayer.

(f) *Application of de minimis safe harbor.* If a taxpayer elects to apply the de minimis safe harbor under § 1.263(a)–1(f) to amounts paid for the production or acquisition of tangible property, then the taxpayer must apply the de minimis safe harbor to amounts paid for all materials and supplies that meet the requirements of § 1.263(a)–1(f), except for those materials and supplies that the taxpayer elects to capitalize and depreciate under paragraph (d) of this section or for which the taxpayer properly uses the optional method of accounting for rotable and temporary spare parts under paragraph (e) of this section. If the taxpayer properly applies the de minimis safe harbor under § 1.263(a)–1(f) to amounts paid for materials and supplies, then these amounts are not treated as amounts paid for materials and supplies under this section. See § 1.263(a)–1(f)(5) for the time and manner of electing the de minimis safe harbor and § 1.263(a)–1(f)(3)(iv) for the treatment of safe harbor amounts.

(g) *Sale or disposition of materials and supplies.* Upon sale or other disposition, materials and supplies as defined in this section are not treated as a capital asset under section 1221 or as property used in the trade or business under section 1231. Any asset for which the taxpayer makes the election to capitalize and depreciate under paragraph (d) of this section shall not be treated as a material or supply, and the recognition and character of the gain or loss for such depreciable asset are determined under other applicable provisions of the Code.

(h) *Examples.* The rules of this section are illustrated by the following examples, in which it is assumed, unless otherwise stated, that the property is not an incidental material or supply, that the taxpayer computes its income on a calendar year basis, that the taxpayer does not make the election to apply paragraph (d) of this section, or use the method of accounting described in paragraph (e) of this section, and that the taxpayer has not elected to apply the de minimis safe harbor under § 1.263(a)–1(f). The following examples illustrate only the application of this section and, unless otherwise stated, do not address the treatment under other provisions of the Code (for example, section 263A).

Example 1. Non-rotable components. A owns a fleet of aircraft that it operates in its business. In Year 1, A purchases a stock of spare parts, which it uses to maintain and repair its aircraft. A keeps a record of consumption of these spare parts. In Year 2, A uses the spare parts for the repair and maintenance of one of its aircraft. Assume each aircraft is a unit of property under § 1.263(a)–3(e) and that spare parts are not rotable or temporary spare parts under paragraph (c)(2) of this section. Assume these repair and maintenance activities do not improve the aircraft under § 1.263(a)–3. These parts are materials and supplies under paragraph (c)(1)(i) of this section because they are components acquired and used to maintain and repair A's aircraft. Under paragraph (a)(1) of this section, the amounts that A paid for the spare parts in Year 1 are deductible in Year 2, the taxable year in which the spare parts are first used to repair and maintain the aircraft.

Example 2. Rotable spare parts; disposal method. B operates a fleet of specialized vehicles that it uses in its service business. Assume that each vehicle is a unit of property under § 1.263(a)–3(e). At the time that it acquires a new type of vehicle, B also acquires a substantial number of rotable spare parts that it will keep on hand to quickly replace similar parts in B's vehicles as those parts break down or wear out. These rotable parts are removable from the vehicles and are repaired so that they can be reinstalled on the same or similar vehicles. In Year 1, B acquires several vehicles and a number of rotable spare parts to be used as replacement parts in these vehicles. In Year 2, B repairs several vehicles by using these rotable spare parts to replace worn or damaged parts. In Year 3, B removes these rotable spare parts from its vehicles, repairs the parts, and reinstalls them on other similar vehicles. In Year 5, B can no longer use the rotable parts it acquired in Year 1 and disposes of them as scrap. Assume that B does not improve any of the rotable spare parts under § 1.263(a)–3. Under paragraph (c)(1)(i) of this section, the rotable spare parts acquired in Year 1 are materials and supplies. Under paragraph (a)(3) of this section, rotable spare parts are generally used or consumed in the taxable year in which the taxpayer disposes of the parts. Therefore, under paragraph (a)(1) of this section, the amounts that B paid for the rotable spare parts in Year 1 are deductible in Year 5, the taxable year in which B disposes of the parts.

Example 3. Rotable spare parts; application of optional method of

accounting. C operates a fleet of specialized vehicles that it uses in its service business. Assume that each vehicle is a unit of property under § 1.263(a)–3(e). At the time that it acquires a new type of vehicle, C also acquires a substantial number of rotable spare parts that it will keep on hand to replace similar parts in C's vehicles as those parts break down or wear out. These rotable parts are removable from the vehicles and are repaired so that they can be reinstalled on the same or similar vehicles. C uses the optional method of accounting for all its rotable and temporary spare parts under paragraph (e) of this section. In Year 1, C acquires several vehicles and a number of rotable spare parts (the ''Year 1 rotable parts'') to be used as replacement parts in these vehicles. In Year 2, C repairs several vehicles and uses the Year 1 rotable parts to replace worn or damaged parts. In Year 3, C pays amounts to remove these Year 1 rotable parts from its vehicles. In Year 4, C pays amounts to maintain, repair, or improve the Year 1 rotable parts. In Year 5, C pays amounts to reinstall the Year 1 rotable parts on other similar vehicles. In Year 8, C removes the Year 1 rotable parts from these vehicles and stores these parts for possible later use. In Year 9, C disposes of the Year 1 rotable parts. Under paragraph (e) of this section, C must deduct the amounts paid to acquire and install the Year 1 rotable parts in Year 2, the taxable year in which the rotable parts are first installed by C in C's vehicles. In Year 3, when C removes the Year 1 rotable parts from its vehicles, C must include in its gross income the fair market value of each part. Also, in Year 3, C must include in the basis of each Year 1 rotable part the fair market value of the rotable part and the amount paid to remove the rotable part from the vehicle. In Year 4, C must include in the basis of each Year 1 rotable part the amounts paid to maintain, repair, or improve each rotable part. In Year 5, the year that C reinstalls the Year 1 rotable parts (as repaired or improved) in other vehicles, C must deduct the reinstallation costs and the amounts previously included in the basis of each part. In Year 8, the year that C removes the Year 1 rotable parts from the vehicles, C must include in income the fair market value of each rotable part removed. In addition, in Year 8, C must include in the basis of each part the fair market value of that part and the amount paid to remove each rotable part from the vehicle. In Year 9, the year that C disposes of the Year 1 rotable parts, C may deduct the amounts remaining in the basis of each rotable part.

Example 4. Rotable part acquired as part of a single unit of property; not material or supply. D operates a fleet of aircraft. In Year 1, D acquires a new aircraft, which includes two new aircraft engines. The aircraft costs $500,000 and has an economic useful life of more than 12 months, beginning when it is placed in service. In Year 5, after the aircraft is operated for several years in D's business, D removes the engines from the aircraft, repairs or improves the engines, and either reinstalls the engines on a similar aircraft or stores the engines for later reinstallation. Assume the aircraft purchased in Year 1, including its two engines, is a unit of property under § 1.263(a)–3(e). Because the engines were acquired as part of the aircraft, a single unit of property, the engines are not materials or supplies under paragraph (c)(1)(i) of this section nor rotable or temporary spare parts under paragraph (c)(2) of this section. Accordingly, D may not apply the rules of this section to the aircraft engines upon the original acquisition of the aircraft nor after the removal of the engines from the aircraft for use in the same or similar aircraft. Rather, D must apply the rules under §§ 1.263(a)–2 and 1.263(a)–3 to the aircraft, including its engines, to determine the treatment of amounts paid to acquire, produce, or improve the unit of property.

Example 5. Consumable property. E operates a fleet of aircraft that carries freight for its customers. E has several storage tanks on its premises, which hold jet fuel for its aircraft. Assume that once the jet fuel is placed in E's aircraft, the jet fuel is reasonably expected to be consumed within 12 months or less. On December 31, Year 1, E purchases a two-year supply of jet fuel. In Year 2, E uses a portion of the jet fuel purchased on December 31, Year 1, to fuel the aircraft used in its business. The jet fuel that E purchased in Year 1 is a material or supply under paragraph (c)(1)(ii) of this section because it is reasonably expected to be consumed within 12 months or less from the time it is placed in E's aircraft. Under paragraph (a)(1) of this section, E may deduct in Year 2 the amounts paid for the portion of jet fuel used in the operation of E's aircraft in Year 2.

Example 6. Unit of property that costs $200 or less. F operates a business that rents out a variety of small individual items to customers (rental items). F maintains a supply of rental items on hand. In Year 1, F purchases a large quantity of rental items to use in its rental business. Assume that each rental item is a unit of property under § 1.263(a)–3(e) and costs $200 or less. In Year 2, F begins using all the rental items purchased in Year 1 by providing them to customers of its rental business. F does not sell or exchange these items on established retail markets at any time after the items are used in the rental business. The rental items are materials and supplies under paragraph (c)(1)(iv) of this section. Under paragraph (a)(1) of this section, the amounts that F paid for the rental items in Year 1 are deductible in Year 2, the taxable year in which the rental items are first used in F's business.

Example 7. Unit of property that costs $200 or less. G provides billing services to its customers. In Year 1, G pays amounts to purchase 50 scanners to be used by its employees. Assume each scanner is a unit of property under § 1.263(a)–3(e) and costs less than $200. In Year 1, G's employees begin using 35 of the scanners, and F stores the remaining 15 scanners for use in a later taxable year. The scanners are materials and supplies under paragraph (c)(1)(iv) of this section. Under paragraph (a)(1) of this section, the amounts G paid for 35 of the scanners are deductible in Year 1, the taxable year in which G first uses each of those scanners. The amounts that G paid for each of the remaining 15 scanners are deductible in the taxable year in which each machine is first used in G's business.

Example 8. Materials and supplies that cost less than $200; de minimis safe harbor. Assume the same facts as in *Example 7* except that G's scanners qualify for the de minimis safe harbor under § 1.263(a)–1(f), and G properly elects to apply the de minimis safe harbor under § 1.263(a)–1(f) to amounts paid in Year 1. G must apply the de minimis safe harbor under § 1.263(a)–1(f) to amounts paid for the scanners, rather than treat these amounts as costs of materials and supplies under this section. In accordance with § 1.263(a)–1(f)(3)(iv), G may deduct the amounts paid for all 50 scanners under § 1.162–1 in the taxable year the amounts are paid.

Example 9. Unit of property that costs $200 or less; bulk purchase. H provides consulting services to its customers. In Year 1, H pays $500 to purchase one box of 10 toner cartridges to use as needed for H's printers. Assume each toner cartridge is a unit of property under § 1.263(a)–3(e). In Year 1, H's employees place 8 of the toner cartridges in printers in H's office, and store the remaining 2 cartridges for use in a later taxable year. The toner cartridges are materials and supplies under paragraph (c)(1)(iv) of this section because even though purchased in one box costing more than $200, the allocable cost of each unit of property equals $50. Therefore, under paragraph (a)(1) of this section, the $400 paid by H for 8 of the cartridges is deductible in Year 1, the taxable year in which H first uses each of those cartridges. The amounts paid by H for each of the remaining 2 cartridges ($50 each) are deductible in the taxable year in which each cartridge is first used in H's business.

Example 10. Materials and supplies used in improvements; coordination with § 1.263(a)–3. J owns various machines that are used in its business. Assume that each machine is a unit of property under § 1.263(a)–3(e). In Year 1, J purchases a supply of spare parts for its machines. J acquired the parts to use in the repair or maintenance of the machines under § 1.162–4 or in the improvement of the machines under § 1.263(a)–3. The spare parts are not rotable or temporary spare parts under paragraph (c)(2) of this section. In Year 2, J uses all of these spare parts in an activity that improves a machine under § 1.263(a)–3. Under paragraph (c)(1)(i) of this section, the spare parts purchased by J in Year 1 are materials and supplies. Under paragraph (a)(1) of this section, the amounts paid for the spare parts are otherwise deductible as materials and supplies in Year 2, the taxable year in which J uses those parts. However, because these materials and supplies are used to improve J's machine, J is required to capitalize the amounts paid for those spare parts under § 1.263(a)–3.

Example 11. Cost of producing materials and supplies; coordination with section 263A. K is a manufacturer that produces liquid waste as part of its operations. K determines that its current liquid waste disposal process is inadequate. To remedy the problem, in Year 1, K constructs a leaching pit to provide a draining area for the liquid waste. Assume the leaching pit is a unit of property under § 1.263(a)–3(e) and has an economic useful life of 12 months or

less, starting on the date that K begins to use the leaching pit as a draining area. At the end of this period, K's factory will be connected to the local sewer system. In Year 2, K starts using the leaching pit in its operations. The amounts paid to construct the leaching pit (including the direct and allocable indirect costs of property produced under section 263A) are amounts paid for a material or supply under paragraph (c)(1)(iii) of this section. However, the amounts paid to construct the leaching pit may be subject to capitalization under section 263A if these amounts comprise the direct or allocable indirect costs of property produced by K.

Example 12. Costs of acquiring materials and supplies for production of property; coordination with section 263A. In Year 1, L purchases jigs, dies, molds, and patterns for use in the manufacture of L's products. Assume each jig, die, mold, and pattern is a unit of property under § 1.263(a)–3(e). The economic useful life of each jig, die, mold, and pattern is 12 months or less, beginning when each item is used in the manufacturing process. The jigs, dies, molds, and patterns are not components acquired to maintain, repair, or improve any of L's equipment under paragraph (c)(1)(i) of this section. L begins using the jigs, dies, molds and patterns in Year 2 to manufacture its products. These items are materials and supplies under paragraph (c)(1)(iii) of this section. Under paragraph (a)(1) of this section, the amounts paid for the items are otherwise deductible in Year 2, the taxable year in which L first uses those items. However, the amounts paid for these materials and supplies may be subject to capitalization under section 263A if these amounts comprise the direct or allocable indirect costs of property produced by L.

Example 13. Election to capitalize and depreciate. M is in the mining business. M acquires certain temporary spare parts, which it keeps on hand to avoid operational time loss in the event it must make temporary repairs to a unit of property that is subject to depreciation. These parts are not used to improve property under § 1.263(a)–3(d). These temporary spare parts are used until a new or repaired part can be installed and then are removed and stored for later temporary installation. M does not use the optional method of accounting for rotable and temporary spare parts in paragraph (e) of this section for any of its rotable or temporary spare parts. The temporary spare parts are materials and supplies under paragraph (c)(1)(i) of this section. Under paragraphs (a)(1) and (a)(3) of this section, the amounts paid for the temporary spare parts are deductible in the taxable year in which they are disposed of by M. However, because it is unlikely that the temporary spare parts will be disposed of in the near future, M would prefer to treat the amounts paid for the spare parts as capital expenditures subject to depreciation. M may elect under paragraph (d) of this section to treat the cost of each temporary spare part as a capital expenditure and as an asset subject to an allowance for depreciation. M makes this election by capitalizing the amounts paid for each spare part in the taxable year that M acquires the spare parts and by beginning to recover the costs of each part on its timely filed Federal tax return for the taxable year in which the part is placed in service for purposes of determining depreciation under the applicable provisions of the Internal Revenue Code and the Treasury Regulations. See § 1.263(a)–2(g) for the treatment of capital expenditures.

Example 14. Election to apply de minimis safe harbor. (i) N provides consulting services to its customers. In Year 1, N pays amounts to purchase 50 laptop computers. Each laptop computer is a unit of property under § 1.263(a)–3(e), costs $400, and has an economic useful life of more than 12 months. Also in Year 1, N purchases 50 office chairs to be used by its employees. Each office chair is a unit of property that costs $100. N has an applicable financial statement (as defined in § 1.263(a)–1(f)(4)) and N has a written accounting policy at the beginning Year 1 to expense amounts paid for units of property costing $500 or less. N treats amounts paid for property costing $500 or less as an expense on its applicable financial statement in Year 1.

(ii) The laptop computers are not materials or supplies under paragraph (c) of this section. Therefore, the amounts N pays for the computers must generally be capitalized under § 1.263(a)–2(d) as amounts paid for the acquisition of tangible property. The office chairs are materials and supplies under paragraph (c)(1)(iv) of this section. Thus, under paragraph (a)(1) of this section, the amounts paid for the office chairs are deductible in the taxable year in which they are first used in N's business. However, under paragraph (f) of this section, if N properly elects to apply the de minimis safe harbor under § 1.263(a)–1(f) to amounts paid in Year 1, then N must apply the de minimis safe harbor under § 1.263(a)–1(f) to amounts paid for the computers and the office chairs, rather than treat the office chairs as the costs of materials and supplies under § 1.162–3. Under the de minimis safe harbor, N may not capitalize the amounts paid for the computers under § 1.263(a)–2 nor treat the office chairs as materials and supplies under § 1.162–3. Instead, in accordance with § 1.263(a)–1(f)(3)(iv), under § 1.162–1, N may deduct the amounts paid for the computers and the office chairs in the taxable year paid.

(i) *Accounting method changes.* Except as otherwise provided in this section, a change to comply with this section is a change in method of accounting to which the provisions of sections 446 and 481 and the accompanying regulations apply. A taxpayer seeking to change to a method of accounting permitted in this section must secure the consent of the Commissioner in accordance with § 1.446–1(e) and follow the administrative procedures issued under § 1.446–1(e)(3)(ii) for obtaining the Commissioner's consent to change its accounting method.

(j) *Effective/applicability date*—(1) *In general.* This section generally applies to amounts paid or incurred in taxable years beginning on or after January 1, 2014. However, a taxpayer may apply paragraph (e) of this section (the optional method of accounting for rotable and temporary spare parts) to taxable years beginning on or after January 1, 2014. Except as provided in paragraphs (j)(2) and (j)(3) of this section, § 1.162–3 as contained in 26 CFR part 1 edition revised as of April 1, 2011, applies to taxable years beginning before January 1, 2014.

(2) *Early application of this section*—(i) *In general.* Except for paragraph (e) of this section, a taxpayer may choose to apply this section to amounts paid or incurred in taxable years beginning on or after January 1, 2012. A taxpayer may choose to apply paragraph (e) of this section (the optional method of accounting for rotable and temporary spare parts) to taxable years beginning on or after January 1, 2012.

(ii) *Transition rule for election to capitalize materials and supplies on 2012 and 2013 returns.* If under paragraph (j)(2)(i) of this section, a taxpayer chooses to make the election to capitalize and depreciate certain materials and supplies under paragraph (d) of this section for its taxable year beginning on or after January 1, 2012, and ending on or before September 19, 2013 (applicable taxable year), and the taxpayer did not make the election specified in paragraph (d)(3) of this section on its timely filed original Federal tax return for the applicable taxable year, the taxpayer must make the election specified in paragraph (d)(3) of this section for the applicable taxable year by filing an amended Federal tax return for the applicable taxable year on or before 180 days from the due date including extensions of the taxpayer's Federal tax return for the applicable taxable year, notwithstanding that the taxpayer may not have extended the due date.

(3) *Optional application of TD 9564.* Except for section 1.162–3T(e), a taxpayer may choose to apply § 1.162–3T as contained in TD 9564 (76 FR 81060) December 27, 2011, to amounts paid or incurred (to acquire or produce property) in taxable years beginning on or after January 1, 2012, and before January 1, 2014. A taxpayer may choose to apply section 1.162–3T(e) (the optional method of accounting for rotable and temporary spare parts) as contained in TD 9564 (76 FR 81060) December 27, 2011, to taxable years beginning on or after January 1, 2012, and before January 1, 2014.

§ 1.162–3T [Removed]

■ **Par. 3.** Section 1.162–3T is removed.

■ **Par. 4.** Section 1.162–4 is revised to read as follows:

§ 1.162–4 Repairs.

(a) *In general.* A taxpayer may deduct amounts paid for repairs and maintenance to tangible property if the amounts paid are not otherwise required to be capitalized. For the election to capitalize amounts paid for repair and maintenance consistent with the taxpayer's books and records, see § 1.263(a)–3(n).

(b) *Accounting method changes.* A change to comply with this section is a change in method of accounting to which the provisions of sections 446 and 481 and the accompanying regulations apply. A taxpayer seeking to change to a method of accounting permitted in this section must secure the consent of the Commissioner in accordance with § 1.446–1(e) and follow the administrative procedures issued under § 1.446–1(e)(3)(ii) for obtaining the Commissioner's consent to change its accounting method.

(c) *Effective/applicability date*—(1) *In general.* This section applies to taxable years beginning on or after January 1, 2014. Except as provided in paragraphs (c)(2) and (c)(3) of this section, § 1.162–4 as contained in 26 CFR part 1 edition revised as of April 1, 2011, applies to taxable years beginning before January 1, 2014.

(2) *Early application of this section.* A taxpayer may choose to apply this section to taxable years beginning on or after January 1, 2012.

(3) *Optional application of TD 9564.* A taxpayer may choose to apply § 1.162–4T as contained in TD 9564 (76 FR 81060), December 27, 2011, to taxable years beginning on or after January 1, 2012, and before January 1, 2014.

§ 1.162–4T [Removed]

■ **Par. 5.** Section 1.162–4T is removed.

■ **Par. 6.** Section 1.162–11 is amended by:

■ 1. Revising paragraph (b).

■ 2. Removing paragraphs (c) and (d).

The revision reads as follows:

§ 1.162–11 Rentals.

* * * * *

(b) *Improvements by lessee on lessor's property*—(1) In general. The cost to a taxpayer of erecting buildings or making permanent improvements on property of which the taxpayer is a lessee is a capital expenditure. For the rules regarding improvements to leased property when the improvements are tangible property, see § 1.263(a)–3(f). For the rules regarding depreciation or amortization deductions for leasehold improvements, see § 1.167(a)–4.

(2) *Effective/applicability date*—(i) *In general.* This paragraph (b) applies to taxable years beginning on or after January 1, 2014. Except as provided in paragraphs (b)(2)(ii) and (b)(2)(iii) of this section, § 1.162–11(b) as contained in 26 CFR part 1 edition revised as of April 1, 2011, applies to taxable years beginning before January 1, 2014.

(ii) *Early application of this paragraph.* A taxpayer may choose to apply this paragraph (b) to taxable years beginning on or after January 1, 2012.

(iii) *Optional application of TD 9564.* A taxpayer may choose to apply § 1.162–11T(b) as contained in TD 9564 (76 FR 81060) December 27, 2011, to taxable years beginning on or after January 1, 2012, and before January 1, 2014.

§ 1.162–11T [Removed]

■ **Par. 7.** Section 1.162–11T is removed.

■ **Par. 8.** Section 1.165–2 is amended by:

■ 1. Revising paragraphs (c) and (d).

■ 2. Removing paragraph (e).

The revisions read as follows:

§ 1.165–2 Obsolescence of nondepreciable property.

* * * * *

(c) *Cross references.* For the allowance under section 165(a) of losses arising from the permanent withdrawal of depreciable property from use in the trade or business or in the production of income, see § 1.167(a)–8, § 1.168(i)–1, § 1.168(i)–1T, § 1.168(i)–8T, Prop. Reg. § 1.168(i)–1 (September 19, 2013), or Prop. Reg. § 1.168(i)–8 (September 19, 2013), as applicable. For provisions respecting the obsolescence of depreciable property for which depreciation is determined under section 167 (but not under section 168, section 1400I, section 1400L(c), section 168 prior to its amendment by the Tax Reform Act of 1986, Public Law 99–514 (100 Stat. 2121 (1986)), or under an additional first year depreciation deduction provision of the Internal Revenue Code (for example, section 168(k) through (n), 1400L(b), or 1400N(d))), see § 1.167(a)–9. For the allowance of casualty losses, see § 1.165–7.

(d) *Effective/applicability date*—(1) *In general.* This section applies to taxable years beginning on or after January 1, 2014. Except as provided in paragraphs (d)(2) and (d)(3) of this section, § 1.165–2 as contained in 26 CFR part 1 edition revised as of April 1, 2011, applies to taxable years beginning before January 1, 2014.

(2) *Early application of § 1.165–2(c).* A taxpayer may choose to apply paragraph (c) of this section to taxable years beginning on or after January 1, 2012.

(3) *Optional application of TD 9564.* A taxpayer may choose to apply § 1.165–2T as contained in TD 9564 (76 FR 81060) December 27, 2011, to taxable years beginning on or after January 1, 2012, and before January 1, 2014.

§ 1.165–2T [Removed]

■ **Par. 9.** Section 1.165–2T is removed.

■ **Par. 10.** Section 1.167(a)–4 is revised to read as follows:

§ 1.167(a)–4 Leased property.

(a) *In general.* Capital expenditures made by either a lessee or lessor for the erection of a building or for other permanent improvements on leased property are recovered by the lessee or lessor under the provisions of the Internal Revenue Code (Code) applicable to the cost recovery of the building or improvements, if subject to depreciation or amortization, without regard to the period of the lease. For example, if the building or improvement is property to which section 168 applies, the lessee or lessor determines the depreciation deduction for the building or improvement under section 168. See section 168(i)(8)(A). If the improvement is property to which section 167 or section 197 applies, the lessee or lessor determines the depreciation or amortization deduction for the improvement under section 167 or section 197, as applicable.

(b) *Effective/applicability date*—(1) *In general.* Except as provided in paragraph (b)(2) or (b)(3) of this section, this section applies to taxable years beginning on or after January 1, 2014.

(2) *Application of this section to leasehold improvements placed in service after December 31, 1986, in taxable years beginning before January 1, 2014.* For leasehold improvements placed in service after December 31, 1986, in taxable years beginning before January 1, 2014, a taxpayer may—

(i) Apply the provisions of this section; or

(ii) Depreciate any leasehold improvement to which section 168 applies under the provisions of section 168 and depreciate or amortize any leasehold improvement to which section 168 does not apply under the provisions of the Code that are applicable to the cost recovery of that leasehold improvement, without regard to the period of the lease.

(3) *Application of this section to leasehold improvements placed in service before January 1, 1987.* Section 1.167(a)–4 as contained in 26 CFR part 1 edition revised as of April 1, 2011, applies to leasehold improvements placed in service before January 1, 1987.

(4) *Change in method of accounting.* Except as provided in § 1.446–1(e)(2)(ii)(*d*)(*3*)(*i*), a change to comply with this section for depreciable assets placed in service in a taxable year ending on or after December 30, 2003, is a change in method of accounting to which the provisions of section 446(e) and the regulations under section 446(e) apply. Except as provided in § 1.446–1(e)(2)(ii)(*d*)(*3*)(*i*), a taxpayer also may treat a change to comply with this section for depreciable assets placed in service in a taxable year ending before December 30, 2003, as a change in method of accounting to which the provisions of section 446(e) and the regulations under section 446(e) apply.

§ 1.167(a)–4T [Removed]

■ **Par. 11.** Section 1.167(a)–4T is removed.

■ **Par. 12.** Section 1.167(a)–7 is amended by:

■ 1. Revising paragraphs (e) and (f).

■ 2. Removing paragraph (g).

The revisions read as follows:

§ 1.167(a)–7 Accounting for depreciable property.

* * * * *

(e) *Applicability.* Paragraphs (a), (b), and (d) of this section apply to property for which depreciation is determined under section 167 (but not under section 168, section 1400I, section 1400L(c), section 168 prior to its amendment by the Tax Reform Act of 1986, Public Law 99–514 (100 Stat. 2121 (1986)), or under an additional first year depreciation deduction provision of the Internal Revenue Code (for example, section 168(k) through (n), 1400L(b), or 1400N(d))). Paragraph (c) of this section does not apply to general asset accounts as provided by section 168(i)(4), § 1.168(i)–1, § 1.168(i)–1T and Prop. Reg. § 1.168(i)–1 (September 19, 2013).

(f) *Effective/applicability date*—(1) *In general.* This section applies to taxable years beginning on or after January 1, 2014. Except as provided in paragraphs (f)(2) and (f)(3) of this section, § 1.167(a)–7 as contained in 26 CFR part 1 edition revised as of April 1, 2011, applies to taxable years beginning before January 1, 2014.

(2) *Early application of § 1.167(a)–7(e).* A taxpayer may choose to apply paragraph (e) of this section to taxable years beginning on or after January 1, 2012.

(3) *Optional application of TD 9564.* A taxpayer may choose to apply § 1.167(a)–7T as contained in TD 9564 (76 FR 81060) December 27, 2011, to taxable years beginning on or after January 1, 2012, and before January 1, 2014.

§ 1.167(a)–7T [Removed]

■ **Par. 13.** Section 1.167(a)–7T is removed.

■ **Par. 14.** Section 1.167(a)–8 is amended by:

■ 1. Revising paragraphs (g) and (h).

■ 2. Removing paragraph (i).

The revisions read as follows:

§ 1.167(a)–8 Retirements.

* * * * *

(g) *Applicability.* This section applies to property for which depreciation is determined under section 167 (but not under section 168, section 1400I, section 1400L(c), section 168 prior to its amendment by the Tax Reform Act of 1986, Public Law 99–514 (100 Stat. 2121(1986)), or under an additional first year depreciation deduction provision of the Internal Revenue Code (for example, section 168(k) through (n), 1400L(b), or 1400N(d))).

(h) *Effective/applicability date*—(1) *In general.* This section applies to taxable years beginning on or after January 1, 2014. Except as provided in paragraphs (h)(2) and (h)(3) of this section, § 1.167(a)–8 as contained in 26 CFR part 1 edition revised as of April 1, 2011, applies to taxable years beginning before January 1, 2014.

(2) *Early application of § 1.167(a)–8(g).* A taxpayer may choose to apply paragraph (g) of this section to taxable years beginning on or after January 1, 2012.

(3) *Optional application of TD 9564.* A taxpayer may choose to apply § 1.167(a)–8T as contained in TD 9564 (76 FR 81060) December 27, 2011, to taxable years beginning on or after January 1, 2012, and before January 1, 2014.

§ 1.167(a)–8T [Removed]

■ **Par. 15.** Section 1.167(a)–8T is removed.

■ **Par. 16.** Section 1.168(i)–7 is added to read as follows:

§ 1.168(i)–7 Accounting for MACRS property.

(a) *In general.* A taxpayer may account for MACRS property (as defined in § 1.168(b)–1(a)(2)) by treating each individual asset as an account (a ''single asset account'' or an ''item account'') or by combining two or more assets in a single account (a ''multiple asset account'' or a ''pool''). A taxpayer may establish as many accounts for MACRS property as the taxpayer wants. This section does not apply to assets included in general asset accounts. For rules applicable to general asset accounts, see § 1.168(i)–1, § 1.168(i)–1T, or Prop. Reg. § 1.168(i)–1 (September 19, 2013), as applicable.

(b) *Required use of single asset accounts.* A taxpayer must account for an asset in a single asset account if the taxpayer uses the asset both in a trade or business (or for the production of income) and in a personal activity, or if the taxpayer places in service and disposes of the asset during the same taxable year. Also, if general asset account treatment for an asset terminates under § 1.168(i)–1T(c)(1)(ii)(A), (e)(3)(iii), (e)(3)(vii), (g), or (h)(2) or Prop. Reg. § 1.168(i)–1(c)(1)(ii)(A), (e)(3)(iii), (e)(3)(vii), (g), or (h)(2) (September 19, 2013), as applicable, the taxpayer must account for the asset in a single asset account beginning in the taxable year in which the general asset account treatment for the asset terminates. If a taxpayer accounts for an asset in a multiple asset account or a pool and the taxpayer disposes of the asset, the taxpayer must account for the asset in a single asset account beginning in the taxable year in which the disposition occurs. See § 1.168(i)–8T(g)(2)(i) or Prop. Reg. § 1.168(i)–8(h)(2)(i) (September 19, 2013), as applicable. If a taxpayer disposes of a component of a larger asset and the unadjusted depreciable basis of the disposed of component is included in the unadjusted depreciable basis of the larger asset, the taxpayer must account for the component in a single asset account beginning in the taxable year in which the disposition occurs. See Prop. Reg. § 1.168(i)–8(g)(3)(i) (September 19, 2013).

(c) *Establishment of multiple asset accounts or pools*—(1) *Assets eligible for multiple asset accounts or pools.* Except as provided in paragraph (b) of this section, assets that are subject to either the general depreciation system of section 168(a) or the alternative depreciation system of section 168(g) may be accounted for in one or more multiple asset accounts or pools.

(2) *Grouping assets in multiple asset accounts or pools*—(i) *General rules.* Assets that are eligible to be grouped into a single multiple asset account or pool may be divided into more than one multiple asset account or pool. Each multiple asset account or pool must include only assets that—

(A) Have the same applicable depreciation method;

(B) Have the same applicable recovery period;

(C) Have the same applicable convention; and

(D) Are placed in service by the taxpayer in the same taxable year.

(ii) *Special rules.* In addition to the general rules in paragraph (c)(2)(i) of this section, the following rules apply

when establishing multiple asset accounts or pools—

(A) Assets subject to the mid-quarter convention may only be grouped into a multiple asset account or pool with assets that are placed in service in the same quarter of the taxable year;

(B) Assets subject to the mid-month convention may only be grouped into a multiple asset account or pool with assets that are placed in service in the same month of the taxable year;

(C) Passenger automobiles for which the depreciation allowance is limited under section 280F(a) must be grouped into a separate multiple asset account or pool;

(D) Assets not eligible for any additional first year depreciation deduction (including assets for which the taxpayer elected not to deduct the additional first year depreciation) provided by, for example, section 168(k) through (n), 1400L(b), or 1400N(d), must be grouped into a separate multiple asset account or pool;

(E) Assets eligible for the additional first year depreciation deduction may only be grouped into a multiple asset account or pool with assets for which the taxpayer claimed the same percentage of the additional first year depreciation (for example, 30 percent, 50 percent, or 100 percent);

(F) Except for passenger automobiles described in paragraph (c)(2)(ii)(C) of this section, listed property (as defined in section 280F(d)(4)) must be grouped into a separate multiple asset account or pool;

(G) Assets for which the depreciation allowance for the placed-in-service year is not determined by using an optional depreciation table (for further guidance, see section 8 of Rev. Proc. 87–57, 1987–2 CB 687, 693 (see § 601.601(d)(2) of this chapter)) must be grouped into a separate multiple asset account or pool; and

(H) Mass assets (as defined in § 1.168(i)–8T(b)(2) or Prop. Reg. § 1.168(i)–8(b)(3) (September 19, 2013), as applicable) that are or will be subject to § 1.168(i)–8T(f)(2)(iii) or Prop. Reg. § 1.168(i)–8(g)(2)(iii) (September 19, 2013), as applicable,(disposed of or converted mass asset is identified by a mortality dispersion table) must be grouped into a separate multiple asset account or pool.

(d) *Cross references.* See § 1.167(a)–7(c) for the records to be maintained by a taxpayer for each account. In addition, see § 1.168(i)–1(l)(3) for the records to be maintained by a taxpayer for each general asset account.

(e) *Effective/applicability date*—(1) *In general.* This section applies to taxable years beginning on or after January 1, 2014.

(2) *Early application of this section.* A taxpayer may choose to apply the provisions of this section to taxable years beginning on or after January 1, 2012.

(3) *Optional application of TD 9564.* A taxpayer may choose to apply § 1.168(i)–7T as contained in TD 9564 (76 FR 81060) December 27, 2011, to taxable years beginning on or after January 1, 2012, and before January 1, 2014.

(4) *Change in method of accounting.* A change to comply with this section for depreciable assets placed in service in a taxable year ending on or after December 30, 2003, is a change in method of accounting to which the provisions of section 446(e) and the regulations under section 446(e) apply. A taxpayer also may treat a change to comply with this section for depreciable assets placed in service in a taxable year ending before December 30, 2003, as a change in method of accounting to which the provisions of section 446(e) and the regulations under section 446(e) apply.

§ 1.168(i)–7T [Removed]

■ **Par. 17.** Section 1.168(i)–7T is removed.

■ **Par. 18.** Section 1.263(a)–0 is amended by:

■ 1. The table of contents introductory text is revised.

■ 2. Revising the section heading and entries to the table of contents for §§ 1.263(a)–1, 1.263(a)–2 and 1.263(a)–3.

■ 3. Adding § 1.263(a)–6 to the table of contents. The revisions and additions read as follows:

§ 1.263(a)–0 Outline of regulations under section 263(a).

This section lists the paragraphs in §§ 1.263(a)–1 through 1.263(a)–3 and § 1.263(a)–6.

§ 1.263(a)–1 Capital expenditures; in general.

(a) General rule for capital expenditures.

(b) Coordination with other provisions of the Internal Revenue Code.

(c) Definitions.

(1) Amount paid.

(2) Produce.

(d) Examples of capital expenditures.

(e) Amounts paid to sell property.

(1) In general.

(2) Dealer in property.

(3) Examples.

(f) De minimis safe harbor election.

(1) In general.

(i) Taxpayer with applicable financial statement.

(ii) Taxpayer without applicable financial statement.

(iii) Taxpayer with both an applicable financial statement and a non-qualifying financial statement.

(2) Exceptions to de minimis safe harbor.

(3) Additional rules.

(i) Transaction and other additional costs.

(ii) Materials and supplies.

(iii) Sale or disposition.

(iv) Treatment of de minimis amounts.

(v) Coordination with section 263A.

(vi) Written accounting procedures for groups of entities.

(vii) Combined expensing accounting procedures.

(4) Definition of applicable financial statement.

(5) Time and manner of making election.

(6) Anti-abuse rule.

(7) Examples.

(g) Accounting method changes.

(h) Effective/applicability date.

(1) In general.

(2) Early application of this section.

(i) In general.

(ii) Transition rule for de minimis safe harbor election on 2012 or 2013 returns.

(3) Optional application of TD 9564.

§ 1.263(a)–2 Amounts paid to acquire or produce tangible property.

(a) Overview.

(b) Definitions.

(1) Amount paid.

(2) Personal property.

(3) Real property.

(4) Produce.

(c) Coordination with other provisions of the Internal Revenue Code.

(1) In general.

(2) Materials and supplies.

(d) Acquired or produced tangible property.

(1) Requirement to capitalize.

(2) Examples.

(e) Defense or perfection of title to property.

(1) In general.

(2) Examples.

(f) Transaction costs.

(1) In general.

(2) Scope of facilitate.

(i) In general.

(ii) Inherently facilitative amounts.

(iii) Special rule for acquisitions of real property.

(A) In general.

(B) Acquisitions of real and personal property in a single transaction.

(iv) Employee compensation and overhead costs.

(A) In general.

(B) Election to capitalize.
(3) Treatment of transaction costs.
(i) In general.
(ii) Treatment of inherently facilitative amounts.
(iii) Contingency fees.
(4) Examples.
(g) Treatment of capital expenditures.
(h) Recovery of capitalized amounts.
(1) In general.
(2) Examples.
(i) Accounting method changes.
(j) Effective/applicability date.
(1) In general.
(2) Early application of this section.
(i) In general.
(ii) Transition rule for election to capitalize employee compensation and overhead costs on 2012 or 2013 returns.
(3) Optional application of TD 9564.

§ 1.263(a)–3 Amounts paid to improve tangible property.

(a) Overview.
(b) Definitions.
(1) Amount paid.
(2) Personal property.
(3) Real property.
(4) Owner.
(c) Coordination with other provisions of the Internal Revenue Code.
(1) In general.
(2) Materials and supplies.
(3) Example.
(d) Requirement to capitalize amounts paid for improvements.
(e) Determining the unit of property.
(1) In general.
(2) Building.
(i) In general.
(ii) Application of improvement rules to a building.
(A) Building structure.
(B) Building system.
(iii) Condominium.
(A) In general.
(B) Application of improvement rules to a condominium.
(iv) Cooperative.
(A) In general.
(B) Application of improvement rules to a cooperative.
(v) Leased building.
(A) In general.
(B) Application of improvement rules to a leased building.
(*1*) Entire building.
(*2*) Portion of building.
(3) Property other than a building.
(i) In general.
(ii) Plant property.
(A) Definition.
(B) Unit of property for plant property.
(iii) Network assets.
(A) Definition.
(B) Unit of property for network assets.
(iv) Leased property other than buildings.
(4) Improvements to property.
(5) Additional rules.
(i) Year placed in service.
(ii) Change in subsequent taxable year.
(6) Examples.
(f) Improvements to leased property.
(1) In general.
(2) Lessee improvements.
(i) Requirement to capitalize.
(ii) Unit of property for lessee improvements.
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(o) Treatment of capital expenditures.
(p) Recovery of capitalized amounts.
(q) Accounting method changes.
(r) Effective/applicability date.
(1) In general.
(2) Early application of this section.
(i) In general.
(ii) Transition rule for elections on 2012 and 2013 returns.
(3) Optional application of TD 9564.

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§ 1.263(a)–6 Election to deduct or capitalize certain expenditures.

(a) In general.
(b) Election provisions.
(c) Effective/applicability date.
(1) In general.
(2) Early application of this section.
(3) Optional application of TD 9564.

§ 1.263(a)–0T [Removed]

■ **Par. 19.** Section 1.263(a)–0T is removed.

Par. 20. Section 1.263(a)–1 is revised to read as follows:

§ 1.263(a)–1 Capital expenditures; in general.

(a) *General rule for capital expenditures.* Except as provided in chapter 1 of the Internal Revenue Code, no deduction is allowed for—

(1) Any amount paid for new buildings or for permanent improvements or betterments made to increase the value of any property or estate; or

(2) Any amount paid in restoring property or in making good the exhaustion thereof for which an allowance is or has been made.

(b) *Coordination with other provisions of the Internal Revenue Code.* Nothing in this section changes the treatment of any amount that is specifically provided for under any provision of the Internal Revenue Code or the Treasury Regulations other than section 162(a) or section 212 and the regulations under those sections. For example, see section 263A, which requires taxpayers to capitalize the direct and allocable indirect costs to property produced by the taxpayer and property acquired for resale. See also section 195 requiring taxpayers to capitalize certain costs as start-up expenditures.

(c) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Amount paid.* In the case of a taxpayer using an accrual method of accounting, the terms *amount paid* and *payment* mean a liability incurred (within the meaning of § 1.446–1(c)(1)(ii)). A liability may not be taken into account under this section prior to the taxable year during which the liability is incurred.

(2) *Produce* means construct, build, install, manufacture, develop, create, raise, or grow. This definition is intended to have the same meaning as the definition used for purposes of section 263A(g)(1) and § 1.263A–2(a)(1)(i), except that improvements are excluded from the definition in this paragraph (c)(2) and are separately defined and addressed in § 1.263(a)–3.

(d) *Examples of capital expenditures.* The following amounts paid are examples of capital expenditures:

(1) An amount paid to acquire or produce a unit of real or personal tangible property. See § 1.263(a)–2.

(2) An amount paid to improve a unit of real or personal tangible property. See § 1.263(a)–3.

(3) An amount paid to acquire or create intangibles. See § 1.263(a)–4.

(4) An amount paid or incurred to facilitate an acquisition of a trade or business, a change in capital structure of a business entity, and certain other transactions. See § 1.263(a)–5.

(5) An amount paid to acquire or create interests in land, such as easements, life estates, mineral interests, timber rights, zoning variances, or other interests in land.

(6) An amount assessed and paid under an agreement between bondholders or shareholders of a corporation to be used in a reorganization of the corporation or voluntary contributions by shareholders to the capital of the corporation for any corporate purpose. See section 118 and § 1.118–1.

(7) An amount paid by a holding company to carry out a guaranty of dividends at a specified rate on the stock of a subsidiary corporation for the purpose of securing new capital for the subsidiary and increasing the value of its stockholdings in the subsidiary. This amount must be added to the cost of the stock in the subsidiary.

(e) *Amounts paid to sell property*—(1) *In general.* Commissions and other transaction costs paid to facilitate the sale of property are not currently deductible under section 162 or 212. Instead, the amounts are capitalized costs that reduce the amount realized in the taxable year in which the sale occurs or are taken into account in the taxable year in which the sale is abandoned if a deduction is permissible. These amounts are not added to the basis of the property sold or treated as an intangible asset under § 1.263(a)–4. See § 1.263(a)–5(g) for the treatment of amounts paid to facilitate the disposition of assets that constitute a trade or business.

(2) *Dealer in property.* In the case of a dealer in property, amounts paid to facilitate the sale of such property are treated as ordinary and necessary business expenses.

(3) *Examples.* The following examples, which assume the sale is not an installment sale under section 453, illustrate the rules of this paragraph (e):

Example 1. Sales costs of real property. A owns a parcel of real estate. A sells the real estate and pays legal fees, recording fees, and sales commissions to facilitate the sale. A must capitalize the fees and commissions and, in the taxable year of the sale, must reduce the amount realized from the sale of the real estate by the fees and commissions.

Example 2. Sales costs of dealers. Assume the same facts as in *Example 1,* except that A is a dealer in real estate. The commissions and fees paid to facilitate the sale of the real estate may be deducted as ordinary and necessary business expenses under section 162.

Example 3. Sales costs of personal property used in a trade or business. B owns a truck for use in B's trade or business. B decides to sell the truck on November 15, Year 1. B pays for an appraisal to determine a reasonable asking price. On February 15, Year 2, B sells the truck to C. In Year 1, B must capitalize the amount paid to appraise the truck, and in Year 2, must reduce the amount realized from the sale of the truck by the amount paid for the appraisal.

Example 4. Costs of abandoned sale of personal property used in a trade or business. Assume the same facts as in *Example 3,* except that, instead of selling the truck on February 15, Year 2, B decides on that date not to sell the truck and takes the truck off the market. In Year 1, B must capitalize the amount paid to appraise the truck. However, B may recognize the amount paid to appraise the truck as a loss under section 165 in Year 2, the taxable year when the sale is abandoned.

Example 5. Sales costs of personal property not used in a trade or business. Assume the same facts as in *Example 3,* except that B does not use the truck in B's trade or business but instead uses it for personal purposes. In Year 1, B must capitalize the amount paid to appraise the truck, and in Year 2, must reduce the amount realized from the sale of the truck by the amount paid for the appraisal.

Example 6. Costs of abandoned sale of personal property not used in a trade or business. Assume the same facts as in *Example 5,* except that, instead of selling the truck on February 15, Year 2, B decides on that date not to sell the truck and takes the truck off the market. In Year 1, B must capitalize the amount paid to appraise the truck. Although B abandons the sale in Year 2, B may not treat the amount paid to appraise the truck as a loss under section 165 because the truck was not used in B's trade or business or in a transaction entered into for profit.

(f) *De minimis safe harbor election*—(1) *In general.* Except as otherwise provided in paragraph (f)(2) of this section, a taxpayer electing to apply the de minimis safe harbor under this paragraph (f) may not capitalize under § 1.263(a)–2(d)(1) or § 1.263(a)–3(d) any amount paid in the taxable year for the acquisition or production of a unit of tangible property nor treat as a material or supply under § 1.162–3(a) any amount paid in the taxable year for tangible property if the amount specified under this paragraph (f)(1) meets the requirements of paragraph (f)(1)(i) or (f)(1)(ii) of this section. But see section 263A and the regulations under section 263A, which require taxpayers to capitalize the direct and allocable indirect costs of property produced by the taxpayer (for example, property improved by the taxpayer) and property acquired for resale.

(i) *Taxpayer with applicable financial statement.* A taxpayer electing to apply the de minimis safe harbor may not capitalize under § 1.263(a)–2(d)(1) or § 1.263(a)–3(d) nor treat as a material or supply under § 1.162–3(a) any amount

paid in the taxable year for property described in paragraph (f)(1) of this section if—

(A) The taxpayer has an applicable financial statement (as defined in paragraph (f)(4) of this section);

(B) The taxpayer has at the beginning of the taxable year written accounting procedures treating as an expense for non-tax purposes—

(*1*) Amounts paid for property costing less than a specified dollar amount; or

(*2*) Amounts paid for property with an economic useful life (as defined in § 1.162–3(c)(3)) of 12 months or less;

(C) The taxpayer treats the amount paid for the property as an expense on its applicable financial statement in accordance with its written accounting procedures; and

(D) The amount paid for the property does not exceed $5,000 per invoice (or per item as substantiated by the invoice) or other amount as identified in published guidance in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter).

(ii) *Taxpayer without applicable financial statement.* A taxpayer electing to apply the de minimis safe harbor may not capitalize under § 1.263(a)–2(d)(1) or § 1.263(a)–3(d) nor treat as a material or supply under § 1.162–3(a) any amount paid in the taxable year for property described in paragraph (f)(1) of this section if—

(A) The taxpayer does not have an applicable financial statement (as defined in paragraph (f)(4) of this section);

(B) The taxpayer has at the beginning of the taxable year accounting procedures treating as an expense for non-tax purposes—

(*1*) Amounts paid for property costing less than a specified dollar amount; or

(*2*) Amounts paid for property with an economic useful life (as defined in § 1.162–3(c)(3)) of 12 months or less;

(C) The taxpayer treats the amount paid for the property as an expense on its books and records in accordance with these accounting procedures; and

(D) The amount paid for the property does not exceed $500 per invoice (or per item as substantiated by the invoice) or other amount as identified in published guidance in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter).

(iii) *Taxpayer with both an applicable financial statement and a non-qualifying financial statement.* For purposes of this paragraph (f)(1), if a taxpayer has an applicable financial statement defined in paragraph (f)(4) of this section in addition to a financial statement that does not meet requirements of paragraph (f)(4) of this section, the taxpayer must meet the requirements of paragraph (f)(1)(i) of this section to qualify to elect the de minimis safe harbor under this paragraph (f).

(2) *Exceptions to de minimis safe harbor.* The de minimis safe harbor in paragraph (f)(1) of this section does not apply to the following:

(i) Amounts paid for property that is or is intended to be included in inventory property;

(ii) Amounts paid for land;

(iii) Amounts paid for rotable, temporary, and standby emergency spare parts that the taxpayer elects to capitalize and depreciate under § 1.162–3(d); and

(iv) Amounts paid for rotable and temporary spare parts that the taxpayer accounts for under the optional method of accounting for rotable parts pursuant to § 1.162–3(e).

(3) *Additional rules*—(i) *Transaction and other additional costs.* A taxpayer electing to apply the de minimis safe harbor under paragraph (f)(1) of this section is not required to include in the cost of the tangible property the additional costs of acquiring or producing such property if these costs are not included in the same invoice as the tangible property. However, the taxpayer electing to apply the de minimis safe harbor under paragraph (f)(1) of this section must include in the cost of such property all additional costs (for example, delivery fees, installation services, or similar costs) if these additional costs are included on the same invoice with the tangible property. For purposes of this paragraph, if the invoice includes amounts paid for multiple tangible properties and such invoice includes additional invoice costs related to these multiple properties, then the taxpayer must allocate the additional invoice costs to each property using a reasonable method, and each property, including allocable labor and overhead, must meet the requirements of paragraph (f)(1)(i) or paragraph (f)(1)(ii) of this section, whichever is applicable. Reasonable allocation methods include, but are not limited to specific identification, a pro rata allocation, or a weighted average method based on the property's relative cost. For purposes of this paragraph (f)(3)(i), additional costs consist of the costs of facilitating the acquisition or production of such tangible property under § 1.263(a)–2(f) and the costs for work performed prior to the date that the tangible property is placed in service under § 1.263(a)–2(d).

(ii) *Materials and supplies.* If a taxpayer elects to apply the de minimis safe harbor provided under this paragraph (f), then the taxpayer must also apply the de minimis safe harbor to amounts paid for all materials and supplies (as defined under § 1.162–3) that meet the requirements of § 1.263(a)–1(f). See paragraph (f)(3)(iv) of this section for treatment of materials and supplies under the de minimis safe harbor.

(iii) *Sale or disposition.* Property to which a taxpayer applies the de minimis safe harbor contained in this paragraph (f) is not treated upon sale or other disposition as a capital asset under section 1221 or as property used in the trade or business under section 1231.

(iv) *Treatment of de minimis amounts.* An amount paid for property to which a taxpayer properly applies the de minimis safe harbor contained in this paragraph (f) is not treated as a capital expenditure under § 1.263(a)–2(d)(1) or § 1.263(a)–3(d) or as a material and supply under § 1.162–3, and may be deducted under § 1.162–1 in the taxable year the amount is paid provided the amount otherwise constitutes an ordinary and necessary expenses incurred in carrying on a trade or business.

(v) *Coordination with section 263A.* Amounts paid for tangible property described in paragraph (f)(1) of this section may be subject to capitalization under section 263A if the amounts paid for tangible property comprise the direct or allocable indirect costs of other property produced by the taxpayer or property acquired for resale. See, for example, § 1.263A–1(e)(3)(ii)(R) requiring taxpayers to capitalize the cost of tools and equipment allocable to property produced or property acquired for resale.

(vi) *Written accounting procedures for groups of entities.* If the taxpayer's financial results are reported on the applicable financial statement (as defined in paragraph (f)(4) of this section) for a group of entities then, for purposes of paragraph (f)(1)(i)(A) of this section, the group's applicable financial statement may be treated as the applicable financial statement of the taxpayer, and for purposes of paragraphs (f)(1)(i)(B) and (f)(1)(i)(C) of this section, the written accounting procedures provided for the group and utilized for the group's applicable financial statement may be treated as the written accounting procedures of the taxpayer.

(vii) *Combined expensing accounting procedures.* For purposes of paragraphs (f)(1)(i) and (f)(1)(ii) of this section, if the taxpayer has, at the beginning of the taxable year accounting procedures

treating as an expense for non-tax purposes (1) amounts paid for property costing less than a specified dollar amount; and (2) amounts paid for property with an economic useful life (as defined in § 1.162–3(c)(3)) of 12 months or less, then a taxpayer electing to apply the de minimis safe harbor under this paragraph (f) must apply the provisions of this paragraph (f) to amounts qualifying under either accounting procedure.

(4) *Definition of applicable financial statement.* For purposes of this paragraph (f), the taxpayer's applicable financial statement (AFS) is the taxpayer's financial statement listed in paragraphs (f)(4)(i) through (iii) of this section that has the highest priority (including within paragraph (f)(4)(ii) of this section). The financial statements are, in descending priority—

(i) A financial statement required to be filed with the Securities and Exchange Commission (SEC) (the 10–K or the Annual Statement to Shareholders);

(ii) A certified audited financial statement that is accompanied by the report of an independent certified public accountant (or in the case of a foreign entity, by the report of a similarly qualified independent professional) that is used for—

(A) Credit purposes;

(B) Reporting to shareholders, partners, or similar persons; or

(C) Any other substantial non-tax purpose; or

(iii) A financial statement (other than a tax return) required to be provided to the federal or a state government or any federal or state agency (other than the SEC or the Internal Revenue Service).

(5) *Time and manner of election.* A taxpayer that makes the election under this paragraph (f) must make the election for all amounts paid during the taxable year for property described in paragraph (f)(1) of this section and meeting the requirements of paragraph (f)(1)(i) or paragraph (f)(1)(ii) of this section, as applicable. A taxpayer makes the election by attaching a statement to the taxpayer's timely filed original Federal tax return (including extensions) for the taxable year in which these amounts are paid. See §§ 301.9100–1 through 301.9100–3 of this chapter for the provisions governing extensions of time to make regulatory elections. The statement must be titled ''Section 1.263(a)–1(f) de minimis safe harbor election'' and include the taxpayer's name, address, taxpayer identification number, and a statement that the taxpayer is making the de minimis safe harbor election under § 1.263(a)–1(f). In the case of a consolidated group filing a consolidated income tax return, the election is made for each member of the consolidated group by the common parent, and the statement must also include the names and taxpayer identification numbers of each member for which the election is made. In the case of an S corporation or a partnership, the election is made by the S corporation or the partnership and not by the shareholders or partners. An election may not be made through the filing of an application for change in accounting method or, before obtaining the Commissioner's consent to make a late election, by filing an amended Federal tax return. A taxpayer may not revoke an election made under this paragraph (f). The manner of electing the de minimis safe harbor under this paragraph (f) may be modified through guidance of general applicability (see §§ 601.601(d)(2) and 601.602 of this chapter).

(6) *Anti-abuse rule.* If a taxpayer acts to manipulate transactions with the intent to achieve a tax benefit or to avoid the application of the limitations provided under paragraphs (f)(1)(i)(B)(*1*), (f)(1)(i)(D), (f)(1)(ii)(B)(*1*), and (f)(1)(ii)(D) of this section, appropriate adjustments will be made to carry out the purposes of this section. For example, a taxpayer is deemed to act to manipulate transactions with an intent to avoid the purposes and requirements of this section if—

(i) The taxpayer applies the de minimis safe harbor to amounts substantiated with invoices created to componentize property that is generally acquired or produced by the taxpayer (or other taxpayers in the same or similar trade or business) as a single unit of tangible property; and

(ii) This property, if treated as a single unit, would exceed any of the limitations provided under paragraphs (f)(1)(i)(B)(*1*), (f)(1)(i)(D), (f)(1)(ii)(B)(*1*), and (f)(1)(ii)(D) of this section, as applicable.

(7) *Examples.* The following examples illustrate the application of this paragraph (f). Unless otherwise provided, assume that section 263A does not apply to the amounts described.

Example 1. De minimis safe harbor; taxpayer without AFS. In Year 1, A purchases 10 printers at $250 each for a total cost of $2,500 as indicated by the invoice. Assume that each printer is a unit of property under § 1.263(a)–3(e). A does not have an AFS. A has accounting procedures in place at the beginning of Year 1 to expense amounts paid for property costing less than $500, and A treats the amounts paid for the printers as an expense on its books and records. The amounts paid for the printers meet the requirements for the de minimis safe harbor under paragraph (f)(1)(ii) of this section. If A elects to apply the de minimis safe harbor under this paragraph (f) in Year 1, A may not capitalize the amounts paid for the 10 printers or any other amounts meeting the criteria for the de minimis safe harbor under paragraph (f)(1). Instead, in accordance with paragraph (f)(3)(iv) of this section, A may deduct these amounts under § 1.162–1 in the taxable year the amounts are paid provided the amounts otherwise constitute deductible ordinary and necessary expenses incurred in carrying on a trade or business.

Example 2. De minimis safe harbor; taxpayer without AFS. In Year 1, B purchases 10 computers at $600 each for a total cost of $6,000 as indicated by the invoice. Assume that each computer is a unit of property under § 1.263(a)–3(e). B does not have an AFS. B has accounting procedures in place at the beginning of Year 1 to expense amounts paid for property costing less than $1,000 and B treats the amounts paid for the computers as an expense on its books and records. The amounts paid for the printers do not meet the requirements for the de minimis safe harbor under paragraph (f)(1)(ii) of this section because the amount paid for the property exceeds $500 per invoice (or per item as substantiated by the invoice). B may not apply the de minimis safe harbor election to the amounts paid for the 10 computers under paragraph (f)(1) of this section.

Example 3. De minimis safe harbor; taxpayer with AFS. C is a member of a consolidated group for Federal income tax purposes. C's financial results are reported on the consolidated applicable financial statements for the affiliated group. C's affiliated group has a written accounting policy at the beginning of Year 1, which is followed by C, to expense amounts paid for property costing $5,000 or less. In Year 1, C pays $6,250,000 to purchase 1,250 computers at $5,000 each. C receives an invoice from its supplier indicating the total amount due ($6,250,000) and the price per item ($5,000). Assume that each computer is a unit of property under § 1.263(a)–3(e). The amounts paid for the computers meet the requirements for the de minimis safe harbor under paragraph (f)(1)(i) of this section. If C elects to apply the de minimis safe harbor under this paragraph (f) for Year 1, C may not capitalize the amounts paid for the 1,250 computers or any other amounts meeting the criteria for the de minimis safe harbor under paragraph (f)(1) of this section. Instead, in accordance with paragraph (f)(3)(iv) of this section, C may deduct these amounts under § 1.162–1 in the taxable year the amounts are paid provided the amounts otherwise constitute deductible ordinary and necessary expenses incurred in carrying on a trade or business.

Example 4. De minimis safe harbor; taxpayer with AFS. D is a member of a consolidated group for Federal income tax purposes. D's financial results are reported on the consolidated applicable financial statements for the affiliated group. D's affiliated group has a written accounting policy at the beginning of Year 1, which is followed by D, to expense amounts paid for property costing less than $15,000. In Year 1,

D pays $4,800,000 to purchase 800 elliptical machines at $6,000 each. D receives an invoice from its supplier indicating the total amount due ($4,800,000) and the price per item ($6,000). Assume that each elliptical machine is a unit of property under § 1.263(a)–3(e). D may not apply the de minimis safe harbor election to the amounts paid for the 800 elliptical machines under paragraph (f)(1) of this section because the amount paid for the property exceeds $5,000 per invoice (or per item as substantiated by the invoice).

Example 5. De minimis safe harbor; additional invoice costs. E is a member of a consolidated group for Federal income tax purposes. E's financial results are reported on the consolidated applicable financial statements for the affiliated group. E's affiliated group has a written accounting policy at the beginning of Year 1, which is followed by E, to expense amounts paid for property costing less than $5,000. In Year 1, E pays $45,000 for the purchase and installation of wireless routers in each of its 10 office locations. Assume that each wireless router is a unit of property under § 1.263(a)–3(e). E receives an invoice from its supplier indicating the total amount due ($45,000), including the material price per item ($2,500), and total delivery and installation ($20,000). E allocates the additional invoice costs to the materials on a pro rata basis, bringing the cost of each router to $4,500 ($2,500 materials + $2,000 labor and overhead). The amounts paid for each router, including the allocable additional invoice costs, meet the requirements for the de minimis safe harbor under paragraph (f)(1)(i) of this section. If E elects to apply the de minimis safe harbor under this paragraph (f) for Year 1, E may not capitalize the amounts paid for the 10 routers (including the additional invoice costs) or any other amounts meeting the criteria for the de minimis safe harbor under paragraph (f)(1) of this section. Instead, in accordance with paragraph (f)(3)(iv) of this section, E may deduct these amounts under § 1.162–1 in the taxable year the amounts are paid provided the amounts otherwise constitute deductible ordinary and necessary expenses incurred in carrying on a trade or business.

Example 6. De minims safe harbor; non-invoice additional costs. F is a corporation that provides consulting services to its customer. F does not have an AFS, but F has accounting procedures in place at the beginning of Year 1 to expense amounts paid for property costing less than $500. In Year 1, F pays $600 to an interior designer to shop for, evaluate, and make recommendations regarding purchasing new furniture for F's conference room. As a result of the interior designer's recommendations, F acquires a conference table for $500 and 10 chairs for $300 each. In Year 1, F receives an invoice from the interior designer for $600 for his services, and F receives a separate invoice from the furniture supplier indicating a total amount due of $500 for the table and $300 for each chair. For Year 1, F treats the amount paid for the table and each chair as an expense on its books and records, and F elects to use the de minimis safe harbor for amounts paid for tangible property that qualify under the safe harbor. The amount paid to the interior designer is a cost of facilitating the acquisition of the table and chairs under § 1.263(a)–2(f). Under paragraph (f)(3)(i) of this section, F is not required to include in the cost of tangible property the additional costs of acquiring such property if these costs are not included in the same invoice as the tangible property. Thus, F is not required to include a pro rata allocation of the amount paid to the interior designer to determine the application of the de minimis safe harbor to the table and the chairs. Accordingly, the amounts paid by F for the table and each chair meet the requirements for the de minimis safe harbor under paragraph (f)(1)(ii) of this section, and F may not capitalize the amounts paid for the table or each chair under paragraph (f)(1) of this section. In addition, F is not required to capitalize the amounts paid to the interior designer as a cost that facilitates the acquisition of tangible property under § 1.263(a)–2(f)(3)(i). Instead, F may deduct the amounts paid for the table, chairs, and interior designer under § 1.162–1 in the taxable year the amounts are paid provided the amounts otherwise constitute deductible ordinary and necessary expenses incurred in carrying on a trade or business.

Example 7. De minimis safe harbor; 12-month economic useful life. G operates a restaurant. In Year 1, G purchases 10 hand-held point-of-service devices at $300 each for a total cost of $3,000 as indicated by invoice. G also purchases 3 tablet computers at $500 each for a total cost of $1,500 as indicated by invoice. Assume each point-of-service device and each tablet computer has an economic useful life of 12 months or less, beginning when they are used in G's business. Assume that each device and each tablet is a unit of property under § 1.263(a)–3(e). G does not have an AFS, but G has accounting procedures in place at the beginning of Year 1 to expense amounts paid for property costing $300 or less and to expense amounts paid for property with an economic useful life of 12 months or less. Thus, G expenses the amounts paid for the hand-held devices on its books and records because each device costs $300. G also expenses the amounts paid for the tablet computers on its books and records because the computers have an economic useful life of 12 months of less, beginning when they are used. The amounts paid for the hand-held devices and the tablet computers meet the requirements for the de minimis safe harbor under paragraph (f)(1)(ii) of this section. If G elects to apply the de minimis safe harbor under this paragraph (f) in Year 1, G may not capitalize the amounts paid for the hand-held devices, the tablet computers, or any other amounts meeting the criteria for the de minimis safe harbor under paragraph (f)(1) of this section. Instead, in accordance with paragraph (f)(3)(iv) of this section, G may deduct the amounts paid for the hand-held devices and tablet computers under § 1.162–1 in the taxable year the amounts are paid provided the amounts otherwise constitute deductible ordinary and necessary business expenses incurred in carrying on a trade or business.

Example 8. De minimis safe harbor; limitation. Assume the facts as in *Example 7,* except G purchases the 3 tablet computers at $600 each for a total cost of $1,800. The amounts paid for the tablet computers do not meet the de minimis rule safe harbor under paragraphs (f)(1)(ii) and (f)(3)(vii) of this section because the cost of each computer exceeds $500. Therefore, the amounts paid for the tablet computers may not be deducted under the safe harbor.

Example 9. De minimis safe harbor; materials and supplies. H is a corporation that provides consulting services to its customers. H has an AFS and a written accounting policy at the beginning of the taxable year to expense amounts paid for property costing $5,000 or less. In Year 1, H purchases 1,000 computers at $500 each for a total cost of $500,000. Assume that each computer is a unit of property under § 1.263(a)–3(e) and is not a material or supply under § 1.162–3. In addition, H purchases 200 office chairs at $100 each for a total cost of $20,000 and 250 customized briefcases at $80 each for a total cost of $20,000. Assume that each office chair and each briefcase is a material or supply under § 1.162–3(c)(1). H treats the amounts paid for the computers, office chairs, and briefcases as expenses on its AFS. The amounts paid for computers, office chairs, and briefcases meet the requirements for the de minimis safe harbor under paragraph (f)(1)(i) of this section. If H elects to apply the de minimis safe harbor under this paragraph (f) in Year 1, H may not capitalize the amounts paid for the 1,000 computers, the 200 office chairs, and the 250 briefcases under paragraph (f)(1) of this section. H may deduct the amounts paid for the computers, the office chairs, and the briefcases under § 1.162–1 in the taxable year the amounts are paid provided the amounts otherwise constitute deductible ordinary and necessary expenses incurred in carrying on a trade or business.

Example 10. De minimis safe harbor; coordination with section 263A. J is a member of a consolidated group for Federal income tax purposes. J's financial results are reported on the consolidated AFS for the affiliated group. J's affiliated group has a written accounting policy at the beginning of Year 1, which is followed by J, to expense amounts paid for property costing less than $1,000 or that has an economic useful life of 12 months or less. In Year 1, J acquires jigs, dies, molds, and patterns for use in the manufacture of J's products. Assume each jig, die, mold, and pattern is a unit of property under § 1.263(a)–3(e) and costs less than $1,000. In Year 1, J begins using the jigs, dies, molds and patterns to manufacture its products. Assume these items are materials and supplies under § 1.162–3(c)(1)(iii), and J elects to apply the de minimis safe harbor under paragraph (f)(1)(i) of this section to amounts qualifying under the safe harbor in Year 1. Under paragraph (f)(3)(v) of this section, the amounts paid for the jigs, dies, molds, and patterns may be subject to capitalization under section 263A if the amounts paid for these tangible properties comprise the direct or allocable indirect costs of other property produced by the taxpayer or property acquired for resale.

Example 11. De minimis safe harbor; anti-abuse rule. K is a corporation that provides

hauling services to its customers. In Year 1, K decides to purchase a truck to use in its business. K does not have an AFS. K has accounting procedures in place at the beginning of Year 1 to expense amounts paid for property costing less than $500. K arranges to purchase a used truck for a total of $1,500. Prior to the acquisition, K requests the seller to provide multiple invoices for different parts of the truck. Accordingly, the seller provides K with four invoices during Year 1—one invoice of $500 for the cab, one invoice of $500 for the engine, one invoice of $300 for the trailer, and a fourth invoice of $200 for the tires. K treats the amounts paid under each invoice as an expense on its books and records. K elects to apply the de minimis safe harbor under paragraph (f) of this section in Year 1 and does not capitalize the amounts paid for each invoice pursuant to the safe harbor. Under paragraph (f)(6) of this section, K has applied the de minimis rule to amounts substantiated with invoices created to componentize property that is generally acquired as a single unit of tangible property in the taxpayer's type of business, and this property, if treated as single unit, would exceed the limitations provided under the de minimis rule. Accordingly, K is deemed to manipulate the transaction to acquire the truck with the intent to avoid the purposes of this paragraph (f). As a result, K may not apply the de minimis rule to these amounts and is subject to appropriate adjustments.

(g) *Accounting method changes.* Except for paragraph (f) of this section (the de minimis safe harbor election), a change to comply with this section is a change in method of accounting to which the provisions of sections 446 and 481 and the accompanying regulations apply. A taxpayer seeking to change to a method of accounting permitted in this section must secure the consent of the Commissioner in accordance with § 1.446–1(e) and follow the administrative procedures issued under § 1.446–1(e)(3)(ii) for obtaining the Commissioner's consent to change its accounting method.

(h) *Effective/applicability date*—(1) *In general.* Except for paragraph (f) of this section, this section generally applies to taxable years beginning on or after January 1, 2014. Paragraph (f) of this section applies to amounts paid in taxable years beginning on or after January 1, 2014. Except as provided in paragraph (h)(1) and paragraph (h)(2) of this section, § 1.263(a)–1 as contained in 26 CFR part 1 edition revised as of April 1, 2011, applies to taxable years beginning before January 1, 2014.

(2) *Early application of this section*—(i) *In general.* Except for paragraph (f) of this section, a taxpayer may choose to apply this section to taxable years beginning on or after January 1, 2012. A taxpayer may choose to apply paragraph (f) of this section to amounts paid in taxable years beginning on or after January 1, 2012.

(ii) *Transition rule for de minimis safe harbor election on 2012 or 2013 returns.* If under paragraph (h)(2)(i) of this section, a taxpayer chooses to make the election to apply the de minimis safe harbor under paragraph (f) of this section for amounts paid in its taxable year beginning on or after January 1, 2012, and ending on or before September 19, 2013 (applicable taxable year), and the taxpayer did not make the election specified in paragraph (f)(5) of this section on its timely filed original Federal tax return for the applicable taxable year, the taxpayer must make the election specified in paragraph (f)(5) of this section for the applicable taxable year by filing an amended Federal tax return for the applicable taxable year on or before 180 days from the due date including extensions of the taxpayer's Federal tax return for the applicable taxable year, notwithstanding that the taxpayer may not have extended the due date.

(3) *Optional application of TD 9564.* A taxpayer may choose to apply § 1.263(a)–1T as contained in TD 9564 (76 FR 81060) December 27, 2011, to taxable years beginning on or after January 1, 2012, and before January 1, 2014.

§ 1.263(a)–1T [Removed]

■ **Par. 21.** Section 1.263(a)–1T is removed.

■ **Par. 22.** Section 1.263(a)–2 is revised to read as follows:

§ 1.263(a)–2 Amounts paid to acquire or produce tangible property.

(a) *Overview.* This section provides rules for applying section 263(a) to amounts paid to acquire or produce a unit of real or personal property. Paragraph (b) of this section contains definitions. Paragraph (c) of this section contains the rules for coordinating this section with other provisions of the Internal Revenue Code (Code). Paragraph (d) of this section provides the general requirement to capitalize amounts paid to acquire or produce a unit of real or personal property. Paragraph (e) of this section provides the requirement to capitalize amounts paid to defend or perfect title to real or personal property. Paragraph (f) of this section provides the rules for determining the extent to which taxpayers must capitalize transaction costs related to the acquisition of tangible property. Paragraphs (g) and (h) of this section address the treatment and recovery of capital expenditures. Paragraph (i) of this section provides for changes in methods of accounting to comply with this section, and paragraph (j) of this section provides the effective and applicability dates for the rules under this section.

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Amount paid.* In the case of a taxpayer using an accrual method of accounting, the terms *amount paid* and *payment* mean a liability incurred (within the meaning of § 1.446–1(c)(1)(ii)). A liability may not be taken into account under this section prior to the taxable year during which the liability is incurred.

(2) *Personal property* means tangible personal property as defined in § 1.48–1(c).

(3) *Real property* means land and improvements thereto, such as buildings or other inherently permanent structures (including items that are structural components of the buildings or structures) that are not personal property as defined in paragraph (b)(2) of this section. Any property that constitutes other tangible property under § 1.48–1(d) is treated as real property for purposes of this section. Local law is not controlling in determining whether property is real property for purposes of this section.

(4) *Produce* means construct, build, install, manufacture, develop, create, raise, or grow. This definition is intended to have the same meaning as the definition used for purposes of section 263A(g)(1) and § 1.263A–2(a)(1)(i), except that improvements are excluded from the definition in this paragraph (b)(4) and are separately defined and addressed in § 1.263(a)–3.

(c) *Coordination with other provisions of the Code*—(1) *In general.* Nothing in this section changes the treatment of any amount that is specifically provided for under any provision of the Code or the Treasury Regulations other than section 162(a) or section 212 and the regulations under those sections. For example, see section 263A requiring taxpayers to capitalize the direct and allocable indirect costs of property produced by the taxpayer and property acquired for resale. See also section 195 requiring taxpayers to capitalize certain costs as start-up expenditures.

(2) *Materials and supplies.* Nothing in this section changes the treatment of amounts paid to acquire or produce property that is properly treated as materials and supplies under § 1.162–3.

(d) *Acquired or produced tangible property*—(1) *Requirement to capitalize.* Except as provided in § 1.162–3 (relating to materials and supplies) and in § 1.263(a)–1(f) (providing a de minimis safe harbor election), a taxpayer must capitalize amounts paid

to acquire or produce a unit of real or personal property (as determined under § 1.263(a)–3(e)), including leasehold improvements, land and land improvements, buildings, machinery and equipment, and furniture and fixtures. See § 1.263(a)–3(f) for the rules for determining whether amounts are for leasehold improvements. Amounts paid to acquire or produce a unit of real or personal property include the invoice price, transaction costs as determined under paragraph (f) of this section, and costs for work performed prior to the date that the unit of property is placed in service by the taxpayer (without regard to any applicable convention under section 168(d)). A taxpayer also must capitalize amounts paid to acquire real or personal property for resale.

(2) *Examples.* The following examples illustrate the rules of this paragraph (d). Unless otherwise provided, assume that the taxpayer does not elect the de minimis safe harbor under § 1.263(a)–1(f) and that the property is not acquired for resale under section 263A.

Example 1. Acquisition of personal property. A purchases new cash registers for use in its retail store located in leased space in a shopping mall. Assume each cash register is a unit of property as determined under § 1.263(a)–3(e) and is not a material or supply under § 1.162–3. A must capitalize under paragraph (d)(1) of this section the amount paid to acquire each cash register.

Example 2. Acquisition of personal property that is a material or supply; coordination with § 1.162–3. B operates a fleet of aircraft. In Year 1, B acquires a stock of component parts, which it intends to use to maintain and repair its aircraft. Assume that each component part is a material or supply under § 1.162–3(c)(1) and B does not make elections under § 1.162–3(d) to treat the materials and supplies as capital expenditures. In Year 2, B uses the component parts in the repair and maintenance of its aircraft. Because the parts are materials and supplies under § 1.162–3, B is not required to capitalize the amounts paid for the parts under paragraph (d)(1) of this section. Rather, to determine the treatment of these amounts, B must apply the rules under § 1.162–3, governing the treatment of materials and supplies.

Example 3. Acquisition of unit of personal property; coordination with § 1.162–3. C operates a rental business that rents out a variety of small individual items to customers (rental items). C maintains a supply of rental items on hand to replace worn or damaged items. C purchases a large quantity of rental items to be used in its business. Assume that each of these rental items is a unit of property under § 1.263(a)–3(e). Also assume that a portion of the rental items are materials and supplies under § 1.162–3(c)(1). Under paragraph (d)(1) of this section, C must capitalize the amounts paid for the rental items that are not materials and supplies under § 1.162–3(c)(1). However, C must apply the rules in § 1.162–3 to determine the treatment of the rental items that are materials and supplies under § 1.162–3(c)(1).

Example 4. Acquisition or production cost. D purchases and produces jigs, dies, molds, and patterns for use in the manufacture of D's products. Assume that each of these items is a unit of property as determined under § 1.263(a)–3(e) and is not a material and supply under § 1.162–3(c)(1). D is required to capitalize under paragraph (d)(1) of this section the amounts paid to acquire and produce the jigs, dies, molds, and patterns.

Example 5. Acquisition of land. F purchases a parcel of undeveloped real estate. F must capitalize under paragraph (d)(1) of this section the amount paid to acquire the real estate. See paragraph (f) of this section for the treatment of amounts paid to facilitate the acquisition of real property.

Example 6. Acquisition of building. G purchases a building. G must capitalize under paragraph (d)(1) of this section the amount paid to acquire the building. See paragraph (f) of this section for the treatment of amounts paid to facilitate the acquisition of real property.

Example 7. Acquisition of property for resale and production of property for sale; coordination with section 263A. H purchases goods for resale and produces other goods for sale. H must capitalize under paragraph (d)(1) of this section the amounts paid to acquire and produce the goods. See section 263A for the amounts required to be capitalized to the property produced or to the property acquired for resale.

Example 8. Production of building; coordination with section 263A. J constructs a building. J must capitalize under paragraph (d)(1) of this section the amount paid to construct the building. See section 263A for the costs required to be capitalized to the real property produced by J.

Example 9. Acquisition of assets constituting a trade or business. K owns tangible and intangible assets that constitute a trade or business. L purchases all the assets of K in a taxable transaction. L must capitalize under paragraph (d)(1) of this section the amount paid for the tangible assets of K. See § 1.263(a)–4 for the treatment of amounts paid to acquire or create intangibles and § 1.263(a)–5 for the treatment of amounts paid to facilitate the acquisition of assets that constitute a trade or business. See section 1060 for special allocation rules for certain asset acquisitions.

Example 10. Work performed prior to placing the property in service. In Year 1, M purchases a building for use as a business office. Prior to placing the building in service, M pays amounts to repair cement steps, refinish wood floors, patch holes in walls, and paint the interiors and exteriors of the building. In Year 2, M places the building in service and begins using the building as its business office. Assume that the work that M performs does not constitute an improvement to the building or its structural components under § 1.263(a)–3. Under § 1.263–3(e)(2)(i), the building and its structural components is a single unit of property. Under paragraph (d)(1) of this section, the amounts paid must be capitalized as amounts to acquire the building unit of property because they were for work performed prior to M's placing the building in service.

Example 11. Work performed prior to placing the property in service. In January Year 1, N purchases a new machine for use in an existing production line of its manufacturing business. Assume that the machine is a unit of property under § 1.263(a)–3(e) and is not a material or supply under § 1.162–3. N pays amounts to install the machine, and after the machine is installed, N pays amounts to perform a critical test on the machine to ensure that it will operate in accordance with quality standards. On November 1, Year 1, the critical test is complete, and N places the machine in service on the production line. N pays amounts to perform periodic quality control testing after the machine is placed in service. Under paragraph (d)(1) of this section, the amounts paid for the installation and the critical test performed before the machine is placed in service must be capitalized by N as amounts to acquire the machine. However, amounts paid for periodic quality control testing after N placed the machine in service are not required to be capitalized as amounts paid to acquire the machine.

(e) *Defense or perfection of title to property*—(1) *In general.* Amounts paid to defend or perfect title to real or personal property are amounts paid to acquire or produce property within the meaning of this section and must be capitalized.

(2) *Examples.* The following examples illustrate the rule of this paragraph (e):

Example 1. Amounts paid to contest condemnation. X owns real property located in County. County files an eminent domain complaint condemning a portion of X's property to use as a roadway. X hires an attorney to contest the condemnation. The amounts that X paid to the attorney must be capitalized because they were to defend X's title to the property.

Example 2. Amounts paid to invalidate ordinance. Y is in the business of quarrying and supplying for sale sand and stone in a certain municipality. Several years after Y establishes its business, the municipality in which it is located passes an ordinance that prohibits the operation of Y's business. Y incurs attorney's fees in a successful prosecution of a suit to invalidate the municipal ordinance. Y prosecutes the suit to preserve its business activities and not to defend Y's title in the property. Therefore, the attorney's fees that Y paid are not required to be capitalized under paragraph (e)(1) of this section.

Example 3. Amounts paid to challenge building line. The board of public works of a municipality establishes a building line across Z's business property, adversely affecting the value of the property. Z incurs legal fees in unsuccessfully litigating the establishment of the building line. The amounts Z paid to the attorney must be capitalized because they were to defend Z's title to the property.

(f) *Transaction costs*—(1) *In general.* Except as provided in § 1.263(a)–1(f)(3)(i) (for purposes of the de minimis safe harbor), a taxpayer must capitalize amounts paid to facilitate the acquisition of real or personal property. See § 1.263(a)–5 for the treatment of amounts paid to facilitate the acquisition of assets that constitute a trade or business. See § 1.167(a)–5 for allocations of facilitative costs between depreciable and non-depreciable property.

(2) *Scope of facilitate*—(i) *In general.* Except as otherwise provided in this section, an amount is paid to facilitate the acquisition of real or personal property if the amount is paid in the process of investigating or otherwise pursuing the acquisition. Whether an amount is paid in the process of investigating or otherwise pursuing the acquisition is determined based on all of the facts and circumstances. In determining whether an amount is paid to facilitate an acquisition, the fact that the amount would (or would not) have been paid but for the acquisition is relevant but is not determinative. Amounts paid to facilitate an acquisition include, but are not limited to, inherently facilitative amounts specified in paragraph (f)(2)(ii) of this section.

(ii) *Inherently facilitative amounts.* An amount is paid in the process of investigating or otherwise pursuing the acquisition of real or personal property if the amount is inherently facilitative. An amount is inherently facilitative if the amount is paid for—

(A) Transporting the property (for example, shipping fees and moving costs);

(B) Securing an appraisal or determining the value or price of property;

(C) Negotiating the terms or structure of the acquisition and obtaining tax advice on the acquisition;

(D) Application fees, bidding costs, or similar expenses;

(E) Preparing and reviewing the documents that effectuate the acquisition of the property (for example, preparing the bid, offer, sales contract, or purchase agreement);

(F) Examining and evaluating the title of property;

(G) Obtaining regulatory approval of the acquisition or securing permits related to the acquisition, including application fees;

(H) Conveying property between the parties, including sales and transfer taxes, and title registration costs;

(I) Finders' fees or brokers' commissions, including contingency fees (defined in paragraph (f)(3)(iii) of this section);

(J) Architectural, geological, survey, engineering, environmental, or inspection services pertaining to particular properties; or

(K) Services provided by a qualified intermediary or other facilitator of an exchange under section 1031.

(iii) *Special rule for acquisitions of real property*—(A) *In general.* Except as provided in paragraph (f)(2)(ii) of this section (relating to inherently facilitative amounts), an amount paid by the taxpayer in the process of investigating or otherwise pursuing the acquisition of real property does not facilitate the acquisition if it relates to activities performed in the process of determining whether to acquire real property and which real property to acquire.

(B) *Acquisitions of real and personal property in a single transaction.* An amount paid by the taxpayer in the process of investigating or otherwise pursuing the acquisition of personal property facilitates the acquisition of such personal property, even if such property is acquired in a single transaction that also includes the acquisition of real property subject to the special rule set out in paragraph (f)(2)(iii)(A) of this section. A taxpayer may use a reasonable allocation method to determine which costs facilitate the acquisition of personal property and which costs relate to the acquisition of real property and are subject to the special rule of paragraph (f)(2)(iii)(A) of this section.

(iv) *Employee compensation and overhead costs*—(A) *In general.* For purposes of paragraph (f) of this section, amounts paid for employee compensation (within the meaning of § 1.263(a)–4(e)(4)(ii)) and overhead are treated as amounts that do not facilitate the acquisition of real or personal property. See section 263A, however, for the treatment of employee compensation and overhead costs required to be capitalized to property produced by the taxpayer or to property acquired for resale.

(B) *Election to capitalize.* A taxpayer may elect to treat amounts paid for employee compensation or overhead as amounts that facilitate the acquisition of property. The election is made separately for each acquisition and applies to employee compensation or overhead, or both. For example, a taxpayer may elect to treat overhead, but not employee compensation, as amounts that facilitate the acquisition of property. A taxpayer makes the election by treating the amounts to which the election applies as amounts that facilitate the acquisition in the taxpayer's timely filed original Federal tax return (including extensions) for the taxable year during which the amounts are paid. See §§ 301.9100–1 through 301.9100–3 of this chapter for the provisions governing extensions of time to make regulatory elections. In the case of an S corporation or a partnership, the election is made by the S corporation or by the partnership, and not by the shareholders or partners. A taxpayer may revoke an election made under this paragraph (f)(2)(iv)(B) with respect to each acquisition only by filing a request for a private letter ruling and obtaining the Commissioner's consent to revoke the election. The Commissioner may grant a request to revoke this election if the taxpayer acted reasonably and in good faith and the revocation will not prejudice the interests of Government. See generally § 301.9100–3 of this chapter. The manner of electing and revoking the election to capitalize under this paragraph (f)(2)(iv)(B) may be modified through guidance of general applicability (see §§ 606.601(d)(2) and 601.602 of this section). An election may not be made or revoked through the filing of an application for change in accounting method or, before obtaining the Commissioner's consent to make the late election or to revoke the election, by filing an amended Federal tax return.

(3) *Treatment of transaction costs*—(i) *In general.* Except as provided under § 1.263(a)–1(f)(3)(i) (for purposes of the de minimis safe harbor), all amounts paid to facilitate the acquisition of real or personal property are capital expenditures. Facilitative amounts allocable to real or personal property must be included in the basis of the property acquired.

(ii) *Treatment of inherently facilitative amounts.* Inherently facilitative amounts allocable to real or personal property are capital expenditures related to such property, even if the property is not eventually acquired. Except for contingency fees as defined in paragraph (f)(3)(iii) of this section, inherently facilitative amounts allocable to real or personal property not acquired may be allocated to those properties and recovered as appropriate in accordance with the applicable provisions of the Code and the Treasury Regulations (for example, sections 165, 167, or 168). See paragraph (h) of this section for the recovery of capitalized amounts.

(iii) *Contingency Fees.* For purposes of this section, a contingency fee is an amount paid that is contingent on the successful closing of the acquisition of real or personal property. Contingency fees must be included in the basis of the

property acquired and may not be allocated to the property not acquired.

(4) *Examples.* The following examples illustrate the rules of paragraph (f) of this section. For purposes of these examples, assume that the taxpayer does not elect the de minimis safe harbor under § 1.263(a)–1(f):

Example 1. Broker's fees to facilitate an acquisition. A decides to purchase a building in which to relocate its offices and hires a real estate broker to find a suitable building. A pays fees to the broker to find property for A to acquire. Under paragraph (f)(2)(ii)(I) of this section, A must capitalize the amounts paid to the broker because these costs are inherently facilitative of the acquisition of real property.

Example 2. Inspection and survey costs to facilitate an acquisition. B decides to purchase Building X and pays amounts to third-party contractors for a termite inspection and an environmental survey of Building X. Under paragraph (f)(2)(ii)(J) of this section, B must capitalize the amounts paid for the inspection and the survey of the building because these costs are inherently facilitative of the acquisition of real property.

Example 3. Moving costs to facilitate an acquisition. C purchases all the assets of D and, in connection with the purchase, hires a transportation company to move storage tanks from D's plant to C's plant. Under paragraph (f)(2)(ii)(A) of this section, C must capitalize the amount paid to move the storage tanks from D's plant to C's plant because this cost is inherently facilitative to the acquisition of personal property.

Example 4. Geological and geophysical costs; coordination with other provisions. E is in the business of exploring, purchasing, and developing properties in the United States for the production of oil and gas. E considers acquiring a particular property but first incurs costs for the services of an engineering firm to perform geological and geophysical studies to determine if the property is suitable for oil or gas production. Assume that the amounts that E paid to the engineering firm constitute geological and geophysical expenditures under section 167(h). Although the amounts that E paid for the geological and geophysical services are inherently facilitative to the acquisition of real property under paragraph (f)(2)(ii)(J) of this section, E is not required to include those amounts in the basis of the real property acquired. Rather, under paragraph (c) of this section, E must capitalize these costs separately and amortize such costs as required under section 167(h) (addressing the amortization of geological and geophysical expenditures).

Example 5. Scope of facilitate. F is in the business of providing legal services to clients. F is interested in acquiring a new conference table for its office. F hires and incurs fees for an interior designer to shop for, evaluate, and make recommendations to F regarding which new table to acquire. Under paragraphs (f)(1) and (2) of this section, F must capitalize the amounts paid to the interior designer to provide these services because they are paid in the process of investigating or otherwise pursuing the acquisition of personal property.

Example 6. Transaction costs allocable to multiple properties. G, a retailer, wants to acquire land for the purpose of building a new distribution facility for its products. G considers various properties on Highway X in State Y. G incurs fees for the services of an architect to advise and evaluate the suitability of the sites for the type of facility that G intends to construct on the selected site. G must capitalize the architect fees as amounts paid to acquire land because these amounts are inherently facilitative to the acquisition of land under paragraph (f)(2)(ii)(J) of this section.

Example 7. Transaction costs; coordination with section 263A. H, a retailer, wants to acquire land for the purpose of building a new distribution facility for its products. H considers various properties on Highway X in State Y. H incurs fees for the services of an architect to prepare preliminary floor plans for a building that H could construct at any of the sites. Under these facts, the architect's fees are not facilitative to the acquisition of land under paragraph (f) of this section. Therefore, H is not required to capitalize the architect fees as amounts paid to acquire land. However, the amounts paid for the architect's fees may be subject to capitalization under section 263A if these amounts comprise the direct or allocable indirect cost of property produced by H, such as the building.

Example 8. Special rule for acquisitions of real property. J owns several retail stores. J decides to examine the feasibility of opening a new store in City X. In October, Year 1, J hires and incurs costs for a development consulting firm to study City X and perform market surveys, evaluate zoning and environmental requirements, and make preliminary reports and recommendations as to areas that J should consider for purposes of locating a new store. In December, Year 1, J continues to consider whether to purchase real property in City X and which property to acquire. J hires, and incurs fees for, an appraiser to perform appraisals on two different sites to determine a fair offering price for each site. In March, Year 2, J decides to acquire one of these two sites for the location of its new store. At the same time, J determines not to acquire the other site. Under paragraph (f)(2)(iii) of this section, J is not required to capitalize amounts paid to the development consultant in Year 1 because the amounts relate to activities performed in the process of determining whether to acquire real property and which real property to acquire, and the amounts are not inherently facilitative costs under paragraph (f)(2)(ii) of this section. However, J must capitalize amounts paid to the appraiser in Year 1 because the appraisal costs are inherently facilitative costs under paragraph (f)(2)(ii)(B) of this section. In Year 2, J must include the appraisal costs allocable to property acquired in the basis of the property acquired. In addition, J may recover the appraisal costs allocable to the property not acquired in accordance with paragraphs (f)(3)(ii) and (h) of this section. See, for example, § 1.165–2 for losses on the permanent withdrawal of non-depreciable property.

Example 9. Contingency fee. K owns several restaurant properties. K decides to open a new restaurant in City X. In October, Year 1, K hires a real estate consultant to identify potential property upon which K may locate its restaurant, and is obligated to compensate the consultant upon the acquisition of property. The real estate consultant identifies three properties, and K decides to acquire one of those properties. Upon closing of the acquisition of that property, K pays the consultant its fee. The amount paid to the consultant constitutes a contingency fee under paragraph (f)(3)(iii) of this section because the payment is contingent on the successful closing of the acquisition of property. Accordingly, under paragraph (f)(3)(iii) of this section, K must include the amount paid to the consultant in the basis of the property acquired. K is not permitted to allocate the amount paid between the properties acquired and not acquired.

Example 10. Employee compensation and overhead. L, a freight carrier, maintains an acquisition department whose sole function is to arrange for the purchase of vehicles and aircraft from manufacturers or other parties to be used in its freight carrying business. As provided in paragraph (f)(2)(iv)(A) of this section, L is not required to capitalize any portion of the compensation paid to employees in its acquisition department or any portion of its overhead allocable to its acquisition department. However, under paragraph (f)(2)(iv)(B) of this section, L may elect to capitalize the compensation and/or overhead costs allocable to the acquisition of a vehicle or aircraft by treating these amounts as costs that facilitate the acquisition of that property in its timely filed original Federal tax return for the year the amounts are paid.

(g) *Treatment of capital expenditures.* Amounts required to be capitalized under this section are capital expenditures and must be taken into account through a charge to capital account or basis, or in the case of property that is inventory in the hands of a taxpayer, through inclusion in inventory costs.

(h) *Recovery of capitalized amounts*—(1) *In general.* Amounts that are capitalized under this section are recovered through depreciation, cost of goods sold, or by an adjustment to basis at the time the property is placed in service, sold, used, or otherwise disposed of by the taxpayer. Cost recovery is determined by the applicable provisions of the Code and regulations relating to the use, sale, or disposition of property.

(2) *Examples.* The following examples illustrate the rule of paragraph (h)(1) of this section. For purposes of these examples, assume that the taxpayer does not elect the de minimis safe harbor under section § 1.263(a)–1(f).

Example 1. Recovery when property placed in service. X owns a 10-unit apartment building. The refrigerator in one of the apartments stops functioning, and X purchases a new refrigerator to replace the

old one. X pays for the acquisition, delivery, and installation of the new refrigerator. Assume that the refrigerator is the unit of property, as determined under § 1.263(a)–3(e), and is not a material or supply under § 1.162–3. Under paragraph (d)(1) of this section, X is required to capitalize the amounts paid for the acquisition, delivery, and installation of the refrigerator. Under this paragraph (h), the capitalized amounts are recovered through depreciation, which begins when the refrigerator is placed in service by X.

Example 2. Recovery when property used in the production of property. Y operates a plant where it manufactures widgets. Y purchases a tractor loader to move raw materials into and around the plant for use in the manufacturing process. Assume that the tractor loader is a unit of property, as determined under § 1.263(a)–3(e), and is not a material or supply under § 1.162–3. Under paragraph (d)(1) of this section, Y is required to capitalize the amounts paid to acquire the tractor loader. Under this paragraph (h), the capitalized amounts are recovered through depreciation, which begins when Y places the tractor loader in service. However, because the tractor loader is used in the production of property, under section 263A the cost recovery (that is, the depreciation) may also be capitalized to Y's property produced, and, consequently, recovered through cost of goods sold. See § 1.263A–1(e)(3)(ii)(I).

(i) *Accounting method changes.* Unless otherwise provided under this section, a change to comply with this section is a change in method of accounting to which the provisions of sections 446 and 481 and the accompanying regulations apply. A taxpayer seeking to change to a method of accounting permitted in this section must secure the consent of the Commissioner in accordance with § 1.446–1(e) and follow the administrative procedures issued under § 1.446–1(e)(3)(ii) for obtaining the Commissioner's consent to change its accounting method.

(j) *Effective/applicability date*—(1) *In general.* Except for paragraphs (f)(2)(iii), (f)(2)(iv), and (f)(3)(ii) of this section, this section generally applies to taxable years beginning on or after January 1, 2014. Paragraphs (f)(2)(iii), (f)(2)(iv), and (f)(3)(ii) of this section apply to amounts paid in taxable years beginning on or after January 1, 2014. Except as provided in paragraphs (j)(1) and (j)(2) of this section, § 1.263(a)–2 as contained in 26 CFR part 1 edition revised as of April 1, 2011, applies to taxable years beginning before January 1, 2014.

(2) *Early application of this section*–(i) *In general.* Except for paragraphs (f)(2)(iii), (f)(2)(iv), and (f)(3)(ii) of this section of this section, a taxpayer may choose to apply this section to taxable years beginning on or after January 1, 2012. A taxpayer may choose to apply paragraphs (f)(2)(iii), (f)(2)(iv), and (f)(3)(ii) of this section to amounts paid in taxable years beginning on or after January 1, 2012.

(ii) *Transition rule for election to capitalize employee compensation and overhead costs on 2012 or 2013 returns.* If under paragraph (j)(2)(i) of this section, a taxpayer chooses to make the election to capitalize employee compensation and overhead costs under paragraph (f)(2)(iv)(B) of this section for amounts paid in its taxable year beginning on or after January 1, 2012, and ending on or before September 19, 2013 (applicable taxable year), and the taxpayer did not make the election specified in paragraph (f)(2)(iv)(B) of this section on its timely filed original Federal tax return for the applicable taxable year, the taxpayer must make the election specified in paragraph (f)(2)(iv)(B) of this section for the applicable taxable year by filing an amended Federal tax return for the applicable taxable year on or before 180 days from the due date including extensions of the taxpayer's Federal tax return for the applicable taxable year, notwithstanding that the taxpayer may not have extended the due date.

(3) *Optional application of TD 9564.* Except for § 1.263(a)–2T(f)(2)(iii), (f)(2)(iv), (f)(3)(ii), and (g), a taxpayer may choose to apply § 1.263(a)–2T as contained in TD 9564 (76 FR 81060) December 27, 2011, to taxable years beginning on or after January 1, 2012, and before January 1, 2014. A taxpayer may choose to apply § 1.263(a)–2T(f)(2)(iii), (f)(2)(iv), (f)(3)(ii) and (g) as contained in TD 9564 (76 FR 81060) December 27, 2011, to amounts paid in taxable years beginning on or after January 1, 2012, and before January 1, 2014.

§ 1.263(a)–2T [Removed]

■ **Par. 23.** Section 1.263(a)–2T is removed.

■ **Par. 24.** Section 1.263(a)–3 is revised to read as follows:

§ 1.263(a)–3 Amounts paid to improve tangible property.

(a) *Overview.* This section provides rules for applying section 263(a) to amounts paid to improve tangible property. Paragraph (b) of this section provides definitions. Paragraph (c) of this section provides rules for coordinating this section with other provisions of the Internal Revenue Code (Code). Paragraph (d) of this section provides the requirement to capitalize amounts paid to improve tangible property and provides the general rules for determining whether a unit of property is improved. Paragraph (e) of this section provides the rules for determining the appropriate unit of property. Paragraph (f) of this section provides rules for leasehold improvements. Paragraph (g) of this section provides special rules for determining improvement costs in particular contexts, including indirect costs incurred during an improvement, removal costs, aggregation of related costs, and regulatory compliance costs. Paragraph (h) of this section provides a safe harbor for small taxpayers. Paragraph (i) provides a safe harbor for routine maintenance costs. Paragraph (j) of this section provides rules for determining whether amounts are paid for betterments to the unit of property. Paragraph (k) of this section provides rules for determining whether amounts are paid to restore the unit of property. Paragraph (l) of this section provides rules for amounts paid to adapt the unit of property to a new or different use. Paragraph (m) of this section provides an optional regulatory accounting method. Paragraph (n) of this section provides an election to capitalize repair and maintenance costs consistent with books and records. Paragraphs (o) and (p) of this section provide for the treatment and recovery of amounts capitalized under this section. Paragraphs (q) and (r) of this section provide for accounting method changes and state the effective/applicability date for the rules in this section.

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Amount paid.* In the case of a taxpayer using an accrual method of accounting, the terms *amounts paid* and *payment* mean a liability incurred (within the meaning of § 1.446–1(c)(1)(ii)). A liability may not be taken into account under this section prior to the taxable year during which the liability is incurred.

(2) *Personal property* means tangible personal property as defined in § 1.48–1(c).

(3) *Real property* means land and improvements thereto, such as buildings or other inherently permanent structures (including items that are structural components of the buildings or structures) that are not personal property as defined in paragraph (b)(2) of this section. Any property that constitutes other tangible property under § 1.48–1(d) is also treated as real property for purposes of this section. Local law is not controlling in determining whether property is real property for purposes of this section.

(4) *Owner* means the taxpayer that has the benefits and burdens of ownership of the unit of property for Federal income tax purposes.

(c) *Coordination with other provisions of the Code*—(1) *In general.* Nothing in this section changes the treatment of any amount that is specifically provided for under any provision of the Code or the regulations other than section 162(a) or section 212 and the regulations under those sections. For example, see section 263A requiring taxpayers to capitalize the direct and allocable indirect costs of property produced and property acquired for resale.

(2) *Materials and supplies.* A material or supply as defined in § 1.162–3(c)(1) that is acquired and used to improve a unit of tangible property is subject to this section and is not treated as a material or supply under § 1.162–3.

(3) *Example.* The following example illustrates the rules of this paragraph (c):

Example. Railroad rolling stock. X is a railroad that properly treats amounts paid for the rehabilitation of railroad rolling stock as deductible expenses under section 263(d). X is not required to capitalize the amounts paid because nothing in this section changes the treatment of amounts specifically provided for under section 263(d).

(d) *Requirement to capitalize amounts paid for improvements.* Except as provided in paragraph (h) or paragraph (n) of this section or under § 1.263(a)–1(f), a taxpayer generally must capitalize the related amounts (as defined in paragraph (g)(3) of this section) paid to improve a unit of property owned by the taxpayer. However, see paragraph (f) of this section for the treatment of amounts paid to improve leased property. See section 263A for the requirement to capitalize the direct and allocable indirect costs of property produced by the taxpayer and property acquired for resale; section 1016 for adding capitalized amounts to the basis of the unit of property; and section 168 for the treatment of additions or improvements for depreciation purposes. For purposes of this section, a unit of property is improved if the amounts paid for activities performed after the property is placed in service by the taxpayer—

(1) Are for a betterment to the unit of property (see paragraph (j) of this section);

(2) Restore the unit of property (see paragraph (k) of this section); or

(3) Adapt the unit of property to a new or different use (see paragraph (l) of this section).

(e) *Determining the unit of property*—(1) *In general.* The unit of property rules in this paragraph (e) apply only for purposes of section 263(a) and §§ 1.263(a)–1, 1.263(a)–2, 1.263(a)–3, and 1.162–3. Unless otherwise specified, the unit of property determination is based upon the functional interdependence standard provided in paragraph (e)(3)(i) of this section. However, special rules are provided for buildings (see paragraph (e)(2) of this section), plant property (see paragraph (e)(3)(ii) of this section), network assets (see paragraph (e)(3)(iii) of this section), leased property (see paragraph (e)(2)(v) of this section for leased buildings and paragraph (e)(3)(iv) of this section for leased property other than buildings), and improvements to property (see paragraph (e)(4) of this section). Additional rules are provided if a taxpayer has assigned different MACRS classes or depreciation methods to components of property or subsequently changes the class or depreciation method of a component or other item of property (see paragraph (e)(5) of this section). Property that is aggregated or subject to a general asset account election or accounted for in a multiple asset account (that is, pooled) may not be treated as a single unit of property.

(2) *Building*—(i) *In general.* Except as otherwise provided in paragraphs (e)(4), and (e)(5)(ii) of this section, in the case of a building (as defined in § 1.48–1(e)(1)), each building and its structural components (as defined in § 1.48–1(e)(2)) is a single unit of property (''building''). See paragraph (e)(2)(iii) of this section for condominiums, paragraph (e)(2)(iv) of this section for cooperatives, and paragraph (e)(2)(v) of this section for leased buildings.

(ii) *Application of improvement rules to a building.* An amount is paid to improve a building under paragraph (d) of this section if the amount is paid for an improvement under paragraphs (j), (k), or paragraph (l) of this section to any of the following:

(A) *Building structure.* A building structure consists of the building (as defined in § 1.48–1(e)(1)), and its structural components (as defined in § 1.48–1(e)(2)), other than the structural components designated as buildings systems in paragraph (e)(2)(ii)(B) of this section.

(B) *Building system.* Each of the following structural components (as defined in § 1.48–1(e)(2)), including the components thereof, constitutes a building system that is separate from the building structure, and to which the improvement rules must be applied—

(*1*) Heating, ventilation, and air conditioning (''HVAC'') systems (including motors, compressors, boilers, furnace, chillers, pipes, ducts, radiators);

(*2*) Plumbing systems (including pipes, drains, valves, sinks, bathtubs, toilets, water and sanitary sewer collection equipment, and site utility equipment used to distribute water and waste to and from the property line and between buildings and other permanent structures);

(*3*) Electrical systems (including wiring, outlets, junction boxes, lighting fixtures and associated connectors, and site utility equipment used to distribute electricity from the property line to and between buildings and other permanent structures);

(*4*) All escalators;

(*5*) All elevators;

(*6*) Fire-protection and alarm systems (including sensing devices, computer controls, sprinkler heads, sprinkler mains, associated piping or plumbing, pumps, visual and audible alarms, alarm control panels, heat and smoke detection devices, fire escapes, fire doors, emergency exit lighting and signage, and fire fighting equipment, such as extinguishers, and hoses);

(*7*) Security systems for the protection of the building and its occupants (including window and door locks, security cameras, recorders, monitors, motion detectors, security lighting, alarm systems, entry and access systems, related junction boxes, associated wiring and conduit);

(*8*) Gas distribution system (including associated pipes and equipment used to distribute gas to and from the property line and between buildings or permanent structures); and

(*9*) Other structural components identified in published guidance in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter) that are excepted from the building structure under paragraph (e)(2)(ii)(A) of this section and are specifically designated as building systems under this section.

(iii) *Condominium*—(A) *In general.* In the case of a taxpayer that is the owner of an individual unit in a building with multiple units (such as a condominium), the unit of property (''condominium'') is the individual unit owned by the taxpayer and the structural components (as defined in § 1.48–1(e)(2)) that are part of the unit.

(B) *Application of improvement rules to a condominium.* An amount is paid to improve a condominium under paragraph (d) of this section if the amount is paid for an improvement under paragraphs (j), (k), or paragraph (l) of this section to the building structure (as defined in paragraph (e)(2)(ii)(A) of this section) that is part of the condominium or to the portion of any building system (as defined in paragraph (e)(2)(ii)(B) of this section) that is part of the condominium. In the case of the condominium management association, the association must apply the improvement rules to the building

structure or to any building system described under paragraphs (e)(2)(ii)(A) and (e)(2)(ii)(B) of this section.

(iv) *Cooperative*—(A) *In general.* In the case of a taxpayer that has an ownership interest in a cooperative housing corporation, the unit of property (''cooperative'') is the portion of the building in which the taxpayer has possessory rights and the structural components (as defined in § 1.48–1(e)(2)) that are part of the portion of the building subject to the taxpayer's possessory rights (cooperative).

(B) *Application of improvement rules to a cooperative.* An amount is paid to improve a cooperative under paragraph (d) of this section if the amount is paid for an improvement under paragraphs (j), (k), or (l) of this section to the portion of the building structure (as defined in paragraph (e)(2)(ii)(A) of this section) in which the taxpayer has possessory rights or to the portion of any building system (as defined in paragraph (e)(2)(ii)(B) of this section) that is part of the portion of the building structure subject to the taxpayer's possessory rights. In the case of a cooperative housing corporation, the corporation must apply the improvement rules to the building structure or to any building system as described under paragraphs (e)(2)(ii)(A) and (e)(2)(ii)(B) of this section.

(v) *Leased building*—(A) *In general.* In the case of a taxpayer that is a lessee of all or a portion of a building (such as an office, floor, or certain square footage), the unit of property (''leased building property'') is each building and its structural components or the portion of each building subject to the lease and the structural components associated with the leased portion.

(B) *Application of improvement rules to a leased building.* An amount is paid to improve a leased building property under paragraphs (d) and (f)(2) of this section if the amount is paid for an improvement, under paragraphs (j), (k), or (l) of this section, to any of the following:

(*1*) *Entire building.* In the case of a taxpayer that is a lessee of an entire building, the building structure (as defined under paragraph (e)(2)(ii)(A) of this section) or any building system (as defined under paragraph (e)(2)(ii)(B) of this section) that is part of the leased building.

(*2*) *Portion of a building.* In the case of a taxpayer that is a lessee of a portion of a building (such as an office, floor, or certain square footage), the portion of the building structure (as defined under paragraph (e)(2)(ii)(A) of this section) subject to the lease or the portion of any building system (as defined under paragraph (e)(2)(ii)(B) of this section) subject to the lease.

(3) *Property other than building*—(i) *In general.* Except as otherwise provided in paragraphs (e)(3), (e)(4), (e)(5), and (f)(1) of this section, in the case of real or personal property other than property described in paragraph (e)(2) of this section, all the components that are functionally interdependent comprise a single unit of property. Components of property are functionally interdependent if the placing in service of one component by the taxpayer is dependent on the placing in service of the other component by the taxpayer.

(ii) *Plant property*—(A) *Definition.* For purposes of this paragraph (e), the term *plant property* means functionally interdependent machinery or equipment, other than network assets, used to perform an industrial process, such as manufacturing, generation, warehousing, distribution, automated materials handling in service industries, or other similar activities.

(B) *Unit of property for plant property.* In the case of plant property, the unit of property determined under the general rule of paragraph (e)(3)(i) of this section is further divided into smaller units comprised of each component (or group of components) that performs a discrete and major function or operation within the functionally interdependent machinery or equipment.

(iii) *Network assets*—(A) *Definition.* For purposes of this paragraph (e), the term *network assets* means railroad track, oil and gas pipelines, water and sewage pipelines, power transmission and distribution lines, and telephone and cable lines that are owned or leased by taxpayers in each of those respective industries. The term includes, for example, trunk and feeder lines, pole lines, and buried conduit. It does not include property that would be included as building structure or building systems under paragraphs (e)(2)(ii)(A) and (e)(2)(ii)(B) of this section, nor does it include separate property that is adjacent to, but not part of a network asset, such as bridges, culverts, or tunnels.

(B) *Unit of property for network assets.* In the case of network assets, the unit of property is determined by the taxpayer's particular facts and circumstances except as otherwise provided in published guidance in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter). For these purposes, the functional interdependence standard provided in paragraph (e)(3)(i) of this section is not determinative.

(iv) *Leased property other than buildings.* In the case of a taxpayer that is a lessee of real or personal property other than property described in paragraph (e)(2) of this section, the unit of property for the leased property is determined under paragraphs (e)(3)(i),(ii), (iii), and (e)(5) of this section except that, after applying the applicable rules under those paragraphs, the unit of property may not be larger than the property subject to the lease.

(4) *Improvements to property.* An improvement to a unit of property generally is not a unit of property separate from the unit of property improved. For the unit of property for lessee improvements, see also paragraph (f)(2)(ii)) of this section. If a taxpayer elects to treat as a capital expenditure under § 1.162–3(d) the amount paid for a rotable spare part, temporary spare part, or standby emergency spare part, and such part is used in an improvement to a unit of property, then for purposes of applying paragraph (d) of this section to the unit of property improved, the part is not a unit of property separate from the unit of property improved.

(5) *Additional rules*—(i) *Year placed in service.* Notwithstanding the unit of property determination under paragraph (e)(3) of this section, a component (or a group of components) of a unit property must be treated as a separate unit of property if, at the time the unit of property is initially placed in service by the taxpayer, the taxpayer has properly treated the component as being within a different class of property under section 168(e) (MACRS classes) than the class of the unit of property of which the component is a part, or the taxpayer has properly depreciated the component using a different depreciation method than the depreciation method of the unit of property of which the component is a part.

(ii) *Change in subsequent taxable year.* Notwithstanding the unit of property determination under paragraphs (e)(2), (3), (4), or (5)(i) of this section, in any taxable year after the unit of property is initially placed in service by the taxpayer, if the taxpayer or the Internal Revenue Service changes the treatment of that property (or any portion thereof) to a proper MACRS class or a proper depreciation method (for example, as a result of a cost segregation study or a change in the use of the property), then the taxpayer must change the unit of property determination for that property (or the portion thereof) under this section to be consistent with the change in treatment

for depreciation purposes. Thus, for example, if a portion of a unit of property is properly reclassified to a MACRS class different from the MACRS class of the unit of property of which it was previously treated as a part, then the reclassified portion of the property should be treated as a separate unit of property for purposes of this section.

(6) *Examples.* The following examples illustrate the application of this paragraph (e) and assume that the taxpayer has not made a general asset account election with regard to property or accounted for property in a multiple asset account. In addition, unless the facts specifically indicate otherwise, assume that the additional rules in paragraph (e)(5) of this section do not apply:

Example 1. Building systems. A owns an office building that contains a HVAC system. The HVAC system incorporates ten roof-mounted units that service different parts of the building. The roof-mounted units are not connected and have separate controls and duct work that distribute the heated or cooled air to different spaces in the building's interior. A pays an amount for labor and materials for work performed on the roof-mounted units. Under paragraph (e)(2)(i) of this section, A must treat the building and its structural components as a single unit of property. As provided under paragraph (e)(2)(ii) of this section, an amount is paid to improve a building if it is for an improvement to the building structure or any designated building system. Under paragraph (e)(2)(ii)(B)(*1*) of this section, the entire HVAC system, including all of the roof-mounted units and their components, comprise a building system. Therefore, under paragraph (e)(2)(ii) of this section, if an amount paid by A for work on the roof-mounted units is an improvement (for example, a betterment) to the HVAC system, A must treat this amount as an improvement to the building.

Example 2. Building systems. B owns a building that it uses in its retail business. The building contains two elevator banks in different locations in its building. Each elevator bank contains three elevators. B pays an amount for labor and materials for work performed on the elevators. Under paragraph (e)(2)(i) of this section, B must treat the building and its structural components as a single unit of property. As provided under paragraph (e)(2)(ii) of this section, an amount is paid to improve a building if it is for an improvement to the building structure or any designated building system. Under paragraph (e)(2)(ii)(B)(*5*) of this section, all six elevators, including all their components, comprise a building system. Therefore, under paragraph (e)(2)(ii) of this section, if an amount paid by B for work on the elevators is an improvement (for example, a betterment) to the elevator system, B must treat this amount as an improvement to the building.

Example 3. Building structure and systems; condominium. C owns a condominium unit in a condominium office building. C uses the condominium unit in its business of providing medical services. The condominium unit contains two restrooms, each of which contains a sink, a toilet, water and drainage pipes and other bathroom fixtures. C pays an amount for labor and materials to perform work on the pipes, sinks, toilets, and plumbing fixtures that are part of the condominium. Under paragraph (e)(2)(iii) of this section, C must treat the individual unit that it owns, including the structural components that are part of that unit, as a single unit of property. As provided under paragraph (e)(2)(iii)(B) of this section, an amount is paid to improve the condominium if it is for an improvement to the building structure that is part of the condominium or to a portion of any designated building system that is part of the condominium. Under paragraph (e)(2)(ii)(B)(*2*) of this section, the pipes, sinks, toilets, and plumbing fixtures that are part of C's condominium comprise the plumbing system for the condominium. Therefore, under paragraph (e)(2)(iii) of this section, if an amount paid by C for work on pipes, sinks, toilets, and plumbing fixtures is an improvement (for example, a betterment) to the portion of the plumbing system that is part of C's condominium, C must treat this amount as an improvement to the condominium.

Example 4. Building structure and systems; property other than buildings. D, a manufacturer, owns a building adjacent to its manufacturing facility that contains office space and related facilities for D's employees that manage and administer D's manufacturing operations. The office building contains equipment, such as desks, chairs, computers, telephones, and bookshelves that are not building structure or building systems. D pays an amount to add an extension to the office building. Under paragraph (e)(2)(i) of this section, D must treat the building and its structural components as a single unit of property. As provided under paragraph (e)(2)(ii) of this section, an amount is paid to improve a building if it is for an improvement to the building structure or any designated building system. Therefore, under paragraph (e)(2)(ii) of this section, if an amount paid by D for the addition of an extension to the office building is an improvement (for example, a betterment) to the building structure or any of the building systems, D must treat this amount as an improvement to the building. In addition, because the equipment contained within the office building constitutes property other than the building, the units of property for the office equipment are initially determined under paragraph (e)(3)(i) of this section and are comprised of all the components that are functionally interdependent (for example, each desk, each chair, and each book shelf).

Example 5. Plant property; discrete and major function. E is an electric utility company that operates a power plant to generate electricity. The power plant includes a structure that is not a building under § 1.48–1(e)(1), and, among other things, one pulverizer that grinds coal, a single boiler that produces steam, one turbine that converts the steam into mechanical energy, and one generator that converts mechanical energy into electrical energy. In addition, the turbine contains a series of blades that cause the turbine to rotate when affected by the steam. Because the plant is composed of real and personal tangible property other than a building, the unit of property for the generating equipment is initially determined under the general rule in paragraph (e)(3)(i) of this section and is comprised of all the components that are functionally interdependent. Under this rule, the initial unit of property is the entire plant because the components of the plant are functionally interdependent. However, because the power plant is plant property under paragraph (e)(3)(ii) of this section, the initial unit of property is further divided into smaller units of property by determining the components (or groups of components) that perform discrete and major functions within the plant. Under this paragraph, E must treat the structure, the boiler, the turbine, the generator, and the pulverizer each as a separate unit of property because each of these components performs a discrete and major function within the power plant. E may not treat components, such as the turbine blades, as separate units of property because each of these components does not perform a discrete and major function within the plant.

Example 6. Plant property; discrete and major function. F is engaged in a uniform and linen rental business. F owns and operates a plant that utilizes many different machines and equipment in an assembly line-like process to treat, launder, and prepare rental items for its customers. F utilizes two laundering lines in its plant, each of which can operate independently. One line is used for uniforms and another line is used for linens. Both lines incorporate a sorter, boiler, washer, dryer, ironer, folder, and waste water treatment system. Because the laundering equipment contained within the plant is property other than a building, the unit of property for the laundering equipment is initially determined under the general rule in paragraph (e)(3)(i) of this section and is comprised of all the components that are functionally interdependent. Under this rule, the initial units of property are each laundering line because each line is functionally independent and is comprised of components that are functionally interdependent. However, because each line is comprised of plant property under paragraph (e)(3)(ii) of this section, F must further divide these initial units of property into smaller units of property by determining the components (or groups of components) that perform discrete and major functions within the line. Under paragraph (e)(3)(ii) of this section, F must treat each sorter, boiler, washer, dryer, ironer, folder, and waste water treatment system in each line as a separate unit of property because each of these components performs a discrete and major function within the line.

Example 7. Plant property; industrial process. G operates a restaurant that prepares and serves food to retail customers. Within its restaurant, G has a large piece of equipment that uses an assembly line-like process to prepare and cook tortillas that G

serves only to its restaurant customers. Because the tortilla-making equipment is property other than a building, the unit of property for the equipment is initially determined under the general rule in paragraph (e)(3)(i) of this section and is comprised of all the components that are functionally interdependent. Under this rule, the initial unit of property is the entire tortilla-making equipment because the various components of the equipment are functionally interdependent. The equipment is not plant property under paragraph (e)(3)(ii) of this section because the equipment is not used in an industrial process, as it performs a small-scale function in G's restaurant operations. Thus, G is not required to further divide the equipment into separate units of property based on the components that perform discrete and major functions.

Example 8. Personal property. H owns locomotives that it uses in its railroad business. Each locomotive consists of various components, such as an engine, generators, batteries, and trucks. H acquired a locomotive with all its components. Because H's locomotive is property other than a building, the initial unit of property is determined under the general rule in paragraph (e)(3)(i) of this section and is comprised of the components that are functionally interdependent. Under paragraph (e)(3)(i) of this section, the locomotive is a single unit of property because it consists entirely of components that are functionally interdependent.

Example 9. Personal property. J provides legal services to its clients. J purchased a laptop computer and a printer for its employees to use in providing legal services. Because the computer and printer are property other than a building, the initial units of property are determined under the general rule in paragraph (e)(3)(i) of this section and are comprised of the components that are functionally interdependent. Under paragraph (e)(3)(i) of this section, the computer and the printer are separate units of property because the computer and the printer are not components that are functionally interdependent (that is, the placing in service of the computer is not dependent on the placing in service of the printer).

Example 10. Building structure and systems; leased building. K is a retailer of consumer products. K conducts its retail sales in a building that it leases from L. The leased building consists of the building structure (including the floor, walls, and roof) and various building systems, including a plumbing system, an electrical system, an HVAC system, a security system, and a fire protection and prevention system. K pays an amount for labor and materials to perform work on the HVAC system of the leased building. Under paragraph (e)(2)(v)(A) of this section, because K leases the entire building, K must treat the leased building and its structural components as a single unit of property. As provided under paragraph (e)(2)(v)(B) of this section, an amount is paid to improve a leased building property if it is for an improvement (for example, a betterment) to the leased building structure or to any building system within the leased building. Therefore, under paragraphs (e)(2)(v)(B)(*1*) and (e)(2)(ii)(B)(*1*) of this section, if an amount paid by K for work on the HVAC system is for an improvement to the HVAC system in the leased building, K must treat this amount as an improvement to the entire leased building property.

Example 11. Production of real property related to leased property. Assume the same facts as in *Example 10,* except that K receives a construction allowance from L, and K uses the construction allowance to build a driveway adjacent to the leased building. Assume that under the terms of the lease, K, the lessee, is treated as the owner of any property that it constructs on or nearby the leased building. Also assume that section 110 does not apply to the construction allowance. Finally, assume that the driveway is not plant property or a network asset. Because the construction of the driveway consists of the production of real property other than a building, all the components of the driveway are functionally interdependent and are a single unit of property under paragraphs (e)(3)(i) and (e)(3)(iv) of this section.

Example 12. Leasehold improvements; construction allowance used for lessor-owned improvements. Assume the same facts as *Example 11,* except that, under the terms of the lease, L, the lessor, is treated as the owner of any property constructed on the leased premises. Because L, the lessor, is the owner of the driveway and the driveway is real property other than a building, all the components of the driveway are functionally interdependent and are a single unit of property under paragraph (e)(3)(i) of this section.

Example 13. Buildings and structural components; leased office space. M provides consulting services to its clients. M conducts its consulting services business in two office spaces in the same building, each of which it leases from N under separate lease agreements. Each office space contains a separate HVAC system, which is part of the leased property. Both lease agreements provide that M is responsible for maintaining, repairing, and replacing the HVAC system that is part of the leased property. M pays amounts to perform work on the HVAC system in each office space. Because M leases two separate office spaces subject to two leases, M must treat the portion of the building structure and the structural components subject to each lease as a separate unit of property under paragraph (e)(2)(v)(A) of this section. As provided under paragraph (e)(2)(v)(B) of this section, an amount is paid to improve a leased building property, if it is for an improvement to the leased portion of the building structure or the portion of any designated building system subject to each lease. Under paragraphs (e)(2)(v)(B)(*1*) and (e)(2)(ii)(B)(*1*) of this section, M must treat the HVAC system associated with each leased office space as a building system of that leased building property. Thus, M must treat the HVAC system associated with the first leased office space as a building system of the first leased office space and the HVAC system associated with the second leased office space as a building system of the second leased office space. Under paragraph (e)(2)(v)(B) of this section, if the amount paid by M for work on the HVAC system in one leased office space is for an improvement (for example, a betterment) to the HVAC system that is part of that leased space, then M must treat the amount as an improvement to that individual leased property.

Example 14. Leased property; personal property. N is engaged in the business of transporting passengers on private jet aircraft. To conduct its business, N leases several aircraft from O. Under paragraph (e)(3)(iv) of this section (referencing paragraph (e)(3)(i) of this section), N must treat all of the components of each leased aircraft that are functionally interdependent as a single unit of property. Thus, N must treat each leased aircraft as a single unit of property.

Example 15. Improvement property. (i) P is a retailer of consumer products. In Year 1, P purchases a building from Q, which P intends to use as a retail sales facility. Under paragraph (e)(2)(i) of this section, P must treat the building and its structural components as a single unit of property. As provided under paragraph (e)(2)(ii) of this section, an amount is paid to improve a building if it is for an improvement to the building structure or any designated building system.

(ii) In Year 2, P pays an amount to construct an extension to the building to be used for additional warehouse space. Assume that the extension involves the addition of walls, floors, roof, and doors, but does not include the addition or extension of any building systems described in paragraph (e)(2)(ii)(B) of this section. Also assume that the amount paid to build the extension is a betterment to the building structure under paragraph (j) of this section, and is therefore treated as an amount paid for an improvement to the entire building under paragraph (e)(2)(ii) of this section. Accordingly, P capitalizes the amount paid as an improvement to the building under paragraph (d) of this section. Under paragraph (e)(4) of this section, the extension is not a unit of property separate from the building, the unit of property improved. Thus, to determine whether any future expenditure constitutes an improvement to the building under paragraph (e)(2)(ii) of this section, P must determine whether the expenditure constitutes an improvement to the building structure, including the building extension, or to any of the designated building systems.

Example 16. Additional rules; year placed in service. R is engaged in the business of transporting freight throughout the United States. To conduct its business, R owns a fleet of truck tractors and trailers. Each tractor and trailer is comprised of various components, including tires. R purchased a truck tractor with all of its components, including tires. The tractor tires have an average useful life to R of more than one year. At the time R placed the tractor in service, it treated the tractor tires as a separate asset for depreciation purposes under section 168. R properly treated the tractor (excluding the cost of the tires) as 3-year property and the tractor tires as 5-year property under section 168(e). Because R's tractor is property other

than a building, the initial units of property for the tractor are determined under the general rule in paragraph (e)(3)(i) of this section and are comprised of all the components that are functionally interdependent. Under this rule, R must treat the tractor, including its tires, as a single unit of property because the tractor and the tires are functionally interdependent (that is, the placing in service of the tires is dependent upon the placing in service of the tractor). However, under paragraph (e)(5)(i) of this section, R must treat the tractor and tires as separate units of property because R properly treated the tires as being within a different class of property under section 168(e).

Example 17. Additional rules; change in subsequent year. S is engaged in the business of leasing nonresidential real property to retailers. In Year 1, S acquired and placed in service a building for use in its retail leasing operation. In Year 5, to accommodate the needs of a new lessee, S incurred costs to improve the building structure. S capitalized the costs of the improvement under paragraph (d) of this section and depreciated the improvement in accordance with section 168(i)(6) as nonresidential real property under section 168(e). In Year 7, S determined that the structural improvement made in Year 5 qualified under section 168(e)(8) as qualified retail improvement property and, therefore, was 15-year property under section 168(e). In Year 7, S changed its method of accounting to use a 15-year recovery period for the improvement. Under paragraph (e)(5)(ii) of this section, in Year 7, S must treat the improvement as a unit of property separate from the building.

Example 18. Additional rules; change in subsequent year. In Year 1, T acquired and placed in service a building and parking lot for use in its retail operations. Under § 1.263(a)–2 of the regulations, T capitalized the cost of the building and the parking lot and began depreciating the building and the parking lot as nonresidential real property under section 168(e). In Year 3, T completed a cost segregation study under which it properly determined that the parking lot qualified as 15-year property under section 168(e). In Year 3, T changed its method of accounting for the parking lot to use a 15-year recovery period and the 150-percent declining balance method of depreciation. Under paragraph (e)(5)(ii) of this section, beginning in Year 3, T must treat the parking lot as a unit of property separate from the building.

Example 19. Additional rules; change in subsequent year. In Year 1, U acquired and placed in service a building for use in its manufacturing business. U capitalized the costs allocable to the building's wiring separately from the building and depreciated the wiring as 7-year property under section 168(e). U capitalized the cost of the building and all other structural components of the building and began depreciating them as nonresidential real property under section 168(e). In Year 3, U completed a cost segregation study under which it properly determined that the wiring is a structural component of the building and, therefore, should have been depreciated as nonresidential real property. In Year 3, U changed its method of accounting to treat the wiring as nonresidential real property. Under paragraph (e)(5)(ii) of this section, U must change the unit of property for the wiring in a manner that is consistent with the change in treatment for depreciation purposes. Therefore, U must change the unit of property for the wiring to treat it as a structural component of the building, and as part of the building unit of property, in accordance with paragraph (e)(2)(i) of this section.

(f) *Improvements to leased property*—(1) *In general.* Except as provided in paragraph (h) of this section (safe harbor for small taxpayers) and under § 1.263(a)–1(f) (de minimis safe harbor), this paragraph (f) provides the exclusive rules for determining whether amounts paid by a taxpayer are for an improvement to a leased property and must be capitalized. In the case of a leased building or a leased portion of a building, an amount is paid to improve a leased property if the amount is paid for an improvement to any of the properties specified in paragraph (e)(2)(ii) of this section (for lessor improvements) or in paragraph (e)(2)(v)(B) of this section (for lessee improvements, except as provided in paragraph (f)(2)(ii) of this section). Section 1.263(a)–4 does not apply to amounts paid for improvements to leased property or to amounts paid for the acquisition or production of leasehold improvement property.

(2) *Lessee improvements*—(i) *Requirement to capitalize.* A taxpayer lessee must capitalize the related amounts (see paragraph (g)(3) of this section) that it pays to improve (as defined under paragraph (d) of this section) a leased property except to the extent that section 110 applies to a construction allowance received by the lessee for the purpose of such improvement or when the improvement constitutes a substitute for rent. See § 1.61–8(c) for the treatment of lessee expenditures that constitute a substitute for rent. A taxpayer lessee must also capitalize the related amounts that a lessor pays to improve (as defined under paragraph (d) of this section) a leased property if the lessee is the owner of the improvement, except to the extent that section 110 applies to a construction allowance received by the lessee for the purpose of such improvement. An amount paid for a lessee improvement under this paragraph (f)(2)(i) is treated as an amount paid to acquire or produce a unit of real or personal property under § 1.263(a)–2(d)(1) of the regulations.

(ii) *Unit of property for lessee improvements.* For purposes of determining whether an amount paid by a lessee constitutes a lessee improvement to a leased property under paragraph (f)(2)(i) of this section, the unit of property and the improvement rules are applied to the leased property in accordance with paragraph (e)(2)(v) (leased buildings) or paragraph (e)(3)(iv) (leased property other than buildings) of this section and include previous lessee improvements. However, if a lessee improvement is comprised of an entire building erected on leased property, then the unit of property for the building and the application of the improvement rules to the building are determined under paragraphs (e)(2)(i) and (e)(2)(ii) of this section.

(3) *Lessor improvements*—(i) *Requirement to capitalize.* A taxpayer lessor must capitalize the related amounts (see paragraph (g)(3) of this section) that it pays directly, or indirectly through a construction allowance to the lessee, to improve (as defined in paragraph (d) of this section) a leased property when the lessor is the owner of the improvement or to the extent that section 110 applies to the construction allowance. A lessor must also capitalize the related amounts that the lessee pays to improve a leased property (as defined in paragraph (e) of this section) when the lessee's improvement constitutes a substitute for rent. See § 1.61–8(c) for treatment of expenditures by lessees that constitute a substitute for rent. Amounts capitalized by the lessor under this paragraph (f)(3)(i) may not be capitalized by the lessee. If a lessor improvement is comprised of an entire building erected on leased property, then the amount paid for the building is treated as an amount paid by the lessor to acquire or produce a unit of property under § 1.263(a)–2(d)(1). See paragraphs (e)(2) of this section for the unit of property for a building and paragraph (e)(3) of this section for the unit of property for real or personal property other than a building.

(ii) *Unit of property for lessor improvements.* In general, an amount capitalized as a lessor improvement under paragraph (f)(3)(i) of this section is not a unit of property separate from the unit of property improved. See paragraph (e)(4) of this section. However, if a lessor improvement is comprised of an entire building erected on leased property, then the unit of property for the building and the application of the improvement rules to the building are determined under paragraphs (e)(2)(i) and (e)(2)(ii) of this section.

(4) *Examples.* The following examples illustrate the application of this paragraph (f) and do not address whether capitalization is required under

another provision of the Code (for example, section 263A). For purposes of the following examples, assume that section 110 does not apply to the lessee and the amounts paid by the lessee are not a substitute for rent.

Example 1. Lessee improvements; additions to building. (i) T is a retailer of consumer products. In Year 1, T leases a building from L, which T intends to use as a retail sales facility. The leased building consists of the building structure under paragraph (e)(2)(ii)(A) of this section and various building systems under paragraph (e)(2)(ii)(B) of this section, including a plumbing system, an electrical system, and an HVAC system. Under the terms of the lease, T is permitted to improve the building at its own expense. Under paragraph (e)(2)(v)(A) of this section, because T leases the entire building, T must treat the leased building and its structural components as a single unit of property. As provided under paragraph (e)(2)(v)(B)(*1*) of this section, an amount is paid to improve a leased building property if the amount is paid for an improvement to the leased building structure or to any building system within the leased building. Therefore, under paragraphs (e)(2)(v)(B)(*1*) and (e)(2)(ii) of this section, if T pays an amount that improves the building structure, the plumbing system, the electrical system, or the HVAC system, then T must treat this amount as an improvement to the entire leased building property.

(ii) In Year 2, T pays an amount to construct an extension to the building to be used for additional warehouse space. Assume that this amount is for a betterment (as defined under paragraph (j) of this section) to T's leased building structure and does not affect any building systems. Accordingly, the amount that T pays for the building extension is for a betterment to the leased building structure, and thus, under paragraph (e)(2)(v)(B)(*1*) of this section, is treated as an improvement to the entire leased building under paragraph (d) of this section. Because T, the lessee, paid an amount to improve a leased building property, T is required to capitalize the amount paid for the building extension as a leasehold improvement under paragraph (f)(2)(i) of this section. In addition, paragraph (f)(2)(i) of this section requires T to treat the amount paid for the improvement as the acquisition or production of a unit of property (leasehold improvement property) under § 1.263(a)–2(d)(1).

(iii) In Year 5, T pays an amount to add a large overhead door to the building extension that it constructed in Year 2 to accommodate the loading of larger products into the warehouse space. Under paragraph (f)(2)(ii) of this section, to determine whether the amount paid by T is for a leasehold improvement, the unit of property and the improvement rules are applied in accordance with paragraph (e)(2)(v) of this section and include T's previous improvements to the leased property. Therefore, under paragraph (e)(2)(v)(A) of this section, the unit of property is the entire leased building, including the extension built in Year 2. In addition, under paragraph (e)(2)(v)(B) of this section, the leased building property is improved if the amount is paid for an improvement to the building structure or any building system. Assume that the amount paid to add the overhead door is for a betterment, under paragraph (j) of this section, to the building structure, which includes the extension. Accordingly, T must capitalize the amounts paid to add the overhead door as a leasehold improvement to the leased building property. In addition, paragraph (f)(2)(i) of this section requires T to treat the amount paid for the improvement as the acquisition or production of a unit of property (leasehold improvement property) under § 1.263(a)–2(d)(1). However, to determine whether a future amount paid by T is for a leasehold improvement to the leased building, the unit of property and the improvement rules are again applied in accordance with paragraph (e)(2)(v) of this section and include the new overhead door.

Example 2. Lessee improvements; additions to certain structural components of buildings. (i) Assume the same facts as *Example 1* except that in Year 2, T also pays an amount to construct an extension of the HVAC system into the building extension. Assume that the extension is a betterment, under paragraph (j) of this section, to the leased HVAC system (a building system under paragraph (e)(2)(ii)(B)(*1*) of this section). Accordingly, the amount that T pays for the extension of the HVAC system is for a betterment to the leased building system, the HVAC system, and thus, under paragraph (e)(2)(v)(B)(*1*) of this section, is treated as an improvement to the entire leased building property under paragraph (d) of this section. Because T, the lessee, pays an amount to improve a leased building property, T is required to capitalize the amount paid as a leasehold improvement under paragraph (f)(2)(i) of this section. Under paragraph (f)(2)(i) of this section, T must treat the amount paid for the HVAC extension as the acquisition and production of a unit of property (leasehold improvement property) under § 1.263(a)–2(d)(1).

(ii) In Year 5, T pays an amount to add an additional chiller to the portion of the HVAC system that it constructed in Year 2 to accommodate the climate control requirements for new product offerings. Under paragraph (f)(2)(ii) of this section, to determine whether the amount paid by T is for a leasehold improvement, the unit of property and the improvement rules are applied in accordance with paragraph (e)(2)(v) of this section and include T's previous improvements to the leased building property. Therefore, under paragraph (e)(2)(v)(B) of this section, the leased building property is improved if the amount is paid for an improvement to the building structure or any building system. Assume that the amount paid to add the chiller is for a betterment, under paragraph (j) of this section, to the HVAC system, which includes the extension of the system in Year 2. Accordingly, T must capitalize the amounts paid to add the chiller as a leasehold improvement to the leased building property. In addition, paragraph (f)(2)(i) of this section requires T to treat the amount paid for the chiller as the acquisition or production of a unit of property (leasehold improvement property) under § 1.263(a)–2(d)(1). However, to determine whether a future amount paid by T is for a leasehold improvement to the leased building, the unit of property and the improvement rules are again applied in accordance with paragraph (e)(2)(v) of this section and include the new chiller.

Example 3. Lessor Improvements; additions to building. (i) T is a retailer of consumer products. In Year 1, T leases a building from L, which T intends to use as a retail sales facility. Pursuant to the lease, L provides a construction allowance to T, which T intends to use to construct an extension to the retail sales facility for additional warehouse space. Assume that the amount paid for any improvement to the building does not exceed the construction allowance and that L is treated as the owner of any improvement to the building. Under paragraph (e)(2)(i) of this section, L must treat the building and its structural components as a single unit of property. As provided under paragraph (e)(2)(ii) of this section, an amount is paid to improve a building if it is paid for an improvement to the building structure or to any building system.

(ii) In Year 2, T uses L's construction allowance to construct an extension to the leased building to provide additional warehouse space in the building. Assume that the extension is a betterment (as defined under paragraph (j) of this section) to the building structure, and therefore, the amount paid for the extension results in an improvement to the building under paragraph (d) of this section. Under paragraph (f)(3)(i) of this section, L, the lessor and owner of the improvement, must capitalize the amounts paid to T to construct the extension to the retail sales facility. T is not permitted to capitalize the amounts paid for the lessor-owned improvement. Finally, under paragraph (f)(3)(ii) of this section, the extension to L's building is not a unit of property separate from the building and its structural components.

Example 4. Lessee property; personal property added to leased building. T is a retailer of consumer products. T leases a building from L, which T intends to use as a retail sales facility. Pursuant to the lease, L provides a construction allowance to T, which T uses to acquire and construct partitions for fitting rooms, counters, and shelving. Assume that each partition, counter, and shelving unit is a unit of property under paragraph (e)(3) of this section. Assume that for Federal income tax purposes T is treated as the owner of the partitions, counters, and shelving. T's expenditures for the partitions, counters, and shelving are not improvements to the leased property under paragraph (d) of this section, but rather constitute amounts paid to acquire or produce separate units of personal property under § 1.263(a)–2(d)(1).

Example 5. Lessor property; buildings on leased property. L is the owner of a parcel of unimproved real property that L leases to T. Pursuant to the lease, L provides a construction allowance to T of $500,000, which T agrees to use to construct a building costing not more than $500,000 on the leased

real property and to lease the building from L after it is constructed. Assume that for Federal income tax purposes, L is treated as the owner of the building that T will construct. T uses the $500,000 to construct the building as required under the lease. The building consists of the building structure and the following building systems: (1) a plumbing system; (2) an electrical system; and (3) an HVAC system. Because L provides a construction allowance to T to construct a building and L is treated as the owner of the building, L must capitalize the amounts that it pays indirectly to T to construct the building as a lessor improvement under paragraph (f)(3)(i) of this section. In addition, the amounts paid by L for the construction allowance are treated as amounts paid by L to acquire and produce the building under § 1.263(a)–2(d)(1). Further, under paragraph (e)(2)(i) of this section, L must treat the building and its structural components as a single unit of property. Under paragraph (f)(3)(i) of this section, T, the lessee, may not capitalize the amounts paid (with the construction allowance received from L) for construction of the building.

Example 6. Lessee contribution to construction costs. Assume the same facts as in *Example 5,* except T spends $600,000 to construct the building. T uses the $500,000 construction allowance provided by L plus $100,000 of its own funds to construct the building that L will own pursuant to the lease. Also assume that the additional $100,000 that T pays is not a substitute for rent. For the reasons discussed in *Example 5,* L must capitalize the $500,000 it paid T to construct the building under § 1.263(a)–2(d)(1). In addition, because T spends its own funds to complete the building, T has a depreciable interest of $100,000 in the building and must capitalize the $100,000 it paid to construct the building as a leasehold improvement under § 1.263(a)–2(d)(1) of the regulations. Under paragraph (e)(2)(i) of this section, L must treat the building as a single unit of property to the extent of its depreciable interest of $500,000. In addition, under paragraphs (f)(2)(ii) and (e)(2)(i) of this section, T must also treat the building as a single unit of property to the extent of its depreciable interest of $100,000.

(g) *Special rules for determining improvement costs*—(1) *Certain costs incurred during an improvement*—(i) *In general.* A taxpayer must capitalize all the direct costs of an improvement and all the indirect costs (including, for example, otherwise deductible repair costs) that directly benefit or are incurred by reason of an improvement. Indirect costs arising from activities that do not directly benefit and are not incurred by reason of an improvement are not required to be capitalized under section 263(a), regardless of whether the activities are performed at the same time as an improvement.

(ii) *Exception for individuals' residences.* A taxpayer who is an individual may capitalize amounts paid for repairs and maintenance that are made at the same time as capital improvements to units of property not used in the taxpayer's trade or business or for the production of income if the amounts are paid as part of an improvement (for example, a remodeling) of the taxpayer's residence.

(2) *Removal Costs*—(i) *In general.* If a taxpayer disposes of a depreciable asset, including a partial disposition under Prop. Reg. § 1.168(i)–1(e)(2)(ix) (September 19, 2013), or Prop. Reg. § 1.168(i)–8(d) (September 19, 2013), for Federal income tax purposes and has taken into account the adjusted basis of the asset or component of the asset in realizing gain or loss, then the costs of removing the asset or component are not required to be capitalized under this section. If a depreciable asset is included in a general asset account under section 168(i)(4), and neither the regulations under section 168(i)(4) and § 1.168(i)–1T(e)(3) nor Prop. Reg. § 1.168(i)–1(e)(3) (September 19, 2013), apply to a disposition of such asset, or a portion of such asset under Prop. Reg. § 1.168(i)–1(e)(2)(ix) (September 19, 2013), a loss is treated as being realized in the amount of zero upon the disposition of the asset solely for purposes of this paragraph (g)(2)(i). If a taxpayer disposes of a component of a unit of property, but the disposal of the component is not a disposition for Federal tax purposes, then the taxpayer must deduct or capitalize the costs of removing the component based on whether the removal costs directly benefit or are incurred by reason of a repair to the unit of property or an improvement to the unit of property. But see § 1.280B–1 for the rules applicable to demolition of structures.

(ii) *Examples.* The following examples illustrate the application of paragraph (g)(2)(i) of this section and, unless otherwise stated, do not address whether capitalization is required under another provision of this section or another provision of the Code (for example, section 263A). For purposes of the following examples, assume that Prop. Reg. § 1.168(i)–1(e) (September 19, 2013), or Prop. Reg. § 1.168(i)–8 (September 19, 2013), applies and that § 1.280B–1 does not apply.

Example 1. Component removed during improvement; no disposition. X owns a factory building with a storage area on the second floor. X pays an amount to remove the original columns and girders supporting the second floor and replace them with new columns and girders to permit storage of supplies with a gross weight 50 percent greater than the previous load-carrying capacity of the storage area. Assume that the replacement of the columns and girders constitutes a betterment to the building structure and is therefore an improvement to the building unit of property under paragraphs (d)(1) and (j) of this section. Assume that X disposes of the original columns and girders and the disposal of these structural components is not a disposition under Prop. Reg. § 1.168(i)–1(e) (September 19, 2013), or Prop. Reg. § 1.168(i)-8 (September 19, 2013). Under paragraphs (g)(2)(i) and (j) of this section, the amount paid to remove the columns and girders must be capitalized as a cost of the improvement, because it directly benefits and is incurred by reason of the improvement to the building.

Example 2. Component removed during improvement; disposition. Assume the same facts as *Example 1,* except X disposes of the original columns and girders and elects to treat the disposal of these structural components as a partial disposition of the factory building under Prop. Reg. § 1.168(i)-8(d) (September 19, 2013), taking into account the adjusted basis of the components in realizing loss on the disposition. Under paragraph (g)(2)(i) of this section, the amount paid to remove the columns and girders is not required to be capitalized as part of the cost of the improvement regardless of their relation to the improvement. However, all the remaining costs of replacing the columns and girders must be capitalized as improvements to the building unit of property under paragraphs (d)(1), (j), and (g)(1) of this section.

Example 3. Component removed during repair or maintenance; no disposition. Y owns a building in which it conducts its retail business. The roof over Y's building is covered with shingles. Over time, the shingles begin to wear and Y begins to experience leaks into its retail premises. However, the building still functions in Y's business. To eliminate the problems, a contractor recommends that Y remove the original shingles and replace them with new shingles. Accordingly, Y pays the contractor to replace the old shingles with new but comparable shingles. The new shingles are comparable to original shingles but correct the leakage problems. Assume that Y disposes of the original shingles, and the disposal of these shingles is not a disposition under Prop. Reg. § 1.168(i)–1(e) (September 19, 2013), or Prop. Reg. § 1.168(i)–8 (September 19, 2013). Assume that replacement of old shingles with new shingles to correct the leakage is not a betterment or a restoration of the building structure or systems under paragraph (j) or (k) of this section and does not adapt the building structure or systems to a new or different use under paragraph (l) of this section. Thus, the amounts paid by Y to replace the shingles are not improvements to the building unit of property under paragraph (d) of this section. Under paragraph (g)(2)(i) of this section, the amounts paid to remove the shingles are not required to be capitalized because they directly benefit and are incurred by reason of repair or maintenance to the building structure.

Example 4. Component removed with disposition and restoration. Assume the same facts as *Example 3* except Y disposes of the original shingles, and Y elects to treat the disposal of these components as a partial disposition of the building under Prop. Reg.

§ 1.168(i)–8(d) (September 19, 2013), and deducts the adjusted basis of the components as a loss on the disposition. Under paragraph (k)(1)(i) of this section, amounts paid for replacement of the shingles constitute a restoration of the building structure because the amounts are paid for the replacement of a component of the structure and the taxpayer has properly deducted a loss for that component. Thus, under paragraphs (d)(2) and (k) of this section, Y is required to capitalize the amounts paid for the replacement of the shingles as an improvement to the building unit of property. However, under paragraph (g)(2)(i) of this section, the amounts paid by Y to remove the original shingles are not required to be capitalized as part of the costs of the improvement, regardless of their relation to the improvement.

(3) *Related amounts.* For purposes of paragraph (d) of this section, amounts paid to improve a unit of property include amounts paid over a period of more than one taxable year. Whether amounts are related to the same improvement depends on the facts and circumstances of the activities being performed.

(4) *Compliance with regulatory requirements.* For purposes of this section, a Federal, state, or local regulator's requirement that a taxpayer perform certain repairs or maintenance on a unit of property to continue operating the property is not relevant in determining whether the amount paid improves the unit of property.

(h) *Safe harbor for small taxpayers*—(1) *In general.* A qualifying taxpayer (as defined in paragraph (h)(3) of this section) may elect to not apply paragraph (d) or paragraph (f) of this section to an eligible building property (as defined in paragraph (h)(4) of this section) if the total amount paid during the taxable year for repairs, maintenance, improvements, and similar activities performed on the eligible building property does not exceed the lesser of—

(i) 2 percent of the unadjusted basis (as defined under paragraph (h)(5) of this section) of the eligible building property; or

(ii) $10,000.

(2) *Application with other safe harbor provisions.* For purposes of paragraph (h)(1) of this section, amounts paid for repairs, maintenance, improvements, and similar activities performed on eligible building property include those amounts not capitalized under the de minimis safe harbor election under § 1.263(a)-1(f) and those amounts deemed not to improve property under the safe harbor for routine maintenance under paragraph (i) of this section.

(3) *Qualifying taxpayer*—(i) *In general.* For purposes of this paragraph (h), the term *qualifying taxpayer* means a taxpayer whose average annual gross receipts as determined under this paragraph (h)(3) for the three preceding taxable years is less than or equal to $10,000,000.

(ii) *Application to new taxpayers.* If a taxpayer has been in existence for less than three taxable years, the taxpayer determines its average annual gross receipts for the number of taxable years (including short taxable years) that the taxpayer (or its predecessor) has been in existence.

(iii) *Treatment of short taxable year.* In the case of any taxable year of less than 12 months (a short taxable year), the gross receipts shall be annualized by—

(A) Multiplying the gross receipts for the short period by 12; and

(B) Dividing the product determined in paragraph (h)(3)(iii)(A) of this section by the number of months in the short period.

(iv) *Definition of gross receipts.* For purposes of applying paragraph (h)(3)(i) of this section, the term *gross receipts* means the taxpayer's receipts for the taxable year that are properly recognized under the taxpayer's methods of accounting used for Federal income tax purposes for the taxable year. For this purpose, gross receipts include total sales (net of returns and allowances) and all amounts received for services. In addition, gross receipts include any income from investments and from incidental or outside sources. For example, gross receipts include interest (including original issue discount and tax-exempt interest within the meaning of section 103), dividends, rents, royalties, and annuities, regardless of whether such amounts are derived in the ordinary course of the taxpayer's trade of business. Gross receipts are not reduced by cost of goods sold or by the cost of property sold if such property is described in section 1221(a)(1), (3), (4), or (5). With respect to sales of capital assets as defined in section 1221, or sales of property described in section 1221(a)(2) (relating to property used in a trade or business), gross receipts shall be reduced by the taxpayer's adjusted basis in such property. Gross receipts do not include the repayment of a loan or similar instrument (for example, a repayment of the principal amount of a loan held by a commercial lender) and, except to the extent of gain recognized, do not include gross receipts derived from a non-recognition transaction, such as a section 1031 exchange. Finally, gross receipts do not include amounts received by the taxpayer with respect to sales tax or other similar state and local taxes if, under the applicable state or local law, the tax is legally imposed on the purchaser of the good or service, and the taxpayer merely collects and remits the tax to the taxing authority. If, in contrast, the tax is imposed on the taxpayer under the applicable law, then gross receipts include the amounts received that are allocable to the payment of such tax.

(4) *Eligible building property.* For purposes of this section, the term, *eligible building property* refers to each unit of property defined in paragraph (e)(2)(i) (building), paragraph (e)(2)(iii)(A) (condominium), paragraph (e)(2)(iv)(A) (cooperative), or paragraph (e)(2)(v)(A) (leased building or portion of building) of this section, as applicable, that has an unadjusted basis of $1,000,0000 or less.

(5) *Unadjusted basis*—(i) *Eligible building property owned by taxpayer.* For purposes of this section, the unadjusted basis of eligible building property owned by the taxpayer means the basis as determined under section 1012, or other applicable sections of Chapter 1, including subchapters O (relating to gain or loss on dispositions of property), C (relating to corporate distributions and adjustments), K (relating to partners and partnerships), and P (relating to capital gains and losses). Unadjusted basis is determined without regard to any adjustments described in section 1016(a)(2) or (3) or to amounts for which the taxpayer has elected to treat as an expense (for example, under sections 179, 179B, or 179C).

(ii) *Eligible building property leased to the taxpayer.* For purposes of this section, the unadjusted basis of eligible building property leased to the taxpayer is the total amount of (undiscounted) rent paid or expected to be paid by the lessee under the lease for the entire term of the lease, including renewal periods if all the facts and circumstances in existence during the taxable year in which the lease is entered indicate a reasonable expectancy of renewal. See § 1.263(a)–4(f)(5)(ii) for the factors significant in determining whether there exists a reasonable expectancy of renewal.

(6) *Time and manner of election.* A taxpayer makes the election described in paragraph (h)(1) of this section by attaching a statement to the taxpayer's timely filed original Federal tax return (including extensions) for the taxable year in which amounts are paid for repairs, maintenance, improvements, and similar activities performed on the eligible building property providing that such amounts qualify under the safe harbor provided in paragraph (h)(1) of

this section. See §§ 301.9100–1 through 301.9100–3 of this chapter for the provisions governing extensions of time to make regulatory elections. The statement must be titled, ''Section 1.263(a)–3(h) Safe Harbor Election for Small Taxpayers'' and include the taxpayer's name, address, taxpayer identification number, and a description of each eligible building property to which the taxpayer is applying the election. In the case of an S corporation or a partnership, the election is made by the S corporation or by the partnership, and not by the shareholders or partners. An election may not be made through the filing of an application for change in accounting method or, before obtaining the Commissioner's consent to make a late election, by filing an amended Federal tax return. A taxpayer may not revoke an election made under this paragraph (h). The time and manner of making the election under this paragraph (h) may be modified through guidance of general applicability (see §§ 601.601(d)(2) and 601.602 of this chapter).

(7) *Treatment of safe harbor amounts.* Amounts paid by the taxpayer for repairs, maintenance, improvements, and similar activities to which the taxpayer properly applies the safe harbor under paragraph (h)(1) of this section and for which the taxpayer properly makes the election under paragraph (h)(6) of this section are not treated as improvements under paragraph (d) or (f) of this section and may be deducted under § 1.162–1 or § 1.212–1, as applicable, in the taxable year these amounts are paid, provided the amounts otherwise qualify for a deduction under these sections.

(8) *Safe harbor exceeded.* If total amounts paid by a qualifying taxpayer during the taxable year for repairs, maintenance, improvements, and similar activities performed on an eligible building property exceed the safe harbor limitations specified in paragraph (h)(1) of this section, then the safe harbor election is not available for that eligible building property and the taxpayer must apply the general improvement rules under this section to determine whether amounts are for improvements to the unit of property, including the safe harbor for routine maintenance under paragraph (i) of this section. The taxpayer may also elect to apply the de minimis safe harbor under § 1.263(a)–1(f) to amounts qualifying under that safe harbor irrespective of the application of this paragraph (h).

(9) *Modification of safe harbor amounts.* The amount limitations provided in paragraphs (h)(1)(i), (h)(1)(ii), and (h)(3) of this section may be modified through published guidance in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter).

(10) *Examples.* The following examples illustrate the rules of this paragraph (h). Assume that § 1.212–1 does not apply to the amounts paid.

Example 1. Safe harbor for small taxpayers applicable. A is a qualifying taxpayer under paragraph (h)(3) of this section. A owns an office building in which A provides consulting services. In Year 1, A's building has an unadjusted basis of $750,000 as determined under paragraph (h)(5)(i) of this section. In Year 1, A pays $5,500 for repairs, maintenance, improvements and similar activities to the office building. Because A's building unit of property has an unadjusted basis of $1,000,000 or less, A's building constitutes eligible building property under paragraph (h)(4) of this section. The aggregate amount paid by A during Year 1 for repairs, maintenance, improvements and similar activities on this eligible building property does not exceed the lesser of $15,000 (2 percent of the building's unadjusted basis of $750,000) or $10,000. Therefore, under paragraph (h)(1) of this section, A may elect to not apply the capitalization rule of paragraph (d) of this section to the amounts paid for repair, maintenance, improvements, or similar activities on the office building in Year 1. If A properly makes the election under paragraph (h)(6) of this section for the office building and the amounts otherwise constitute deductible ordinary and necessary expenses incurred in carrying on a trade or business, A may deduct these amounts under § 1.162–1 in Year 1.

Example 2. Safe harbor for small taxpayers inapplicable. Assume the same facts as in *Example 1,* except that A pays $10,500 for repairs, maintenance, improvements, and similar activities performed on its office building in Year 1. Because this amount exceeds $10,000, the lesser of the two limitations provided in paragraph (h)(1) of this section, A may not apply the safe harbor for small taxpayers under paragraph (h)(1) of this section to the total amounts paid for repairs, maintenance, improvements, and similar activities performed on the building. Therefore, A must apply the general improvement rules under this section to determine which of the aggregate amounts paid are for improvements and must be capitalized under paragraph (d) of this section and which of the amounts are for repair and maintenance under § 1.162–4.

Example 3. Safe harbor applied building-by-building. (i) B is a qualifying taxpayer under paragraph (h)(3) of this section. B owns two rental properties, Building M and Building N. Building M and Building N are both multi-family residential buildings. In Year 1, each property has an unadjusted basis of $300,000 under paragraph (h)(5) of this section. Because Building M and Building N each have an unadjusted basis of $1,000,000 or less, Building M and Building N each constitute eligible building property in Year 1 under paragraph (h)(4) of this section. In Year 1, B pays $5,000 for repairs, maintenance, improvements, and similar activities performed on Building M. In Year 1, B also pays $7,000 for repairs, maintenance, improvements, and similar activities performed on Building N.

(ii) The total amount paid by B during Year 1 for repairs, maintenance, improvements and similar activities on Building M ($5,000) does not exceed the lesser of $6,000 (2 percent of the building's unadjusted basis of $300,000) or $10,000. Therefore, under paragraph (h)(1) of this section, for Year 1, B may elect to not apply the capitalization rule under paragraph (d) of this section to the amounts it paid for repairs, maintenance, improvements, and similar activities on Building M. If B properly makes the election under paragraph (h)(6) of this section for Building M and the amounts otherwise constitute deductible ordinary and necessary expenses incurred in carrying on B's trade or business, B may deduct these amounts under § 1.162–1.

(iii) The total amount paid by B during Year 1 for repairs, maintenance, improvements and similar activities on Building N ($7,000) exceeds $6,000 (2 percent of the building's unadjusted basis of $300,000), the lesser of the two limitations provided under paragraph (h)(1) of this section. Therefore, B may not apply the safe harbor under paragraph (h)(1) of this section to the total amounts paid for repairs, maintenance, improvements, and similar activities performed on Building N. Instead, B must apply the general improvement rules under this section to determine which of the total amounts paid for work performed on Building N are for improvements and must be capitalized under paragraph (d) of this section and which amounts are for repair and maintenance under § 1.162–4.

Example 4. Safe harbor applied to leased building property. C is a qualifying taxpayer under paragraph (h)(3) of this section. C is the lessee of a building in which C operates a retail store. The lease is a triple-net lease, and the lease term is 20 years, including reasonably expected renewals. C pays $4,000 per month in rent. In Year 1, C pays $7,000 for repairs, maintenance, improvements, and similar activities performed on the building. Under paragraph (h)(5)(ii) of this section, the unadjusted basis of C's leased unit of property is $960,000 ($4,000 monthly rent × 12 months × 20 years). Because C's leased building has an unadjusted basis of $1,000,000 or less, the building is eligible building property for Year 1 under paragraph (h)(4) of this section. The total amount paid by C during Year 1 for repairs, maintenance, improvements, and similar activities on the leased building ($7,000) does not exceed the lesser of $19,200 (2 percent of the building's unadjusted basis of $960,000) or $10,000. Therefore, under paragraph (h)(1) of this section, for Year 1, C may elect to not apply the capitalization rule under paragraph (d) of this section to the amounts it paid for repairs, maintenance, improvements, and similar activities on the leased building. If C properly makes the election under paragraph (h)(6) of this section for the leased building and the amounts otherwise constitute deductible ordinary and necessary expenses incurred in carrying on C's trade or business, C may deduct these amounts under § 1.162–1.

(i) *Safe harbor for routine maintenance on property*—(1) *In general.* An amount paid for routine maintenance (as defined in paragraph (i)(1)(i) or (i)(1)(ii) of this section, as applicable) on a unit of tangible property, or in the case of a building, on any of the properties designated in paragraphs (e)(2)(ii), (e)(2)(iii)(B), (e)(2)(iv)(B), or paragraph (e)(2)(v)(B) of this section, is deemed not to improve that unit of property.

(i) *Routine maintenance for buildings.* Routine maintenance for a building unit of property is the recurring activities that a taxpayer expects to perform as a result of the taxpayer's use of any of the properties designated in paragraphs (e)(2)(ii), (e)(2)(iii)(B), (e)(2)(iv)(B), or (e)(2)(v)(B) of this section to keep the building structure or each building system in its ordinarily efficient operating condition. Routine maintenance activities include, for example, the inspection, cleaning, and testing of the building structure or each building system, and the replacement of damaged or worn parts with comparable and commercially available replacement parts. Routine maintenance may be performed any time during the useful life of the building structure or building systems. However, the activities are routine only if the taxpayer reasonably expects to perform the activities more than once during the 10-year period beginning at the time the building structure or the building system upon which the routine maintenance is performed is placed in service by the taxpayer. A taxpayer's expectation will not be deemed unreasonable merely because the taxpayer does not actually perform the maintenance a second time during the 10-year period, provided that the taxpayer can otherwise substantiate that its expectation was reasonable at the time the property was placed in service. Factors to be considered in determining whether maintenance is routine and whether a taxpayer's expectation is reasonable include the recurring nature of the activity, industry practice, manufacturers' recommendations, and the taxpayer's experience with similar or identical property. With respect to a taxpayer that is a lessor of a building or a part of the building, the taxpayer's use of the building unit of property includes the lessee's use of its unit of property.

(ii) *Routine maintenance for property other than buildings.* Routine maintenance for property other than buildings is the recurring activities that a taxpayer expects to perform as a result of the taxpayer's use of the unit of property to keep the unit of property in its ordinarily efficient operating condition. Routine maintenance activities include, for example, the inspection, cleaning, and testing of the unit of property, and the replacement of damaged or worn parts of the unit of property with comparable and commercially available replacement parts. Routine maintenance may be performed any time during the useful life of the unit of property. However, the activities are routine only if, at the time the unit of property is placed in service by the taxpayer, the taxpayer reasonably expects to perform the activities more than once during the class life (as defined in paragraph (i)(4) of this section) of the unit of property. A taxpayer's expectation will not be deemed unreasonable merely because the taxpayer does not actually perform the maintenance a second time during the class life of the unit of property, provided that the taxpayer can otherwise substantiate that its expectation was reasonable at the time the property was placed in service. Factors to be considered in determining whether maintenance is routine and whether the taxpayer's expectation is reasonable include the recurring nature of the activity, industry practice, manufacturers' recommendations, and the taxpayer's experience with similar or identical property. With respect to a taxpayer that is a lessor of a unit of property, the taxpayer's use of the unit of property includes the lessee's use of the unit of property.

(2) *Rotable and temporary spare parts.* Except as provided in paragraph (i)(3) of this section, for purposes of paragraph (i)(1)(ii) of this section, amounts paid for routine maintenance include routine maintenance performed on (and with regard to) rotable and temporary spare parts.

(3) *Exceptions.* Routine maintenance does not include the following:

(i) Amounts paid for a betterment to a unit of property under paragraph (j) of this section;

(ii) Amounts paid for the replacement of a component of a unit of property for which the taxpayer has properly deducted a loss for that component (other than a casualty loss under § 1.165–7) (see paragraph (k)(1)(i) of this section);

(iii) Amounts paid for the replacement of a component of a unit of property for which the taxpayer has properly taken into account the adjusted basis of the component in realizing gain or loss resulting from the sale or exchange of the component (see paragraph (k)(1)(ii) of this section);

(iv) Amounts paid for the restoration of damage to a unit of property for which the taxpayer is required to take a basis adjustment as a result of a casualty loss under section 165, or relating to a casualty event described in section 165, subject to the limitation in paragraph (k)(4) of this section (see paragraph (k)(1)(iii) of this section);

(v) Amounts paid to return a unit of property to its ordinarily efficient operating condition, if the property has deteriorated to a state of disrepair and is no longer functional for its intended use (see paragraph (k)(1)(iv) of this section);

(vi) Amounts paid to adapt a unit of property to a new or different use under paragraph (l) of this section;

(vii) Amounts paid for repairs, maintenance, or improvement of network assets (as defined in paragraph (e)(3)(iii)(A) of this section); or

(viii) Amounts paid for repairs, maintenance, or improvement of rotable and temporary spare parts to which the taxpayer applies the optional method of accounting for rotable and temporary spare parts under § 1.162–3(e).

(4) *Class life.* The class life of a unit of property is the recovery period prescribed for the property under sections 168(g)(2) and (3) for purposes of the alternative depreciation system, regardless of whether the property is depreciated under section 168(g). For purposes of determining class life under this section, section 168(g)(3)(A) (relating to tax-exempt use property subject to lease) does not apply. If the unit of property is comprised of components with different class lives, then the class life of the unit of property is deemed to be the same as the component with the longest class life.

(5) *Coordination with section 263A.* Amounts paid for routine maintenance under this paragraph (i) may be subject to capitalization under section 263A if these amounts comprise the direct or allocable indirect costs of other property produced by the taxpayer or property acquired for resale. See, for example, § 1.263A–1(e)(3)(ii)(O) requiring taxpayers to capitalize the cost of repairing equipment or facilities allocable to property produced or property acquired for resale.

(6) *Examples.* The following examples illustrate the application of this paragraph (i) and, unless otherwise stated, do not address the treatment under other provisions of the Code (for example, section 263A). In addition, unless otherwise stated, assume that the taxpayer has not applied the optional method of accounting for rotable and temporary spare parts under § 1.162–3(e).

Example 1. Routine maintenance on component. (i) A is a commercial airline

engaged in the business of transporting passengers and freight throughout the United States and abroad. To conduct its business, A owns or leases various types of aircraft. As a condition of maintaining its airworthiness certification for these aircraft, A is required by the Federal Aviation Administration (FAA) to establish and adhere to a continuous maintenance program for each aircraft within its fleet. These programs, which are designed by A and the aircraft's manufacturer and approved by the FAA, are incorporated into each aircraft's maintenance manual. The maintenance manuals require a variety of periodic maintenance visits at various intervals. One type of maintenance visit is an engine shop visit (ESV), which A expects to perform on its aircraft engines approximately every 4 years to keep its aircraft in its ordinarily efficient operating condition. In Year 1, A purchased a new aircraft, which included four new engines attached to the airframe. The four aircraft engines acquired with the aircraft are not materials or supplies under § 1.162–3(c)(1)(i) because they are acquired as part of a single unit of property, the aircraft. In Year 5, A performs its first ESV on the aircraft engines. The ESV includes disassembly, cleaning, inspection, repair, replacement, reassembly, and testing of the engine and its component parts. During the ESV, the engine is removed from the aircraft and shipped to an outside vendor who performs the ESV. If inspection or testing discloses a discrepancy in a part's conformity to the specifications in A's maintenance program, the part is repaired, or if necessary, replaced with a comparable and commercially available replacement part. After the ESVs, the engines are returned to A to be reinstalled on another aircraft or stored for later installation. Assume that the class life for A's aircraft, including the engines, is 12 years. Assume that none of the exceptions set out in paragraph (i)(3) of this section apply to the costs of performing the ESVs.

(ii) Because the ESVs involve the recurring activities that A expects to perform as a result of its use of the aircraft to keep the aircraft in ordinarily efficient operating condition and consist of maintenance activities that A expects to perform more than once during the 12 year class life of the aircraft, A's ESVs are within the routine maintenance safe harbor under paragraph (i)(1)(ii) of this section. Accordingly, the amounts paid for the ESVs are deemed not to improve the aircraft and are not required to be capitalized under paragraph (d) of this section.

Example 2. Routine maintenance after class life. Assume the same facts as in *Example 1,* except that in year 15 A pays amounts to perform an ESV on one of the original aircraft engines after the end of the class life of the aircraft. Because this ESV involves the same routine maintenance activities that were performed on aircraft engines in *Example 1,* this ESV also is within the routine maintenance safe harbor under paragraph (i)(1)(ii) of this section. Accordingly, the amounts paid for this ESV, even though performed after the class life of the aircraft, are deemed not to improve the aircraft and are not required to be capitalized under paragraph (d) of this section.

Example 3. Routine maintenance on rotable spare parts. (i) Assume the same facts as in *Example 1,* except that in addition to the four engines purchased as part of the aircraft, A separately purchases four additional new engines that A intends to use in its aircraft fleet to avoid operational downtime when ESVs are required to be performed on the engines previously installed on an aircraft. Later in Year 1, A installs these four engines on an aircraft in its fleet. In Year 5, A performs the first ESVs on these four engines. Assume that these ESVs involve the same routine maintenance activities that were performed on the engines in *Example 1,* and that none of the exceptions set out in paragraph (i)(3) of this section apply to these ESVs. After the ESVs were performed, these engines were reinstalled on other aircraft or stored for later installation.

(ii) The additional aircraft engines are rotable spare parts because they were acquired separately from the aircraft, they are removable from the aircraft, and are repaired and reinstalled on other aircraft or stored for later installation. See § 1.162–3(c)(2) (definition of rotable and temporary spare parts). Assume the class life of an engine is the same as the airframe, 12 years. Because the ESVs involve the recurring activities that A expects to perform as a result of its use of the engines to keep the engines in ordinarily efficient operating condition, and consist of maintenance activities that A expects to perform more than once during the 12 year class life of the engine, the ESVs fall within the routine maintenance safe harbor under paragraph (i)(1)(ii) of this section. Accordingly, the amounts paid for the ESVs for the four additional engines are deemed not to improve these engines and are not required to be capitalized under paragraph (d) of this section. For the treatment of amounts paid to acquire the engines, see § 1.162–3(a).

Example 4. Routine maintenance resulting from prior owner's use. (i) In January, Year 1, B purchases a used machine for use in its manufacturing operations. Assume that the machine is the unit of property and has a class life of 10 years. B places the machine in service in January, Year 1, and at that time, B expects to perform manufacturer recommended scheduled maintenance on the machine approximately every three years. The scheduled maintenance includes the cleaning and oiling of the machine, the inspection of parts for defects, and the replacement of minor items such as springs, bearings, and seals with comparable and commercially available replacement parts. At the time B purchased the machine, the machine was approaching the end of a three-year scheduled maintenance period. As a result, in February, Year 1, B pays amounts to perform the manufacturer recommended scheduled maintenance. Assume that none of the exceptions set out in paragraph (i)(3) of this section apply to the amounts paid for the scheduled maintenance.

(ii) The majority of B's costs do not qualify under the routine maintenance safe harbor in paragraph (i)(1)(ii) of this section because the costs were incurred primarily as a result of the prior owner's use of the property and not B's use. B acquired the machine just before it had received its three-year scheduled maintenance. Accordingly, the amounts paid for the scheduled maintenance resulted from the prior owner's, and not B's, use of the property and must be capitalized if those amounts result in a betterment under paragraph (i) of this section, including the amelioration of a material condition or defect, or otherwise result in an improvement under paragraph (d) of this section.

Example 5. Routine maintenance resulting from new owner's use. Assume the same facts as in *Example 4,* except that after B pays amounts for the maintenance in Year 1, B continues to operate the machine in its manufacturing business. In Year 4, B pays amounts to perform the next scheduled manufacturer recommended maintenance on the machine. Assume that the scheduled maintenance activities performed are the same as those performed in *Example 4* and that none of the exceptions set out in paragraph (i)(3) of this section apply to the amounts paid for the scheduled maintenance. Because the scheduled maintenance performed in Year 4 involves the recurring activities that B performs as a result of its use of the machine, keeps the machine in an ordinarily efficient operating condition, and consists of maintenance activities that B expects to perform more than once during the 10-year class life of the machine, B's scheduled maintenance costs are within the routine maintenance safe harbor under paragraph (i)(1)(ii) of this section. Accordingly, the amounts paid for the scheduled maintenance in Year 4 are deemed not to improve the machine and are not required to be capitalized under paragraph (d) of this section.

Example 6. Routine maintenance; replacement of substantial structural part; coordination with section 263A. C is in the business of producing commercial products for sale. As part of the production process, C places raw materials into lined containers in which a chemical reaction is used to convert raw materials into the finished product. The lining, which comprises 60 percent of the total physical structure of the container, is a substantial structural part of the container. Assume that each container, including its lining, is the unit of property and that a container has a class life of 12 years. At the time that C placed the container into service, C was aware that approximately every three years, the container lining would need to be replaced with comparable and commercially available replacement materials. At the end of three years, the container will continue to function, but will become less efficient and the replacement of the lining will be necessary to keep the container in an ordinarily efficient operating condition. In Year 1, C acquired 10 new containers and placed them into service. In Year 4, Year 7, Year 9, and Year 12, C pays amounts to replace the containers' linings with comparable and commercially available replacement parts. Assume that none of the exceptions set out in paragraph (i)(3) of this section apply to the amounts paid for the replacement linings. Because the replacement of the linings involves recurring activities that C expects to perform as a result

of its use of the containers to keep the containers in their ordinarily efficient operating condition and consists of maintenance activities that C expects to perform more than once during the 12-year class life of the containers, C's lining replacement costs are within the routine maintenance safe harbor under paragraph (i)(1)(ii) of this section. Accordingly, the amounts that C paid for the replacement of the container linings are deemed not to improve the containers and are not required to be capitalized under paragraph (d) of this section. However, the amounts paid to replace the lining may be subject to capitalization under section 263A if the amounts paid for this maintenance comprise the direct or allocable indirect costs of the property produced by C. See § 1.263A–1(e)(3)(ii)(O).

Example 7. Routine maintenance once during class life. D is a Class I railroad that owns a fleet of freight cars. Assume that a freight car, including all its components, is a unit of property and has a class life of 14 years. At the time that D places a freight car into service, D expects to perform cyclical reconditioning to the car every 8 to 10 years to keep the freight car in ordinarily efficient operating condition. During this reconditioning, D pays amounts to disassemble, inspect, and recondition or replace components of the freight car with comparable and commercially available replacement parts. Ten years after D places the freight car in service, D pays amounts to perform a cyclical reconditioning on the car. Because D expects to perform the reconditioning only once during the 14 year class life of the freight car, the amounts D pays for the reconditioning do not qualify for the routine maintenance safe harbor under paragraph (i)(1)(ii) of this section. Accordingly, D must capitalize the amounts paid for the reconditioning of the freight car if these amounts result in an improvement under paragraph (d) of this section.

Example 8. Routine maintenance; reasonable expectation. Assume the same facts as *Example 7,* except in Year 1, D acquires and places in service several refrigerated freight cars, which also have a class life of 14 years. Because of the special requirements of these cars, at the time they are placed in service, D expects to perform a reconditioning of the refrigeration components of the freight car every 6 years to keep the freight car in an ordinarily efficient operating condition. During the reconditioning, D pays amounts to disassemble, inspect, and recondition or replace the refrigeration components of the freight car with comparable and commercially available replacement parts. Assume that none of the exceptions set out in paragraph (i)(3) of this section apply to the amounts paid for the reconditioning of these freight cars. In Year 6, D pays amounts to perform a reconditioning on the refrigeration components on one of the freight cars. However, because of changes in the frequency that D utilizes this freight car, D does not perform the second reconditioning on the same freight car until Year 15, after the end of the 14-year class life of the car. Under paragraph (i)(1)(ii) of this section, D's reasonable expectation that it would perform the reconditioning every 6 years will not be deemed unreasonable merely because D did not actually perform the reconditioning a second time during the 14-year class life, provided that D can substantiate that its expectation was reasonable at the time the property was placed in service. If D can demonstrate that its expectation was reasonable in Year 1 using the factors provided in paragraph (i)(1)(ii) of this section, then the amounts paid by D to recondition the refrigerated freight car components in Year 6 and in Year 15 are within the routine maintenance safe harbor under paragraph (i)(1)(ii) of this section.

Example 9. Routine maintenance on non-rotable part. E is a towboat operator that owns and leases a fleet of towboats. Each towboat is equipped with two diesel-powered engines. Assume that each towboat, including its engines, is the unit of property and that a towboat has a class life of 18 years. At the time that E places its towboats into service, E is aware that approximately every three to four years E will need to perform scheduled maintenance on the two towboat engines to keep the engines in their ordinarily efficient operating condition. This maintenance is completed while the engines are attached to the towboat and involves the cleaning and inspecting of the engines to determine which parts are within acceptable operating tolerances and can continue to be used, which parts must be reconditioned to be brought back to acceptable tolerances, and which parts must be replaced. Engine parts replaced during these procedures are replaced with comparable and commercially available replacement parts. Assume the towboat engines are not rotable spare parts under § 1.162–3(c)(2). In Year 1, E acquired a new towboat, including its two engines, and placed the towboat into service. In Year 5, E pays amounts to perform scheduled maintenance on both engines in the towboat. Assume that none of the exceptions set out in paragraph (i)(3) of this section apply to the scheduled maintenance costs. Because the scheduled maintenance involves recurring activities that E expects to perform more than once during the 18-year class life of the towboat, the maintenance results from E's use of the towboat, and the maintenance is performed to keep the towboat in an ordinarily efficient operating condition, the scheduled maintenance on E's towboat is within the routine maintenance safe harbor under paragraph (i)(1)(ii) of this section. Accordingly, the amounts paid for the scheduled maintenance to its towboat engines in Year 5 are deemed not to improve the towboat and are not required to be capitalized under paragraph (d) of this section.

Example 10. Routine maintenance with related betterments. Assume the same facts as *Example 9,* except that in Year 9 E's towboat engines are due for another scheduled maintenance visit. At this time, E decides to upgrade the engines to increase their horsepower and propulsion, which would permit the towboats to tow heavier loads. Accordingly, in Year 9, E pays amounts to perform many of the same activities that it would perform during the typical scheduled maintenance activities such as cleaning, inspecting, reconditioning, and replacing minor parts, but at the same time, E incurs costs to upgrade certain engine parts to increase the towing capacity of the boats in excess of the capacity of the boats when E placed them in service. In combination with the replacement of parts with new and upgraded parts, the scheduled maintenance must be completed to perform the horsepower and propulsion upgrade. Thus, the work done on the engines encompasses more than the recurring activities that E expected to perform as a result of its use of the towboats and did more than keep the towboat in its ordinarily efficient operating condition. Rather under paragraph (j) of this section, the amounts paid to increase the horsepower and propulsion of the engines are for a betterment to the towboat, and such amounts are excepted from the routine maintenance safe harbor under paragraph (i)(3)(i) of this section. In addition, under paragraph (g)(1)(i) of this section, the scheduled maintenance procedures directly benefit the upgrades. Therefore, the amounts that E paid in Year 9 for the maintenance and upgrade of the engines do not qualify for the routine maintenance safe harbor described under paragraph (i)(1)(ii) of this section. Rather, E must capitalize the amounts paid for maintenance and upgrades of the engines as an improvement to the towboats under paragraph (d) of this section.

Example 11. Routine maintenance with unrelated improvements. Assume the same facts as *Example 9,* except in Year 5, in addition to paying amounts to perform the scheduled engine maintenance on both engines, E also incurs costs to upgrade the communications and navigation systems in the pilot house of the towboat with new state-of-the-art systems. Assume the amounts paid to upgrade the communications and navigation systems are for betterments under paragraph (j) of this section, and therefore result in an improvement to the towboat under paragraph (d) of this section. In contrast with *Example 9,* the amounts paid for the scheduled maintenance on E's towboat engines are not otherwise related to the upgrades to the navigation systems. Because the scheduled maintenance on the towboat engines does not directly benefit and is not incurred by reason of the upgrades to the communication and navigation systems, the amounts paid for the scheduled engine maintenance are not a direct or indirect cost of the improvement under paragraph (g)(1)(i) of this section. Accordingly, the amounts paid for the scheduled maintenance to its towboat engines in Year 5 are routine maintenance deemed not to improve the towboat and are not required to be capitalized under paragraph (d) of this section.

Example 12. Exceptions to routine maintenance. F owns and operates a farming and cattle ranch with an irrigation system that provides water for crops. Assume that each canal in the irrigation system is a single unit of property and has a class life of 20 years. At the time F placed the canals into service, F expected to have to perform major maintenance on the canals every three years

to keep the canals in their ordinarily efficient operating condition. This maintenance includes draining the canals, and then cleaning, inspecting, repairing, and reconditioning or replacing parts of the canal with comparable and commercially available replacement parts. F placed the canals into service in Year 1 and did not perform any maintenance on the canals until Year 6. At that time, the canals had fallen into a state of disrepair and no longer functioned for irrigation. In Year 6, F pays amounts to drain the canals and do extensive cleaning, repairing, reconditioning, and replacing parts of the canals with comparable and commercially available replacement parts. Although the work performed on F's canals was similar to the activities that F expected to perform, but did not perform, every three years, the costs of these activities do not fall within the routine maintenance safe harbor. Specifically, under paragraph (i)(3)(v) of this section, routine maintenance does not include activities that return a unit of property to its former ordinarily efficient operating condition if the property has deteriorated to a state of disrepair and is no longer functional for its intended use. Accordingly, amounts that F pays for work performed on the canals in Year 6 must be capitalized if they result in improvements under paragraph (d) of this section (for example, restorations under paragraph (k) of this section).

Example 13. Routine maintenance on a building; escalator system. In Year 1, G acquires a large retail mall in which it leases space to retailers. The mall contains an escalator system with 40 escalators, which includes landing platforms, trusses, tracks, steps, handrails, and safety brushes. In Year 1, when G placed its building into service, G reasonably expected that it would need to replace the handrails on the escalators approximately every four years to keep the escalator system in its ordinarily efficient operating condition. After a routine inspection and test of the escalator system in Year 4, G determines that the handrails need to be replaced and pays an amount to replace the handrails with comparable and commercially available handrails. The escalator system, including the handrails, is a building system under paragraph (e)(2)(ii)(B)(*4*) of this section. Assume that none of the exceptions in paragraph (i)(3) of this section apply to the scheduled maintenance costs. Because the replacement of the handrails involves recurring activities that G expects to perform as a result of its use of the escalator system to keep the escalator system in an ordinarily efficient operating condition, and G reasonably expects to perform these activities more than once during the 10-year period beginning at the time building system was placed in service, the amounts paid by G for the handrail replacements are within the routine maintenance safe harbor under paragraph (i)(1)(i) of this section. Accordingly, the amounts paid for the replacement of the handrails in Year 4 are deemed not to improve the building unit of property and are not required to be capitalized under paragraph (d) of this section.

Example 14. Not routine maintenance; escalator system. Assume the same facts as in *Example 13,* except that in Year 9, G pays amounts to replace the steps of the escalators. In Year 1, when G placed its building into service, G reasonably expected that approximately every 18 to 20 years G would need to replace the steps to keep the escalator system in its ordinarily efficient operating condition. Because the replacement does not involve recurring activities that G expects to perform more than once during the 10-year period beginning at the time the building structure or the building system was placed in service, the costs of these activities do not fall within the routine maintenance safe harbor. Accordingly, amounts that G pays to replace the steps in Year 9 must be capitalized if they result in improvements under paragraph (d) of this section (for example, restorations under paragraph (k) of this section).

Example 15. Routine maintenance on building; reasonable expectation. In Year 1, H acquires a new office building, which it uses to provide services. The building contains an HVAC system, which is a building system under paragraph (e)(2)(ii)(B)(*1*) of this section. In Year 1, when H placed its building into service, H reasonably expected that every four years H would need to pay an outside contractor to perform detailed testing, monitoring, and preventative maintenance on its HVAC system to keep the HVAC system in its ordinarily efficient operating condition. This scheduled maintenance includes disassembly, cleaning, inspection, repair, replacement, reassembly, and testing of the HVAC system and many of its component parts. If inspection or testing discloses a problem with any component, the part is repaired, or if necessary, replaced with a comparable and commercially available replacement part. The scheduled maintenance at these intervals is recommended by the manufacturer of the HVAC system and is routinely performed on similar systems in similar buildings. Assume that none of the exceptions in paragraph (i)(3) of this section apply to the amounts paid for the maintenance on the HVAC system. In Year 4, H pays amounts to a contractor to perform the scheduled maintenance. However, H does not perform this scheduled maintenance on its building again until Year 11. Under paragraph (i)(1)(i) of this section, H's reasonable expectation that it would perform the maintenance every 4 years will not be deemed unreasonable merely because H did not actually perform the maintenance a second time during the 10-year period, provided that H can substantiate that its expectation was reasonable at the time the property was placed in service. If H can demonstrate that its expectation was reasonable in Year 1 using the other factors considered in paragraph (i)(1)(i), then the amounts H paid for the maintenance of the HVAC system in Year 4 and in Year 11 are within the routine maintenance safe harbor under paragraph (i)(1)(i) of this section.

(j) *Capitalization of betterments*—(1) *In general.* A taxpayer must capitalize as an improvement an amount paid for a betterment to a unit of property. An amount is paid for a betterment to a unit of property only if it—

(i) Ameliorates a material condition or defect that either existed prior to the taxpayer's acquisition of the unit of property or arose during the production of the unit of property, whether or not the taxpayer was aware of the condition or defect at the time of acquisition or production;

(ii) Is for a material addition, including a physical enlargement, expansion, extension, or addition of a major component (as defined in paragraph (k)(6) of this section) to the unit of property or a material increase in the capacity, including additional cubic or linear space, of the unit of property; or

(iii) Is reasonably expected to materially increase the productivity, efficiency, strength, quality, or output of the unit of property.

(2) *Application of betterment rules*—(i) *In general.* The applicability of each quantitative and qualitative factor provided in paragraphs (j)(1)(ii) and (j)(1)(iii) of this section to a particular unit of property depends on the nature of the unit of property. For example, if an addition or an increase in a particular factor cannot be measured in the context of a specific type of property, this factor is not relevant in the determination of whether an amount has been paid for a betterment to the unit of property.

(ii) *Application of betterment rules to buildings.* An amount is paid to improve a building if it is paid for a betterment, as defined under paragraph (j)(1) of this section, to a property specified under paragraph (e)(2)(ii) (building), paragraph (e)(2)(iii)(B) (condominium), paragraph (e)(2)(iv)(B) (cooperative), or paragraph (e)(2)(v)(B) (leased building or leased portion of building) of this section. For example, an amount is paid to improve a building if it is paid for an increase in the efficiency of the building structure or any one of its building systems (for example, the HVAC system).

(iii) *Unavailability of replacement parts.* If a taxpayer replaces a part of a unit of property that cannot reasonably be replaced with the same type of part (for example, because of technological advancements or product enhancements), the replacement of the part with an improved, but comparable, part does not, by itself, result in a betterment to the unit of property.

(iv) *Appropriate comparison*—(A) *In general.* In cases in which an expenditure is necessitated by normal wear and tear or damage to the unit of property that occurred during the taxpayer's use of the unit of property, the determination of whether an expenditure is for the betterment of the unit of property is made by comparing

the condition of the property immediately after the expenditure with the condition of the property immediately prior to the circumstances necessitating the expenditure.

(B) *Normal wear and tear.* If the expenditure is made to correct the effects of normal wear and tear to the unit of property that occurred during the taxpayer's use of the unit of property, the condition of the property immediately prior to the circumstances necessitating the expenditure is the condition of the property after the last time the taxpayer corrected the effects of normal wear and tear (whether the amounts paid were for maintenance or improvements) or, if the taxpayer has not previously corrected the effects of normal wear and tear, the condition of the property when placed in service by the taxpayer.

(C) *Damage to property.* If the expenditure is made to correct damage to a unit of property that occurred during the taxpayer's use of the unit of property, the condition of the property immediately prior to the circumstances necessitating the expenditure is the condition of the property immediately prior to damage.

(3) *Examples.* The following examples illustrate the application of this paragraph (j) only and do not address whether capitalization is required under another provision of this section or another provision of the Internal Revenue Code (for example, section 263A). Unless otherwise provided, assume that the appropriate comparison in paragraph (j)(2)(iv) of this section is not applicable under the facts.

Example 1. Amelioration of pre-existing material condition or defect. In Year 1, A purchases a store located on a parcel of land that contains underground gasoline storage tanks left by prior occupants. Assume that the parcel of land is the unit of property. The tanks had leaked prior to A's purchase, causing soil contamination. A is not aware of the contamination at the time of purchase. In Year 2, A discovers the contamination and incurs costs to remediate the soil. The remediation costs are for a betterment to the land under paragraph (j)(1)(i) of this section because A incurred the costs to ameliorate a material condition or defect that existed prior to A's acquisition of the land.

Example 2. Not amelioration of pre-existing condition or defect. B owns an office building that was constructed with insulation that contained asbestos. The health dangers of asbestos were not widely known when the building was constructed. Several years after B places the building into service, B determines that certain areas of asbestos-containing insulation have begun to deteriorate and could eventually pose a health risk to employees. Therefore, B pays an amount to remove the asbestos-containing insulation from the building structure and replace it with new insulation that is safer to employees, but no more efficient or effective than the asbestos insulation. Under paragraphs (e)(2)(ii) and (j)(2)(ii) of this section, an amount is paid to improve a building unit of property if the amount is paid for a betterment to the building structure or any building system. Although the asbestos is determined to be unsafe under certain circumstances, the presence of asbestos insulation in a building, by itself, is not a preexisting material condition or defect of the building structure under paragraph (j)(1)(i) of this section. In addition, the removal and replacement of the asbestos is not for a material addition to the building structure or a material increase in the capacity of the building structure under paragraphs (j)(1)(ii) and (j)(2)(iv) of this section as compared to the condition of the property prior to the deterioration of the insulation. Similarly, the removal and replacement of asbestos is not reasonably expected to materially increase the productivity, efficiency, strength, quality, or output of the building structure under paragraphs (j)(1)(iii) and (j)(2)(iv) of this section as compared to the condition of the property prior to the deterioration of the insulation. Therefore, the amount paid to remove and replace the asbestos insulation is not for a betterment to the building structure or an improvement to the building under paragraph (j) of this section.

Example 3. Not amelioration of pre-existing material condition or defect. (i) In January, Year 1, C purchased a used machine for use in its manufacturing operations. Assume that the machine is a unit of property and has a class life of 10 years. C placed the machine in service in January, Year 1 and at that time expected to perform manufacturer recommended scheduled maintenance on the machine every three years. The scheduled maintenance includes cleaning and oiling the machine, inspecting parts for defects, and replacing minor items, such as springs, bearings, and seals, with comparable and commercially available replacement parts. The scheduled maintenance does not include any material additions or materially increase the capacity, productivity, efficiency, strength, quality, or output of the machine. At the time C purchased the machine, it was approaching the end of a three-year scheduled maintenance period. As a result, in February, Year 1, C pays an amount to perform the manufacturer recommended scheduled maintenance to keep the machine in its ordinarily efficient operating condition.

(ii) The amount that C pays does not qualify under the routine maintenance safe harbor in paragraph (i) of this section, because the cost primarily results from the prior owner's use of the property and not the taxpayer's use. C acquired the machine just before it had received its three-year scheduled maintenance. Accordingly, the amount that C pays for the scheduled maintenance results from the prior owner's use of the property and ameliorates conditions or defects that existed prior to C's ownership of the machine. Nevertheless, considering the purpose and minor nature of the work performed, this amount does not ameliorate a material condition or defect in the machine under paragraph (j)(1)(i) of this section, is not for a material addition to or increase in capacity of the machine under paragraph (j)(1)(ii) of this section, and is not reasonably expected to materially increase the productivity, efficiency, strength, quality, or output of the machine under paragraph (j)(1)(iii) of this section. Therefore, C is not required to capitalize the amount paid for the scheduled maintenance as a betterment to the unit of property under this paragraph (j).

Example 4. Not amelioration of pre-existing material condition or defect. D purchases a used ice resurfacing machine for use in the operation of its ice skating rink. To comply with local regulations, D is required to routinely monitor the air quality in the ice skating rink. One week after D places the machine into service, during a routine air quality check, D discovers that the operation of the machine is adversely affecting the air quality in the skating rink. As a result, D pays an amount to inspect and retune the machine, which includes replacing minor components of the engine that had worn out prior to D's acquisition of the machine. Assume the resurfacing machine, including the engine, is the unit of property. The routine maintenance safe harbor in paragraph (i) of this section does not apply to the amounts paid, because the activities performed do not relate solely to the taxpayer's use of the machine. The amount that D pays to inspect, retune, and replace minor components of the ice resurfacing machine ameliorates a condition or defect that existed prior to D's acquisition of the equipment. Nevertheless, considering the purpose and minor nature of the work performed, this amount does not ameliorate a material condition or defect in the machine under paragraph (j)(1)(i) of this section. In addition, the amount is not paid for a material addition to the machine or a material increase in the capacity of the machine under paragraph (j)(1)(ii) of this section. Also, the activities are not reasonably expected to materially increase the productivity, efficiency, strength, quality, or output of the machine under paragraph (j)(1)(iii) of this section. Therefore, D is not required to capitalize the amount paid to inspect, retune, and replace minor components of the machine as a betterment under this paragraph (j).

Example 5. Amelioration of material condition or defect. (i) E acquires a building for use in its business of providing assisted living services. Before and after the purchase, the building functions as an assisted living facility. However, at the time of the purchase, E is aware that the building is in a condition that is below the standards that E requires for facilities used in its business. Immediately after the acquisition and during the following two years, while E continues to use the building as an assisted living facility, E pays amounts for extensive repairs and maintenance, and the acquisition of new property to bring the facility into the high-quality condition for which E's facilities are known. The work on E's building includes repairing damaged drywall, repainting, re-wallpapering, replacing windows, repairing and replacing doors, replacing and regrouting

tile, repairing millwork, and repairing and replacing roofing materials. The work also involves the replacement of section 1245 property, including window treatments, furniture, and cabinets. The work that E performs affects only the building structure under paragraph (e)(2)(ii)(A) of this section and does not affect any of the building systems described in paragraph (e)(2)(ii)(B) of this section. Assume that each section 1245 property is a separate unit of property.

(ii) Under paragraphs (e)(2)(ii) and (j)(2)(ii) of this section, an amount is paid to improve a building unit of property if the amount is paid for a betterment to the building structure or any building system. Considering the purpose of the expenditure and the effect of the expenditures on the building structure, the amounts that E paid for repairs and maintenance to the building structure comprise a betterment to the building structure under paragraph (j)(1)(i) of this section because the amounts ameliorate material conditions that existed prior to E's acquisition of the building. Therefore, E must treat the amounts paid for the betterment to the building structure as an improvement to the building and must capitalize the amounts under paragraphs (j) and (d)(1) of this section. Moreover, E is required to capitalize the amounts paid to acquire and install each section 1245 property, including each window treatment, each item of furniture, and each cabinet, in accordance with § 1.263(a)–2(d)(1).

Example 6. Not a betterment; building refresh. (i) F owns a nationwide chain of retail stores that sell a wide variety of items. To maintain the appearance and functionality of its store buildings after several years of wear, F periodically pays amounts to refresh the look and layout of its stores. The work that F performs during a refresh consists of cosmetic and layout changes to the store's interiors and general repairs and maintenance to the store building to modernize the store buildings and reorganize the merchandise displays. The work to each store consists of replacing and reconfiguring display tables and racks to provide better exposure of the merchandise, making corresponding lighting relocations and flooring repairs, moving one wall to accommodate the reconfiguration of tables and racks, patching holes in walls, repainting the interior structure with a new color scheme to coordinate with new signage, replacing damaged ceiling tiles, cleaning and repairing wood flooring throughout the store building, and power washing building exteriors. The display tables and the racks all constitute section 1245 property. F pays amounts to refresh 50 stores during the taxable year. Assume that each section 1245 property within each store is a separate unit of property. Finally, assume that the work does not ameliorate any material conditions or defects that existed when F acquired the store buildings or result in any material additions to the store buildings.

(ii) Under paragraphs (e)(2)(ii) and (j)(2)(ii) of this section, an amount is paid to improve a building unit of property if the amount is paid for a betterment to the building structure or any building system. Considering the facts and circumstances including the purpose of the expenditure, the physical nature of the work performed, and the effect of the expenditure on the buildings' structure and systems, the amounts paid for the refresh of each building are not for any material additions to, or material increases in the capacity of, the buildings' structure or systems as compared with the condition of the structure or systems after the previous refresh. Moreover, the amounts paid are not reasonably expected to materially increase the productivity, efficiency, strength, quality, or output of any building structure or system under as compared to the condition of the structures or systems after the previous refresh. Rather, the work performed keeps F's store buildings' structures and buildings' systems in their ordinarily efficient operating condition. Therefore, F is not required to treat the amounts paid for the refresh of its store buildings' structures and buildings' systems as betterments under paragraphs (j)(1)(ii), (j)(1)(iii), and (j)(2)(iv) of this section. However, F is required to capitalize the amounts paid to acquire and install each section 1245 property in accordance with § 1.263(a)–2(d)(1).

Example 7. Building refresh; limited improvement. (i) Assume the same facts as *Example 6* except, in the course of the refresh to one of its store buildings, F also pays amounts to increase the building's storage space, add a second loading dock, and add a second overhead door. Specifically, at the same time F pays amounts to perform the refresh, F pays additional amounts to construct an addition to the back of the store building, including adding a new overhead door and loading dock to the building. The work also involves upgrades to the electrical system of the building, including the addition of a second service box with increased amperage and new wiring from the service box to provide lighting and power throughout the new space. Although it is performed at the same time, the construction of the additions does not affect, and is not otherwise related to, the refresh of the retail space.

(ii) Under paragraphs (e)(2)(ii) and (j)(2)(ii) of this section, an amount is paid to improve a building unit of property if the amount is paid for a betterment to the building structure or any building system. Under paragraph (j)(1)(ii) of this section, the amounts paid by F to add the storage space, loading dock, overhead door, and expand the electrical system are for betterments to F's building structure and to the electrical system because they are for material additions to, and a material increase in capacity of, the structure and the electrical system of F's store building. Accordingly, F must treat the amounts paid for these betterments as improvements to the building unit of property and capitalize these amounts under paragraphs (d)(1) and (j) of this section. However, for the reasons discussed in *Example 6,* F is not required to treat the amounts paid for the refresh of its store building structure and systems as a betterments under paragraph (j)(1) of this section. In addition, F is not required under paragraph (g)(1) of this section to capitalize the refresh costs described in *Example 6* because these costs do not directly benefit and are not incurred by reason of the additions to the building structure and electrical system. As in *Example 6,* F is required to capitalize the amounts paid to acquire and install each section 1245 property in accordance with § 1.263(a)–2(d)(1).

Example 8. Betterment; building remodel. (i) G owns a large chain of retail stores that sell a variety of items. G determines that due to changes in the retail market, it can no longer compete in its current store class and decides to upgrade its stores to offer higher end products to a different type of customer. To offer these products and attract different types of customers, G must substantially remodel its stores. Thus, G pays amounts to remodel its stores by performing work on the buildings' structures and systems as defined under paragraphs (e)(2)(ii)(A) and (e)(2)(ii)(B) of this section. This work includes replacing large parts of the exterior walls with windows, replacing the escalators with a monumental staircase, adding a new glass enclosed elevator, rebuilding the interior and exterior facades, replacing vinyl floors with ceramic flooring, replacing ceiling tiles with acoustical tiles, and removing and rebuilding walls to move changing rooms and create specialty departments. The work also includes upgrades to increase the capacity of the buildings' electrical system to accommodate the structural changes and the addition of new section 1245 property, such as new product information kiosks and point of sale systems. The work to the electrical system also involves the installation of new more efficient and mood enhancing lighting fixtures. In addition, the work includes remodeling all bathrooms by replacing contractor-grade plumbing fixtures with designer-grade fixtures that conserve water and energy. Finally, G also pays amounts to clean debris resulting from construction during the remodel, patch holes in walls that were made to upgrade the electrical system, repaint existing walls with a new color scheme to match the new interior construction, and to power wash building exteriors to enhance the new exterior facade.

(ii) Under paragraphs (e)(2)(ii) and (j)(2)(ii) of this section, an amount is paid to improve a building unit of property if the amount is paid for a betterment to the building structure or any building system. Considering the facts and circumstances, including the purpose of the expenditure, the physical nature of the work performed, and the effect of the work on the buildings' structures and buildings' systems, the amounts that G pays for the remodeling of its stores result in betterments to the buildings' structures and several of its systems under paragraph (j) of this section. Specifically, the amounts paid to replace large parts of the exterior walls with windows, replace the escalators with a monumental staircase, add a new elevator, rebuild the interior and exterior facades, replace vinyl floors with ceramic flooring, replace the ceiling tiles with acoustical tiles, and to remove and rebuild walls are for material additions, that is the addition of major components, to the building structure under paragraph (j)(1)(ii) of this section and are reasonably expected to increase the quality of the building structure under

paragraph (j)(1)(iii) of this section. Similarly, the amounts paid to upgrade the electrical system are to materially increase the capacity of the electrical system under paragraph (j)(1)(ii) of this section and are reasonably expected to increase the quality of this system under paragraph (j)(1)(iii) of this section. In addition, the amounts paid to remodel the bathrooms with higher grade and more resource-efficient materials are reasonably expected to increase the efficiency and quality of the plumbing system under paragraph (j)(1)(iii) of this section. Finally, the amounts paid to clean debris, patch and repaint existing walls with a new color scheme, and to power wash building exteriors, while not betterments by themselves, directly benefitted and were incurred by reason of the improvements to G's store buildings' structures and electrical systems under paragraph (g)(1) of this section. Therefore, G must treat the amounts paid for betterments to the store buildings' structures and systems, including the costs of cleaning, patching, repairing, and power washing the building, as improvements to G's buildings and must capitalize these amounts under paragraphs (d)(1) and (j) of this section. Moreover, G is required to capitalize the amounts paid to acquire and install each section 1245 property in accordance with § 1.263(a)–2(d)(1). For the treatment of amounts paid to remove components of property, see paragraph (g)(2) of this section.

Example 9. Not betterment; relocation and reinstallation of personal property. In Year 1, H purchases new cash registers for use in its retail store located in leased space in a shopping mall. Assume that each cash register is a unit of property as determined under paragraph (e)(3) of this section. In Year 1, H capitalizes the costs of acquiring and installing the new cash registers under § 1.263(a)–2(d)(1). In Year 3, H's lease expires, and H decides to relocate its retail store to a different building. In addition to various other costs, H pays $5,000 to move the cash registers and $1,000 to reinstall them in the new store. The cash registers are used for the same purpose and in the same manner that they were used in the former location. The amounts that H pays to move and reinstall the cash registers into its new store do not result in a betterment to the cash registers under paragraph (j) of this section.

Example 10. Betterment; relocation and reinstallation of equipment. J operates a manufacturing facility in Building A, which contains various machines that J uses in its manufacturing business. J decides to expand part of its operations by relocating a machine to Building B to reconfigure the machine with additional components. Assume that the machine is a single unit of property under paragraph (e)(3) of this section. J pays amounts to disassemble the machine, to move the machine to the new location, and to reinstall the machine in a new configuration with additional components. Assume that the reinstallation, including the reconfiguration and the addition of components, is for an increase in capacity of the machine, and therefore is for a betterment to the machine under paragraph (j)(1)(ii) of this section. Accordingly, J must capitalize the costs of reinstalling the machine as an improvement to the machine under paragraphs (j) and (d)(1) of this section. J is also required to capitalize the costs of disassembling and moving the machine to Building B because these costs directly benefit and are incurred by reason of the improvement to the machine under paragraph (g)(1) of this section.

Example 11. Betterment; regulatory requirement. K owns a building that it uses in its business. In Year 1, City C passes an ordinance setting higher safety standards for buildings because of the hazardous conditions caused by earthquakes. To comply with the ordinance, K pays an amount to add expansion bolts to its building structure. These bolts anchor the wooden framing of K's building to its cement foundation, providing additional structural support and resistance to seismic forces, making the building more resistant to damage from lateral movement. Under paragraphs (e)(2)(ii) and (j)(2)(ii) of this section, an amount is paid to improve a building unit of property if the amount is paid for a betterment to the building structure or any building system. The framing and foundation are part of the building structure as defined in paragraph (e)(2)(ii)(A) of this section. Prior to the ordinance, the old building was in good condition but did not meet City C's new requirements for earthquake resistance. The amount paid by K for the addition of the expansion bolts met City C's new requirement, but also materially increased the strength of the building structure under paragraph (j)(1)(iii) of this section. Therefore, K must treat the amount paid to add the expansion bolts as a betterment to the building structure and must capitalize this amount as an improvement to building under paragraphs (d)(1) and (j) of this section. City C's new requirement that K's building meet certain safety standards to continue to operate is not relevant in determining whether the amount paid improved the building. See paragraph (g)(4) of this section.

Example 12. Not a betterment; regulatory requirement. L owns a meat processing plant. After operating the plant for many years, L discovers that oil is seeping through the concrete walls of the plant. Federal inspectors advise L that it must correct the seepage problem or shut down its plant. To correct the problem, L pays an amount to add a concrete lining to the walls from the floor to a height of about four feet and also to add concrete to the floor of the plant. Under paragraphs (e)(2)(ii) and (j)(2)(ii) of this section, an amount is paid to improve a building unit of property if the amount is paid for a betterment to the building structure or any building system. The walls are part of the building structure as defined in paragraph (e)(2)(ii)(A) of this section. The condition necessitating the expenditure was the seepage of the oil into the plant. Prior to the seepage, the walls did not leak and were functioning for their intended use. L is not required to treat the amount paid as a betterment under paragraphs (j)(1)(ii) and (j)(2)(iv) of this section because it is not paid for a material addition to, or a material increase in the capacity of, the building's structure as compared to the condition of the structure prior to the seepage of oil. Moreover, the amount paid is not reasonably expected to materially increase the productivity, efficiency, strength, quality, or output of the building structure under paragraphs (j)(1)(iii) and (j)(2)(iv) as compared to the condition of the structure prior to the seepage of the oil Therefore, L is not required to treat the amount paid to correct the seepage as a betterment to the building under paragraph (d)(1) or (j) of this section. The federal inspectors' requirement that L correct the seepage to continue operating the plant is not relevant in determining whether the amount paid improves the plant.

Example 13. Not a betterment; new roof membrane. M owns a building that it uses for its retail business. Over time, the waterproof membrane (top layer) on the roof of M's building begins to wear, and M began to experience water seepage and leaks throughout its retail premises. To eliminate the problems, a contractor recommends that M put a new rubber membrane on the worn membrane. Accordingly, M pays the contractor to add the new membrane. The new membrane is comparable to the worn membrane when it was originally placed in service by the taxpayer. Under paragraphs (e)(2)(ii) and (j)(2)(ii) of this section, an amount is paid to improve a building unit of property if the amount is paid for a betterment to the building structure or any building system. The roof is part of the building structure under paragraph (e)(2)(ii)(A) of this section. The condition necessitating the expenditure was the normal wear of M's roof. Under paragraph (j)(2)(iv) of this section, to determine whether the amounts are for a betterment, the condition of the building structure after the expenditure must be compared to the condition of the structure when M placed the building into service because M has not previously corrected the effects of normal wear and tear. Under these facts, the amount paid to add the new membrane to the roof is not for a material addition or a material increase in the capacity of the building structure under paragraph (j)(1)(ii) of this section as compared to the condition of the structure when it was placed in service. Moreover, the new membrane is not reasonably expected to materially increase the productivity, efficiency, strength, quality, or output of the building structure under paragraph (j)(1)(iii) of this section as compared to the condition of the building structure when it was placed in service. Therefore, M is not required to treat the amount paid to add the new membrane as a betterment to the building under paragraph (d)(1) or (j) of this section.

Example 14. Material increase in capacity; building. N owns a factory building with a storage area on the second floor. N pays an amount to reinforce the columns and girders supporting the second floor to permit storage of supplies with a gross weight 50 percent greater than the previous load-carrying capacity of the storage area. Under paragraphs (e)(2)(ii) and (j)(2)(ii) of this section, an amount is paid to improve a building unit of property if the amount is paid for a betterment to the building structure or any building system. The

columns and girders are part of the building structure defined under paragraph (e)(2)(ii)(A) of this section. N must treat the amount paid to reinforce the columns and girders as a betterment under paragraphs (j)(1)(ii) and (j)(1)(iii) of this section because it materially increases the load-carrying capacity and the strength of the building structure. Therefore, N must capitalize this amount as an improvement to the building under paragraphs (d)(1) and (j) of this section.

Example 15. Material increase in capacity; channel. O owns harbor facilities consisting of a slip for the loading and unloading of barges and a channel leading from the slip to the river. At the time of purchase, the channel was 150 feet wide, 1,000 feet long, and 10 feet deep. Several years after purchasing the harbor facilities, to allow for ingress and egress and for the unloading of larger barges, O decides to deepen the channel to a depth of 20 feet. O pays a contractor to dredge the channel to 20 feet. Assume the channel is the unit of property. O must capitalize the amounts paid for the dredging as an improvement to the channel because they are for a material increase in the capacity of the unit of property under paragraph (j)(1)(ii) of this section.

Example 16. Not a material increase in capacity; channel. Assume the same facts as in *Example 15,* except that the channel was susceptible to siltation and, after dredging to 20 feet, the channel depth had been reduced to 18 feet. O pays a contractor to redredge the channel to a depth of 20 feet. The expenditure was necessitated by the siltation of the channel. Both prior to the siltation and after the redredging, the depth of the channel was 20 feet. Applying the comparison rule under paragraph (j)(2)(iv) of this section, the amounts paid by O to redredge the channel are not for a betterment under paragraph (j)(1)(ii) of this section because they are not for a material addition to, or a material increase in the capacity of, the unit of property as compared to the condition of the property prior to the siltation. Similarly, these amounts are not for a betterment under paragraph (j)(1)(iii) of this section because the amounts are not reasonably expected to increase the productivity, efficiency, strength, quality, or output of the unit of property as compared to the condition of the property before the siltation. Therefore, O is not required to capitalize these amounts as improvement under paragraphs (d)(1) and (j) of this section.

Example 17. Material increase in capacity; channel. Assume the same facts as in *Example 16* except that after the redredging, there is more siltation, and the channel depth is reduced back to 18 feet. In addition, to allow for additional ingress and egress and for the unloading of even larger barges, O decides to deepen the channel to a depth of 25 feet. O pays a contractor to redredge the channel to 25 feet. O must capitalize the amounts paid for the dredging as an improvement to the channel because the amounts are for a material increase in the capacity of the unit of property under paragraph (j)(1)(ii) of this section as compared to condition of the unit of property before the siltation. As part of this improvement, O is also required to capitalize the portion of the redredge costs allocable to restoring the depth lost to the siltation because, under paragraph (g)(1)(i) of this section, these amounts directly benefit and are incurred by reason of the improvement to the unit of property.

Example 18. Not a material increase in capacity; building. P owns a building used in its trade or business. The first floor has a drop-ceiling. To fully expose windows on the first floor, P pays an amount to remove the drop-ceiling and repaint the original ceiling. Under paragraphs (e)(2)(ii) and (j)(2)(ii) of this section, an amount is paid to improve a building unit of property if the amount is paid for a betterment to the building structure or any building system. The ceiling is part of the building structure as defined under paragraph (e)(2)(ii)(A) of this section. P is not required to treat the amount paid to remove the drop-ceiling as a betterment to the building because it was not for a material addition or material increase in the capacity of the building structure under paragraph (j)(1)(ii) of this section and it was not reasonably expected to materially increase to the efficiency, strength, or quality of the building structure under paragraph (j)(1)(iii) of this section. In addition, under paragraph (j)(2)(i) of this section, because the effect on productivity and output of the building structure cannot be measured in this context, these factors are not relevant in determining whether there is a betterment to the building structure.

Example 19. Material increase in capacity; building. Q owns a building that it uses in its retail business. The building contains one floor of retail space with very high ceilings. Q pays an amount to add a stairway and a mezzanine for the purposes of adding additional selling space within its building. Under paragraphs (e)(2)(ii) and (j)(2)(ii) of this section, an amount is paid to improve a building unit of property if the amount is paid for a betterment to the building structure or any building system. The stairway and the mezzanine are part of the building structure as defined under paragraph (e)(2)(ii)(A) of this section. Q is required to treat the amount paid to add the stairway and mezzanine as a betterment because it is for a material addition to, and an increase in the capacity of, the building structure under paragraph (j)(1)(ii) of this section. Therefore, Q must capitalize this amount as an improvement to the building unit of property under paragraphs (d)(1) and (j) of this section.

Example 20. Not material increase in efficiency; HVAC system. R owns an office building that it uses to provide services to customers. The building contains an HVAC system that incorporates 10 roof-mounted units that provide heating and air conditioning for different parts of the building. The HVAC system also consists of controls for the entire system and duct work that distributes the heated or cooled air to the various spaces in the building's interior. After many years of use of the HVAC system, R begins to experience climate control problems in various offices throughout the office building and consults with a contractor to determine the cause. The contractor recommends that R replace two of the roof-mounted units. R pays an amount to replace the two specified units. The two new units are expected to eliminate the climate control problems and to be 10 percent more energy efficient than the replaced units in their original condition. No work is performed on the other roof-mounted heating/cooling units, the duct work, or the controls. Under paragraphs (e)(2)(ii) and (j)(2)(ii) of this section, an amount is paid to improve a building unit of property if the amount is paid for a betterment to the building structure or any building system. The HVAC system, including the two-roof mounted units, is a building system under paragraph (e)(2)(ii)(B)(*1*) of this section. The replacement of the two roof-mounted units is not a material addition to or a material increase in the capacity of the HVAC system under paragraphs (j)(1)(ii) and (j)(3)(ii) of this section as compared to the condition of the system prior to the climate control problems. In addition, given the 10 percent efficiency increase in two units of the entire HVAC system, the replacement is not expected to materially increase the productivity, efficiency, strength, quality, or output of the HVAC system under paragraphs (j)(1)(iii) and (j)(2)(iv) of this section as compared to the condition of the system prior to the climate control problems. Therefore, R is not required to capitalize the amounts paid for these replacements as betterments to the building unit of property under paragraphs (d)(1) and (j) of this section.

Example 21. Material increase in efficiency; building. S owns a building that it uses in its service business. S conducts an energy assessment and determines that it could significantly reduce its energy costs by adding insulation to its building. S pays an insulation contractor to apply a combination of loose-fill, spray foam, and blanket insulation throughout S's building structure, including within the attic, walls, and crawl spaces. S reasonably expects the new insulation to make the building more energy efficient because the contractor indicated that the new insulation would reduce its annual energy and power costs by approximately 50 percent of its annual costs during the last five years. Under paragraphs (e)(2)(ii) and (j)(2)(ii) of this section, an amount is paid to improve a building if the amount is paid for a betterment to the building structure or any building system. Therefore, under paragraphs (d)(1) and (j) of this section, S must capitalize as a betterment the amount paid to add the insulation because the insulation is reasonably expected to materially increase the efficiency of the building structure under paragraph (j)(1)(iii) of this section.

Example 22. Material addition; building. T owns and operates a restaurant, which provides a variety of prepared foods to its customers. To better accommodate its customers and increase customer traffic, T decides to add a drive-through service area. As a result, T pays amounts to partition an area within its restaurant for a drive-through service counter, to construct a service window with necessary security features, to build an overhang for vehicles, and to construct a drive-up menu board. Assume that the drive-up menu board is section 1245

property that is a separate unit of property under paragraph (e)(3) of this section. Under paragraphs (e)(2)(ii) and (j)(2)(ii) of this section, an amount is paid to improve a building unit of property if the amount is paid for a betterment to the building structure or any building system. The amounts paid for the partition, service window and overhang are betterments to the building structure because they comprise a material addition (that is, a physical expansion, extension, and addition of a major component) to the building structure under paragraph (j)(1)(ii) of this section. Accordingly, T must capitalize as an improvement the amounts paid to add the partition, drive-through window, and overhang under paragraphs (d)(1) and (j) of this section. T is also required to capitalize the amounts paid to acquire and install each section 1245 property in accordance with § 1.263(a)–2(d)(1).

Example 23. Costs incurred during betterment. U owns a building that it uses in its service business. To accommodate new employees and equipment, U pays amounts to increase the load capacity of its electrical system by adding a second electrical panel with additional circuits and adding wiring and outlets throughout the electrical system of its building. To complete the upgrades to the electrical system, the contractor makes several holes in walls. As a result, U also incurs costs to patch the holes and repaint several walls. Under paragraphs (e)(2)(ii) and (j)(2)(ii) of this section, an amount is paid to improve a building unit of property if the amount is paid for a betterment to the building structure or any building system. The amounts paid to upgrade the panel and wiring are for betterments to U's electrical system because they increase the capacity of the electrical system under paragraph (j)(1)(ii) of this section and increase the strength and output of the electrical system under paragraph (j)(1)(iii) of this section. Accordingly, U is required to capitalize the costs of the upgrade to the electrical system as an improvement to the building unit of property under paragraphs (d)(1) and (j) of this section. Moreover, under paragraph (g)(1) of this section, U is required to capitalize the amounts paid to patch holes and repaint several walls in its building because these costs directly benefit and are incurred by reason of the improvement to U's building unit of property.

(k) *Capitalization of restorations*—(1) *In general.* A taxpayer must capitalize as an improvement an amount paid to restore a unit of property, including an amount paid to make good the exhaustion for which an allowance is or has been made. An amount restores a unit of property only if it—

(i) Is for the replacement of a component of a unit of property for which the taxpayer has properly deducted a loss for that component, other than a casualty loss under § 1.165–7;

(ii) Is for the replacement of a component of a unit of property for which the taxpayer has properly taken into account the adjusted basis of the component in realizing gain or loss resulting from the sale or exchange of the component;

(iii) Is for the restoration of damage to a unit of property for which the taxpayer is required to take a basis adjustment as a result of a casualty loss under section 165, or relating to a casualty event described in section 165, subject to the limitation in paragraph (k)(4) of this section;

(iv) Returns the unit of property to its ordinarily efficient operating condition if the property has deteriorated to a state of disrepair and is no longer functional for its intended use;

(v) Results in the rebuilding of the unit of property to a like-new condition after the end of its class life as defined in paragraph (i)(4) of this section (see paragraph (k)(5) of this section); or

(vi) Is for the replacement of a part or a combination of parts that comprise a major component or a substantial structural part of a unit of property (see paragraph (k)(6) of this section).

(2) *Application of restorations to buildings.* An amount is paid to improve a building if it is paid to restore (as defined under paragraph (k)(1) of this section) a property specified under paragraph (e)(2)(ii) (building), paragraph (e)(2)(iii)(B) (condominium), paragraph (e)(2)(iv)(B) (cooperative), or paragraph (e)(2)(v)(B) (leased building or portion of building) of this section. For example, an amount is paid to improve a building if it is paid for the replacement of a part or combination of parts that comprise a major component or substantial structural part of the building structure or any one of its building systems (for example, the HVAC system). See paragraph (k)(6) of this section.

(3) *Exception for losses based on salvage value.* A taxpayer is not required to treat as a restoration amounts paid under paragraph (k)(1)(i) or paragraph (k)(1)(ii) of this section if the unit of property has been fully depreciated and the loss is attributable only to remaining salvage value as computed for federal income tax purposes.

(4) *Restoration of damage from casualty*—(i) *Limitation.* For purposes of paragraph (k)(1)(iii) of this section, the amount paid for restoration of damage to the unit of property that must be capitalized under this paragraph (k) is limited to the excess (if any) of—

(A) The amount prescribed by § 1.1011–1 as the adjusted basis of the single, identifiable property (under § 1.167–7(b)(2)(i)) for determining the loss allowable on account of the casualty, over

(B) The amount paid for restoration of damage to the unit of property under paragraph (k)(1)(iii) of this section that also constitutes an improvement under any other provision of paragraph (k)(1) of this section.

(ii) *Amounts in excess of limitation.* The amounts paid for restoration of damage to a unit of property as described in paragraph (k)(1)(iii) of this section, but that exceed the limitation provided in paragraph (k)(4)(i) of this section, must be treated in accordance with the provisions of the Internal Revenue Code and regulations that are otherwise applicable. See, for example, § 1.162–4 (repairs and maintenance); § 1.263(a)–2 (costs to acquire and produce units of property); and § 1.263(a)-3 (costs to improve units of property).

(5) *Rebuild to like-new condition.* For purposes of paragraph (k)(1)(v) of this section, a unit of property is rebuilt to a like-new condition if it is brought to the status of new, rebuilt, remanufactured, or a similar status under the terms of any federal regulatory guideline or the manufacturer's original specifications. Generally, a comprehensive maintenance program, even though substantial, does not return a unit of property to a like-new condition.

(6) *Replacement of a major component or a substantial structural part*—(i) *In general.* To determine whether an amount is for the replacement of a part or a combination of parts that comprise a major component or a substantial structural part of the unit of property under paragraph (k)(1)(vi) of this section, it is appropriate to consider all the facts and circumstances. These facts and circumstances include the quantitative and qualitative significance of the part or combination of parts in relation to the unit of property.

(A) *Major component.* A major component is a part or combination of parts that performs a discrete and critical function in the operation of the unit of property. An incidental component of the unit of property, even though such component performs a discrete and critical function in the operation of the unit of property, generally will not, by itself, constitute a major component.

(B) *Substantial structural part.* A substantial structural part is a part or combination of parts that comprises a large portion of the physical structure of the unit of property.

(ii) *Major components and substantial structural parts of buildings.* In the case of a building, an amount is for the replacement of a major component or a

substantial structural part of the building unit of property if—

(A) The replacement includes a part or combination of parts that comprise a major component (as defined in paragraph (k)(6)(i)(A) of this section), or a significant portion of a major component, of any of the properties designated in paragraph (e)(2)(ii) (building), paragraph (e)(2)(iii)(B) (condominium), paragraph (e)(2)(iv)(B) (cooperative), or paragraph (e)(2)(v)(B) (leased building or leased portion of a building) of this section; or

(B) The replacement includes a part or combination of parts that comprises a large portion of the physical structure of any of the properties designated in paragraph (e)(2)(ii) (building), paragraph (e)(2)(iii)(B) (condominium), paragraph (e)(2)(iv)(B) (cooperative), or paragraph (e)(2)(v)(B) (leased building or portion of building) of this section.

(7) *Examples.* The following examples illustrate the application of this paragraph (k) only and do not address whether capitalization is required under another provision of this section or another provision of the Code (for example, section 263A). Unless otherwise stated, assume that the taxpayer has not properly deducted a loss for, nor taken into account the adjusted basis on a sale or exchange of, any unit of property, asset, or component of a unit of property that is replaced.

Example 1. Replacement of loss component. A owns a manufacturing building containing various types of manufacturing equipment. A does a cost segregation study of the manufacturing building and properly determines that a walk-in freezer in the manufacturing building is section 1245 property as defined in section 1245(a)(3). The freezer is not part of the building structure or the HVAC system under paragraph (e)(2)(i) or (e)(2)(ii)(B)(*1*) of this section. Several components of the walk-in freezer cease to function, and A decides to replace them. A abandons the old freezer components and properly recognizes a loss from the abandonment of the components. A replaces the abandoned freezer components with new components and incurs costs to acquire and install the new components. Under paragraph (k)(1)(i) of this section, A must capitalize the amounts paid to acquire and install the new freezer components because A replaced components for which it had properly deducted a loss.

Example 2. Replacement of sold component. Assume the same facts as in *Example 1,* except that A did not abandon the components but instead sold them to another party and properly recognized a loss on the sale. Under paragraph (k)(1)(ii) of this section, A must capitalize the amounts paid to acquire and install the new freezer components because A replaced components for which it had properly taken into account the adjusted basis of the components in realizing a loss from the sale of the components.

Example 3. Restoration after casualty loss. B owns an office building that it uses in its trade or business. A storm damages the office building at a time when the building has an adjusted basis of $500,000. B deducts under section 165 a casualty loss in the amount of $50,000, and properly reduces its basis in the office building to $450,000. B hires a contractor to repair the damage to the building, including the repair of the building roof and the removal of debris from the building premises. B pays the contractor $50,000 for the work. Under paragraph (k)(1)(iii) of this section, B must treat the $50,000 amount paid to the contractor as a restoration of the building structure because B properly adjusted its basis in that amount as a result of a casualty loss under section 165, and the amount does not exceed the limit in paragraph (k)(4) of this section. Therefore, B must treat the amount paid as an improvement to the building unit of property and, under paragraph (d)(2) of this section, must capitalize the amount paid.

Example 4. Restoration after casualty event. Assume the same facts as in *Example 3,* except that B receives insurance proceeds of $50,000 after the casualty to compensate for its loss. B cannot deduct a casualty loss under section 165 because its loss was compensated by insurance. However, B properly reduces its basis in the property by the amount of the insurance proceeds. Under paragraph (k)(1)(iii) of this section, B must treat the $50,000 amount paid to the contractor as a restoration of the building structure because B has properly taken a basis adjustment relating to a casualty event described in section 165, and the amount does not exceed the limit in paragraph (k)(4) of this section. Therefore, B must treat the amount paid as an improvement to the building unit of property and, under paragraph (d)(2) of this section, must capitalize the amount paid.

Example 5. Restoration after casualty loss; limitation. (i) C owns a building that it uses in its trade or business. A storm damages the building at a time when the building has an adjusted basis of $500,000. C determines that the cost of restoring its property is $750,000, deducts a casualty loss under section 165 in the amount of $500,000, and properly reduces its basis in the building to $0. C hires a contractor to repair the damage to the building and pays the contractor $750,000 for the work. The work involves replacing the entire roof structure of the building at a cost of $350,000 and pumping water from the building, cleaning debris from the interior and exterior, and replacing areas of damaged dry wall and flooring at a cost of $400,000. Although resulting from the casualty event, the pumping, cleaning, and replacing damaged drywall and flooring, does not directly benefit and is not incurred by reason of the roof replacement.

(ii) Under paragraph (k)(1)(vi) of this section, C must capitalize as an improvement the $350,000 amount paid to the contractor to replace the roof structure because the roof structure constitutes a major component and a substantial structural part of the building unit of property. In addition, under paragraphs (k)(1)(iii) and (k)(4)(i), C must treat as a restoration the remaining costs, limited to the excess of the adjusted basis of the building over the amounts paid for the improvement under paragraph (k)(1)(vi). Accordingly, C must treat as a restoration $150,000 ($500,000—$350,000) of the $400,000 paid for the portion of the costs related to repairing and cleaning the building structure under paragraph (k)(1)(iii) of this section. Thus, in addition to the $350,000 to replace the roof structure, C must also capitalize the $150,000 as an improvement to the building unit of property under paragraph (d)(2) of this section. C is not required to capitalize the remaining $250,000 repair and cleaning costs under paragraph (k)(1)(iii) of this section.

Example 6. Restoration of property in a state of disrepair. D owns and operates a farm with several barns and outbuildings. D did not use or maintain one of the outbuildings on a regular basis, and the outbuilding fell into a state of disrepair. The outbuilding previously was used for storage but can no longer be used for that purpose because the building is not structurally sound. D decides to restore the outbuilding and pays an amount to shore up the walls and replace the siding. Under paragraphs (e)(2)(ii) and (k)(2) of this section, an amount is paid to improve a building if the amount is paid to restore the building structure or any building system. The walls and siding are part of the building structure under paragraph (e)(2)(ii)(A) of this section. Under paragraph (k)(1)(iv) of this section, D must treat the amount paid to shore up the walls and replace the siding as a restoration of the building structure because the amounts return the building structure to its ordinarily efficient operating condition after it had deteriorated to a state of disrepair and was no longer functional for its intended use. Therefore, D must treat the amount paid to shore up the walls and replace the siding as an improvement to the building unit of property and, under paragraph (d)(2) of this section, must capitalize the amount paid.

Example 7. Rebuild of property to like-new condition before end of class life. E is a Class I railroad that owns a fleet of freight cars. Assume the freight cars have a recovery period of 7 years under section 168(c) and a class life of 14 years. Every 8 to 10 years, E rebuilds its freight cars. Ten years after E places the freight car in service, E performs a rebuild to the manufacturer's original specification, which includes a complete disassembly, inspection, and reconditioning or replacement of components of the suspension and draft systems, trailer hitches, and other special equipment. E also modifies the car to upgrade various components to the latest engineering standards. The freight car is stripped to the frame, with all of its substantial components either reconditioned or replaced. The frame itself is the longest-lasting part of the car and is reconditioned. The walls of the freight car are replaced or are sandblasted and repainted. New wheels are installed on the car. All the remaining components of the car are restored before they are reassembled. At the end of the rebuild, the freight car has been restored to like-new condition under the manufacturer's

specifications. Assume the freight car is the unit of property. E is not required to treat as an improvement and capitalize the amounts paid to rebuild the freight car under paragraph (k)(1)(v) of this section because, although the amounts paid restore the freight car to like-new condition, the amounts were not paid after the end of the class life of the freight car. However, see paragraphs (k)(1)(vi) and (k)(6) of this section to determine whether any amounts must be capitalized because they are paid for the replacement of a major component or a substantial structural part of the unit of property.

Example 8. Rebuild of property to like-new condition after end of class life. Assume the same facts as in *Example 7,* except that E rebuilds the freight car 15 years after E places it in service. Under paragraph (k)(1)(v) of this section, E must treat as an improvement and capitalize the amounts paid to rebuild the freight car because the amounts paid restore the freight car to like-new condition after the end of the class life of the freight car.

Example 9. Not a rebuild to a like-new condition. F is a commercial airline engaged in the business of transporting freight and passengers. To conduct its business, F owns several aircraft. As a condition of maintaining its airworthiness certificates, F is required by the FAA to establish and adhere to a continuous maintenance program for each aircraft in its fleet. F performs heavy maintenance on its airframes every 8 to 10 years. In Year 1, F purchased an aircraft for $15 million. In Year 16, F paid $2 million for the labor and materials necessary to perform the second heavy maintenance visit on the airframe of an aircraft. To perform the heavy maintenance visit, F extensively disassembles the airframe, removing items such as engines, landing gear, cabin and passenger compartment seats, side and ceiling panels, baggage stowage bins, galleys, lavatories, floor boards, cargo loading systems, and flight control surfaces. As specified by F's maintenance manual for the aircraft, F then performs certain tasks on the disassembled airframe for the purpose of preventing deterioration of the inherent safety and reliability levels of the airframe. These tasks include lubrication and service, operational and visual checks, inspection and functional checks, reconditioning of minor parts and components, and removal, discard, and replacement of certain life-limited single cell parts, such as cartridges, canisters, cylinders, and disks. Reconditioning of parts includes burnishing corrosion, repairing cracks, dents, gouges, punctures, tightening or replacing loose or missing fasteners, replacing damaged seals, gaskets, or valves, and similar activities. In addition to the tasks described above, to comply with certain FAA airworthiness directives, F inspects specific skin locations, applies doublers over small areas where cracks were found, adds structural reinforcements, and replaces skin panels on a small section of the fuselage. However, the heavy maintenance does not include the replacement of any major components or substantial structural parts of the aircraft with new components. In addition, the heavy maintenance visit does not bring the aircraft to the status of new, rebuilt, remanufactured, or a similar status under FAA guidelines or the manufacturer's original specifications. After the heavy maintenance, the aircraft was reassembled. Assume the aircraft, including the engines, is a unit of property and has a class life of 12 years under section 168(c). Although the heavy maintenance is performed after the end of the class life of the aircraft, F is not required to treat the heavy maintenance as a restoration and improvement of the unit of property under paragraph (k)(1)(v) of this section because, although extensive, the amounts paid do not restore the aircraft to like-new condition. See also paragraph (i)(1)(iii) of this section for the application of the safe harbor for routine maintenance.

Example 10. Replacement of major component or substantial structural part; personal property. G is a common carrier that owns a fleet of petroleum hauling trucks. G pays amounts to replace the existing engine, cab, and petroleum tank with a new engine, cab, and tank. Assume the tractor of the truck (which includes the cab and the engine) is a single unit of property and that the trailer (which contains the petroleum tank) is a separate unit of property. The new engine and the cab each constitute a part or combination of parts that comprise a major component of G's tractor, because they perform a discrete and critical function in the operation of the tractor. In addition, the cab constitutes a part or combination of parts that comprise a substantial structural part of G's tractor. Therefore, the amounts paid for the replacement of the engine and the cab must be capitalized under paragraph (k)(1)(vi) of this section. Moreover, the new petroleum tank constitutes a part or combination of parts that comprise a major component and a substantial structural part of the trailer. Accordingly, the amounts paid for the replacement of the tank also must be capitalized under paragraph (k)(1)(vi) of this section.

Example 11. Repair performed during restoration. Assume the same facts as in *Example 10,* except that, at the same time the engine and cab of the tractor are replaced, G pays amounts to paint the cab of the tractor with its company logo and to fix a broken taillight on the tractor. The repair of the broken taillight and the painting of the cab generally are deductible expenses under § 1.162–4. However, under paragraph (g)(1)(i) of this section, a taxpayer must capitalize all the direct costs of an improvement and all the indirect costs that directly benefit or are incurred by reason of an improvement. Repairs and maintenance that do not directly benefit or are not incurred by reason of an improvement are not required to be capitalized under section 263(a), regardless of whether they are made at the same time as an improvement. For the amounts paid to paint the logo on the cab, G's need to paint the logo arose from the replacement of the cab with a new cab. Therefore, under paragraph (g)(1)(i) of this section, G must capitalize the amounts paid to paint the cab as part of the improvement to the tractor because these amounts directly benefit and are incurred by reason of the restoration of the tractor. The amounts paid to repair the broken taillight are not for the replacement of a major component, do not directly benefit, and are not incurred by reason of the replacement of the cab or the engine under paragraph (g)(1)(i) of this section, even though the repair was performed at the same time as these replacements. Thus, G is not required to capitalize the amounts paid to repair the broken taillight.

Example 12. Related amounts to replace major component or substantial structural part; personal property. (i) H owns a retail gasoline station, consisting of a paved area used for automobile access to the pumps and parking areas, a building used to market gasoline, and a canopy covering the gasoline pumps. The premises also consist of underground storage tanks (USTs) that are connected by piping to the pumps and are part of the gasoline pumping system used in the immediate retail sale of gas. The USTs are components of the gasoline pumping system. To comply with regulations issued by the Environmental Protection Agency, H is required to remove and replace leaking USTs. In Year 1, H hires a contractor to perform the removal and replacement, which consists of removing the old tanks and installing new tanks with leak detection systems. The removal of the old tanks includes removing the paving material covering the tanks, excavating a hole large enough to gain access to the old tanks, disconnecting any strapping and pipe connections to the old tanks, and lifting the old tanks out of the hole. Installation of the new tanks includes placement of a liner in the excavated hole, placement of the new tanks, installation of a leak detection system, installation of an overfill system, connection of the tanks to the pipes leading to the pumps, backfilling of the hole, and replacement of the paving. H also is required to pay a permit fee to the county to undertake the installation of the new tanks.

(ii) H pays the permit fee to the county on October 15, Year 1. On December 15, Year 1, the contractor completes the removal of the old USTs and bills H for the costs of removal. On January 15, Year 2, the contractor completes the installation of the new USTs and bills H for the remainder of the work. Assume that H computes its taxes on a calendar year basis and H's gasoline pumping system is the unit of property. Under paragraph (k)(1)(vi) of this section, H must capitalize the amounts paid to replace the USTs as a restoration to the gasoline pumping system because the USTs are parts or combinations of parts that comprise a major component and substantial structural part of the gasoline pumping system. Moreover, under paragraph (g)(2) of this section, H must capitalize the costs of removing the old USTs because H has not taken a loss on the disposition of the USTs, and the amounts to remove the USTs directly benefit and are incurred by reason of the restoration of, and improvement to, the gasoline pumping system. In addition, under paragraph (g)(1) of this section, H must capitalize the permit fees because they directly benefit and are incurred by reason of the improvement to the gasoline pumping system. Finally, under paragraph (g)(3) of this section, H must capitalize the related amounts paid to improve the gasoline

pumping system, including the permit fees, the amount paid to remove the old USTs, and the amount paid to install the new USTs, even though the amounts were separately invoiced, paid to different parties, and incurred in different tax years.

Example 13. Not replacement of major component; incidental. J owns a machine shop in which it makes dies used by manufacturers. In Year 1, J purchased a drill press for use in its production process. In Year 3, J discovers that the power switch assembly, which controls the supply of electric power to the drill press, has become damaged and cannot operate. To correct this problem, J pays amounts to replace the power switch assembly with comparable and commercially available replacement parts. Assume that the drill press is a unit of property under paragraph (e) of this section and the power switch assembly is a small component of the drill press that may be removed and installed with relative ease. The power switch assembly is not a major component of the unit of property under paragraph (k)(6)(i)(A) of this section because, although the power assembly may affect the function of J's drill press by controlling the supply of electric power, the power assembly is an incidental component of the drill press. In addition, the power assembly is not a substantial structural part of J's drill press under paragraph (k)(6)(i)(B) of this section. Therefore, J is not required to capitalize the costs to replace the power switch assembly under paragraph (k)(1)(vi) of this section.

Example 14. Replacement of major component or substantial structural part; roof. K owns a manufacturing building. K discovers several leaks in the roof of the building and hires a contractor to inspect and fix the roof. The contractor discovers that a major portion of the decking has rotted and recommends the replacement of the entire roof. K pays the contractor to replace the entire roof, including the decking, insulation, asphalt, and various coatings. Under paragraphs (e)(2)(ii) and (k)(2) of this section, an amount is paid to improve a building if the amount is paid to restore the building structure or any building system. The roof is part of the building structure as defined under paragraph (e)(2)(ii)(A) of this section. Because the entire roof performs a discrete and critical function in the building structure, the roof comprises a major component of the building structure under paragraph (k)(6)(ii)(A) of this section. In addition, because the roof comprises a large portion of the physical structure of the building structure, the roof comprises a substantial structural part of the building structure under paragraph (k)(6)(ii)(B) of this section. Therefore, under either analysis, K must treat the amount paid to replace the roof as a restoration of the building under paragraphs (k)(1)(vi) and (k)(2) of this section and must capitalize the amount paid as an improvement under paragraph (d)(2) of this section.

Example 15. Not replacement of major component or substantial structural part; roof membrane. L owns a building in which it conducts its retail business. The roof decking over L's building is covered with a waterproof rubber membrane. Over time, the rubber membrane begins to wear, and L begins to experience leaks into its retail premises. However, the building is still functioning in L's business. To eliminate the problems, a contractor recommends that L replace the membrane on the roof with a new rubber membrane. Accordingly, L pays the contractor to strip the original membrane and replace it with a new rubber membrane. The new membrane is comparable to the original membrane but corrects the leakage problems. Under paragraphs (e)(2)(ii) and (k)(2) of this section, an amount is paid to improve a building if the amount is paid to restore the building structure or any building system. The roof, including the membrane, is part of the building structure as defined under paragraph (e)(2)(ii)(A) of this section. Because the entire roof performs a discrete and critical function in the building structure, the roof comprises a major component of the building structure under paragraph (k)(6)(ii)(A) of this section. Although the replacement membrane may aid in the function of the building structure, it does not, by itself, comprise a significant portion of the roof major component under paragraph (k)(6)(ii)(A) of this section. In addition, the replacement membrane does not comprise a substantial structural part of L's building structure under paragraph (k)(6)(ii)(B) of this section. Therefore, L is not required to capitalize the amount paid to replace the membrane as a restoration of the building under paragraph (k)(1)(vi) of this section.

Example 16. Not a replacement of major component or substantial structural part; HVAC system. M owns a building in which it operates an office that provides medical services. The building contains one HVAC system, which is comprised of three furnaces, three air conditioning units, and duct work that runs throughout the building to distribute the hot or cold air throughout the building. One furnace in M's building breaks down, and M pays an amount to replace it with a new furnace. Under paragraphs (e)(2)(ii) and (k)(2) of this section, an amount is paid to improve a building if the amount is paid to restore the building structure or any building system. The HVAC system, including the furnaces, is a building system under paragraph (e)(2)(ii)(B)(*1*) of this section. As the parts that provide the heating function in the system, the three furnaces, together, perform a discrete and critical function in the operation of the HVAC system and are therefore a major component of the HVAC system under paragraph (k)(6)(i)(A) of this section. However, the single furnace is not a significant portion of this major component of the HVAC system under paragraph (k)(6)(ii)(A) of this section, or a substantial structural part of the HVAC system under paragraph (k)(6)(ii)(B) of this section. Therefore, M is not required to treat the amount paid to replace the furnace as a restoration of the building under paragraph (k)(1)(vi) of this section.

Example 17. Replacement of major component or substantial structural part; HVAC system. N owns a large office building in which it provides consulting services. The building contains one HVAC system, which is comprised of one chiller unit, one boiler, pumps, duct work, diffusers, air handlers, outside air intake, and a cooling tower. The chiller unit includes the compressor, evaporator, condenser, and expansion valve, and it functions to cool the water used to generate air conditioning throughout the building. N pays an amount to replace the chiller with a comparable unit. Under paragraphs (e)(2)(ii) and (k)(2) of this section, an amount is paid to improve a building if the amount is paid to restore the building structure or any building system. The HVAC system, including the chiller unit, is a building system under paragraph (e)(2)(ii)(B)(*1*) of this section. The chiller unit performs a discrete and critical function in the operation of the HVAC system because it provides the cooling mechanism for the entire system. Therefore, the chiller unit is a major component of the HVAC system under paragraph (k)(6)(ii)(A) of this section. Because the chiller unit comprises a major component of a building system, N must treat the amount paid to replace the chiller unit as a restoration to the building under paragraphs (k)(1)(vi) and (k)(2) of this section and must capitalize the amount paid as an improvement to the building under paragraph (d)(2) of this section.

Example 18. Not replacement of major component or substantial structural part; HVAC system. O owns an office building that it uses to provide services to customers. The building contains a HVAC system that incorporates ten roof-mounted units that provide heating and air conditioning for the building. The HVAC system also consists of controls for the entire system and duct work that distributes the heated or cooled air to the various spaces in the building's interior. O begins to experience climate control problems in various offices throughout the office building and consults with a contractor to determine the cause. The contractor recommends that O replace three of the roof-mounted heating and cooling units. O pays an amount to replace the three specified units. No work is performed on the other roof-mounted heating and cooling units, the duct work, or the controls. Under paragraphs (e)(2)(ii) and (k)(2) of this section, an amount is paid to improve a building if the amount restores the building structure or any building system. The HVAC system, including the 10 roof-mounted heating and cooling units, is a building system under paragraph (e)(2)(ii)(B)(*1*) of this section. As the components that generate the heat and the air conditioning in the HVAC system, the 10 roof-mounted units, together, perform a discrete and critical function in the operation of the HVAC system and, therefore, are a major component of the HVAC system under paragraph (k)(6)(ii)(A) of this section. The three roof-mounted heating and cooling units are not a significant portion of a major component of the HVAC system under (k)(6)(ii)(A) of this section, or a substantial structural part of the HVAC system, under paragraph (k)(6)(ii)(B) of this section. Accordingly, O is not required to treat the amount paid to replace the three roof-mounted heating and cooling units as a restoration of the building under paragraph (k)(1)(iv) of this section.

Example 19. Replacement of major component or substantial structural part; fire

protection system. P owns a building that it uses to operate its business. P pays an amount to replace the sprinkler system in the building with a new sprinkler system. Under paragraphs (e)(2)(ii) and (k)(2) of this section, an amount is paid to improve a building if the amount restores the building structure or any building system. The fire protection and alarm system, including the sprinkler system, is a building system under paragraph (e)(2)(ii)(B)(*6*) of this section. As the component that provides the fire suppression mechanism in the system, the sprinkler system performs a discrete and critical function in the operation of the fire protection and alarm system and is therefore a major component of the system under paragraph (k)(6)(ii)(A) of this section. Because the sprinkler system comprises a major component of a building system, P must treat the amount paid to replace the sprinkler system as restoration to the building unit of property under paragraphs (k)(1)(vi) and (k)(2) of this section and must capitalize the amount paid as an improvement to the building under paragraph (d)(2) of this section.

Example 20. Replacement of major component or substantial structural part; electrical system. Q owns a building that it uses to operate its business. Q pays an amount to replace the wiring throughout the building with new wiring that meets building code requirements. Under paragraphs (e)(2)(ii) and (k)(2) of this section, an amount is paid to improve a building if the amount restores the building structure or any building system. The electrical system, including the wiring, is a building system under paragraph (e)(2)(ii)(B)(*3*) of this section. As the component that distributes the electricity throughout the system, the wiring performs a discrete and critical function in the operation of the electrical system under paragraph (k)(6)(ii)(A) of this section. The wiring also comprises a large portion of the physical structure of the electrical system under paragraph (k)(6)(ii)(B) of this section. Because the wiring comprises a major component and a substantial structural part of a building system, Q must treat the amount paid to replace the wiring as a restoration to the building under paragraphs (k)(1)(vi) and (k)(2) of this section and must capitalize the amount paid as an improvement to the building under paragraph (d)(2) of this section.

Example 21. Not a replacement of major component or substantial structural part; electrical system. R owns a building that it uses to operate its business. R pays an amount to replace 30 percent of the wiring throughout the building with new wiring that meets building code requirements. Under paragraphs (e)(2)(ii) and (k)(2) of this section, an amount is paid to improve a building if the amount restores the building structure or any building system. The electrical system, including the wiring, is a building system under paragraph (e)(2)(ii)(B)(*3*) of this section. All the wiring in the building comprises a major component because it performs a discrete and critical function in the operation of the electrical system. However, the portion of the wiring that was replaced is not a significant portion of the wiring major component under paragraph (k)(6)(ii)(A) of this section, nor does it comprise a substantial structural part of the electrical system under paragraph (k)(6)(ii)(B) of this section. Therefore, under paragraph (k)(6) of this section, the replacement of 30 percent of the wiring is not the replacement of a major component or substantial structural part of the building, and R is not required to treat the amount paid to replace 30 percent of the wiring as a restoration to the building under paragraph (k)(1)(iv) of this section.

Example 22. Replacement of major component or substantial structural part; plumbing system. S owns a building in which it conducts a retail business. The retail building has three floors. The retail building has men's and women's restrooms on two of the three floors. S decides to update the restrooms by paying an amount to replace the plumbing fixtures in all of the restrooms, including all the toilets and sinks, with modern style plumbing fixtures of similar quality and function. S does not replace the pipes connecting the fixtures to the building's plumbing system. Under paragraphs (e)(2)(ii) and (k)(2) of this section, an amount is paid to improve a building if the amount restores the building structure or any building system. The plumbing system, including the plumbing fixtures, is a building system under paragraph (e)(2)(ii)(B)(*2*) of this section. All the toilets together perform a discrete and critical function in the operation of the plumbing system, and all the sinks, together, also perform a discrete and critical function in the operation of the plumbing system. Therefore, under paragraph (k)(6)(ii)(A) of this section, all the toilets comprise a major component of the plumbing system, and all the sinks comprise a major component of the plumbing system. Accordingly, S must treat the amount paid to replace all of the toilets and all of the sinks as a restoration of the building under paragraphs (k)(1)(vi) and (k)(2) of this section and must capitalize the amount paid as an improvement to the building under paragraph (d)(2) of this section.

Example 23. Not replacement of major component or substantial structural part; plumbing system. Assume the same facts as *Example 22* except that S does not update all the bathroom fixtures. Instead, S only pays an amount to replace 8 of the total of 20 sinks located in the various restrooms. The 8 replaced sinks, by themselves, do not comprise a significant portion of a major component (the 20 sinks) of the plumbing system under paragraph (k)(6)(ii)(A) of this section nor do they comprise a large portion of the physical structure of the plumbing system under paragraph (k)(6)(ii)(B) of this section. Therefore, under paragraph (k)(6) of this section, the replacement of the eight sinks does not constitute the replacement of a major component or substantial structural part of the building, and S is not required to treat the amount paid to replace the eight sinks as a restoration of a building under paragraph (k)(1)(iv) of this section.

Example 24. Replacement of major component or substantial structural part; plumbing system. (i) T owns and operates a hotel building. T decides that, to attract customers and to remain competitive, it needs to update the guest rooms in its facility. Accordingly, T pays amounts to replace the bathtubs, toilets, and sinks, and to repair, repaint, and retile the bathroom walls and floors, which is necessitated by the installation of the new plumbing components. The replacement bathtubs, toilets, sinks, and tile are new and in a different style, but are similar in function and quality to the replaced items. T also pays amounts to replace certain section 1245 property, such as the guest room furniture, carpeting, drapes, table lamps, and partition walls separating the bathroom area. T completes this work on two floors at a time, closing those floors and leaving the rest of the hotel open for business. In Year 1, T pays amounts to perform the updates for 4 of the 20 hotel room floors and expects to complete the renovation of the remaining rooms over the next two years.

(ii) Under paragraphs (e)(2)(ii) and (k)(2) of this section, an amount is paid to improve a building if the amount restores the building structure or any building system. The plumbing system, including the bathtubs, toilets, and sinks, is a building system under paragraph (e)(2)(ii)(B)(*2*) of this section. All the bathtubs, together, all the toilets, together, and all the sinks together in the hotel building perform discrete and critical functions in the operation of the plumbing system under paragraph (k)(6)(ii)(A) of this section and comprise a large portion of the physical structure of the plumbing system under paragraph (k)(6)(ii)(B) of this section. Therefore, under paragraph (k)(6)(ii) of this section, these plumbing components comprise major components and substantial structural parts of the plumbing system, and T must treat the amount paid to replace these plumbing components as a restoration of, and improvement to, the building under paragraphs (k)(1)(vi) and (k)(2) of this section. In addition, under paragraph (g)(1)(i) of this section, T must treat the costs of repairing, repainting, and retiling the bathroom walls and floors as improvement costs because these costs directly benefit and are incurred by reason of the improvement to the building. Further, under paragraph (g)(3) of this section, T must treat the costs incurred in Years 1, 2, and 3 for the bathroom remodeling as improvement costs, even though they are incurred over a period of several taxable years, because they are related amounts paid to improve the building unit of property. Accordingly, under paragraph (d)(2) of this section, T must treat all the amounts it incurs to update its hotel restrooms as an improvement to the hotel building and capitalize these amounts. In addition, under § 1.263(a)–2 of the regulations, T must capitalize the amounts paid to acquire and install each section 1245 property.

Example 25. Not replacement of major component or substantial structural part; windows. U owns a large office building that it uses to provide office space for employees that manage U's operations. The building has 300 exterior windows that represent 25 percent of the total surface area of the building. In Year 1, U pays an amount to replace 100 of the exterior windows that had

become damaged. At the time of these replacements, U has no plans to replace any other windows in the near future. Under paragraphs (e)(2)(ii) and (k)(2) of this section, an amount is paid to improve a building if the amount restores the building structure or any building system. The exterior windows are part of the building structure as defined under paragraph (e)(2)(ii)(A) of this section. The 300 exterior windows perform a discrete and critical function in the operation of the building structure and are, therefore, a major component of the building structure under paragraph (k)(6)(i)(A) of this section. However, the 100 windows do not comprise a significant portion of this major component of the building structure under paragraph (k)(6)(ii)(A) of this section or a substantial structural part of the building structure under paragraph (k)(6)(ii)(B) of this section. Therefore, under paragraph (k)(6) of this section, the replacement of the 100 windows does not constitute the replacement of a major component or substantial structural part of the building, and U is not required to treat the amount paid to replace the 100 windows as restoration of the building under paragraph (k)(1)(iv) of this section.

Example 26. Replacement of major component; windows. Assume the same facts as *Example 25,* except that that U replaces 200 of the 300 windows on the building. The 300 exterior windows perform a discrete and critical function in the operation of the building structure and are, therefore, a major component of the building structure under paragraph (k)(6)(i)(A) of this section. The 200 windows comprise a significant portion of this major component of the building structure under paragraph (k)(6)(ii)(A) of this section. Therefore, under paragraph (k)(6) of this section, the replacement of the 200 windows comprise the replacement of a major component of the building structure. Accordingly, U must treat the amount paid to replace the 200 windows as a restoration of the building under paragraphs (k)(1)(vi) and (k)(2) of this section and must capitalize the amount paid as an improvement to the building under paragraph (d)(2) of this section.

Example 27. Replacement of substantial structural part; windows. Assume the same facts as *Example 25,* except that the building is a modern design and the 300 windows represent 90 percent of the total surface area of the building. U replaces 100 of the 300 windows on the building. The 300 exterior windows perform a discrete and critical function in the operation of the building structure and are, therefore, a major component of the building structure under paragraph (k)(6)(i)(A) of this section. The 100 windows do not comprise a significant portion of this major component of the building structure under paragraph (k)(6)(ii)(A) of this section, however, they do comprise a substantial structural part of the building structure under paragraph (k)(6)(ii)(B) of this section. Therefore, under paragraph (k)(6) of this section, the replacement of the 100 windows comprise the replacement of a substantial structural part of the building structure. Accordingly, U must treat the amount paid to replace the 100 windows as a restoration of the building unit of property under paragraphs (k)(1)(vi) and (k)(2) of this section and must capitalize the amount paid as an improvement to the building under paragraph (d)(2) of this section.

Example 28. Not replacement of major component or substantial structural part; floors. V owns and operates a hotel building. V decides to refresh the appearance of the hotel lobby by replacing the floors in the lobby. The hotel lobby comprises less than 10 percent of the square footage of the entire hotel building. V pays an amount to replace the wood flooring in the lobby with new wood flooring of a similar quality. V did not replace any other flooring in the building. Assume that the wood flooring constitutes section 1250 property. Under paragraphs (e)(2)(ii) and (k)(2) of this section, an amount is paid to improve a building if the amount restores the building structure or any building system. The wood flooring is part of the building structure under paragraph (e)(2)(ii)(A) of this section. All the floors in the hotel building comprise a major component of the building structure because they perform a discrete and critical function in the operation of the building structure. However, the lobby floors are not a significant portion of a major component (that is, all the floors) under paragraph (k)(6)(ii)(A) of this section, nor do the lobby floors comprise a substantial structural part of the building structure under paragraph (k)(6)(ii)(B) of this section. Therefore, under paragraph (k)(6) of this section, the replacement of the lobby floors is not the replacement of a major component or substantial structural part of the building unit of property, and V is not required to treat the amount paid for the replacement of the lobby floors as a restoration to the building under paragraph (k)(1)(iv) of this section.

Example 29. Replacement of major component or substantial structural part; floors. Assume the same facts as *Example 28,* except that V decides to refresh the appearance of all the public areas of the hotel building by replacing all the floors in the public areas. To that end, V pays an amount to replace all the wood floors in all the public areas of the hotel building with new wood floors. The public areas include the lobby, the hallways, the meeting rooms, the ballrooms, and other public rooms throughout the hotel interiors. The public areas comprise approximately 40 percent of the square footage of the entire hotel building. All the floors in the hotel building comprise a major component of the building structure because they perform a discrete and critical function in the operation of the building structure. The floors in all the public areas of the hotel comprise a significant portion of a major component (that is, all the building floors) of the building structure. Therefore, under paragraph (k)(6)(ii)(A) of this section, the replacement of all the public area floors constitutes the replacement of a major component of the building structure. Accordingly, V must treat the amount paid to replace the public area floors as a restoration of the building unit of property under paragraphs (k)(1)(vi) and (k)(2) of this section and must capitalize the amounts as an improvement to the building under paragraph (d)(2) of this section.

Example 30. Replacement with no disposition. (i) X owns an office building with four elevators serving all floors in the building. X replaces one of the elevators. The elevator is a structural component of the office building. X chooses to apply Prop. Reg. § 1.168(i)–8 to taxable years beginning on or after January 1, 2012, and before the applicability date of the final regulations. In accordance with Prop. Reg. § 1.168(i)–8(c)(4)(ii)(A) (September 19, 2013), the office building (including its structural components) is the asset for tax disposition purposes. X does not treat the structural components of the office building as assets under Prop. Reg. § 1.168(i)–8(c)(4)(iii) (September 19, 2013). X also does not make the partial disposition election provided under Prop. Reg. § 1.168(i)–8(d)(2) (September 19, 2013), for the elevator. Thus, the retirement of the replaced elevator is not a disposition under section 168, and no loss is taken into account for purposes of paragraph (k)(1)(i) of this section.

(ii) Under paragraphs (e)(2)(ii) and (k)(2) of this section, an amount is paid to improve a building if the amount restores the building structure or any building system. The elevator system, including all four elevators, is a building system under paragraph (e)(2)(ii)(B)(*5*) of this section. The replacement elevator does not perform a discrete and critical function in the operation of elevator system under paragraph (k)(6)(ii)(A) of this section nor does it comprise a large portion of the physical structure of the elevator system under paragraph (k)(6)(ii)(B) of this section. Therefore, under paragraph (k)(6) of this section, the replacement elevator does not constitute the replacement of a major component or substantial structural part of the elevator system. Accordingly, X is not required to treat the amount paid to replace the elevator as a restoration to the building under either paragraph (k)(1)(i) or paragraph (k)(1)(vi) of this section.

Example 31. Replacement with disposition. The facts are the same as in *Example 30,* except X makes the partial disposition election provided under paragraph Prop. Reg. § 1.168(i)–8(d)(2) (September 19, 2013), for the elevator. Although the office building (including its structural components) is the asset for disposition purposes, the result of X making the partial disposition election for the elevator is that the retirement of the replaced elevator is a disposition. Thus, depreciation for the retired elevator ceases at the time of its retirement (taking into account the applicable convention), and X recognizes a loss upon this retirement. Accordingly, X must treat the amount paid to replace the elevator as a restoration of the building under paragraphs (k)(1)(i) and (k)(2) of this section and must capitalize the amount paid as an improvement to the building under paragraph (d)(2) of this section. In addition, the replacement elevator is treated as a separate asset for tax disposition purposes pursuant to Prop. Reg. § 1.168(i)–8(c)(4)(ii)(D) (September 19, 2013), and for depreciation purposes pursuant to section 168(i)(6).

(l) *Capitalization of amounts to adapt property to a new or different use*—(1) *In general.* A taxpayer must capitalize as an improvement an amount paid to adapt a unit of property to a new or different use. In general, an amount is paid to adapt a unit of property to a new or different use if the adaptation is not consistent with the taxpayer's ordinary use of the unit of property at the time originally placed in service by the taxpayer.

(2) *Application of adaption rule to buildings.* In the case of a building, an amount is paid to improve a building if it is paid to adapt to a new or different use a property specified under paragraph (e)(2)(ii) (building), paragraph (e)(2)(iii)(B) (condominium), paragraph (e)(2)(iv)(B) (cooperative), or paragraph (e)(2)(v)(B) (leased building or leased portion of building) of this section. For example, an amount is paid to improve a building if it is paid to adapt the building structure or any one of its buildings systems to a new or different use.

(3) *Examples.* The following examples illustrate the application of this paragraph (l) only and do not address whether capitalization is required under another provision of this section or under another provision of the Code (for example, section 263A). Unless otherwise stated, assume that the taxpayer has not properly deducted a loss for any unit of property, asset, or component of a unit of property that is removed and replaced.

Example 1. New or different use; change in building use. A is a manufacturer and owns a manufacturing building that it has used for manufacturing since Year 1, when A placed it in service. In Year 30, A pays an amount to convert its manufacturing building into a showroom for its business. To convert the facility, A removes and replaces various structural components to provide a better layout for the showroom and its offices. A also repaints the building interiors as part of the conversion. When building materials are removed and replaced, A uses comparable and commercially available replacement materials. Under paragraphs (l)(2) and (e)(2)(ii) of this section, an amount is paid to improve A's manufacturing building if the amount adapts the building structure or any designated building system to a new or different use. Under paragraph (l)(1) of this section, the amount paid to convert the manufacturing building into a showroom adapts the building structure to a new or different use because the conversion to a showroom is not consistent with A's ordinary use of the building structure at the time it was placed in service. Therefore, A must capitalize the amount paid to convert the building into a showroom as an improvement to the building under paragraphs (d)(3) and (l) of this section.

Example 2. Not a new or different use; leased building. B owns and leases out space in a building consisting of twenty retail spaces. The space was designed to be reconfigured; that is, adjoining spaces could be combined into one space. One of the tenants expands its occupancy by leasing two adjoining retail spaces. To facilitate the new lease, B pays an amount to remove the walls between the three retail spaces. Assume that the walls between spaces are part of the building and its structural components. Under paragraphs (l)(2) and (e)(2)(ii) of this section, an amount is paid to improve B's building if it adapts the building structure or any of the building systems to a new or different use. Under paragraph (l)(1) of this section, the amount paid to convert three retail spaces into one larger space for an existing tenant does not adapt B's building structure to a new or different use because the combination of retail spaces is consistent with B's intended, ordinary use of the building structure. Therefore, the amount paid by B to remove the walls does not improve the building under paragraph (l) of this section and is not required to be capitalized under paragraph (d)(3) of this section.

Example 3. Not a new or different use; preparing building for sale. C owns a building consisting of twenty retail spaces. C decides to sell the building. In anticipation of selling the building, C pays an amount to repaint the interior walls and to refinish the hardwood floors. Under paragraphs (l)(2) and (e)(2)(ii) of this section, an amount is paid to improve C's building to a new or different use if it adapts the building structure or any of the building systems to a new or different use. Preparing the building for sale does not constitute a new or different use for the building structure under paragraph (l)(1) of this section. Therefore, the amount paid by C to prepare the building structure for sale does not improve the building under paragraph (l) of this section and is not required to be capitalized under paragraph (d)(3) of this section.

Example 4. New or different use; land. D owns a parcel of land on which it previously operated a manufacturing facility. Assume that the land is the unit of property. During the course of D's operation of the manufacturing facility, the land became contaminated with wastes from its manufacturing processes. D discontinues manufacturing operations at the site and decides to develop the property for residential housing. In anticipation of building residential property, D pays an amount to remediate the contamination caused by D's manufacturing process. In addition, D pays an amount to regrade the land so that it can be used for residential purposes. Amounts that D pays to clean up wastes do not adapt the land to a new or different use, regardless of the extent to which the land was cleaned, because this cleanup merely returns the land to the condition it was in before the land was contaminated in D's operations. Therefore, D is not required to capitalize the amount paid for the cleanup under paragraph (l)(1) of this section. However, the amount paid to regrade the land so that it can be used for residential purposes adapts the land to a new or different use that is inconsistent with D's intended ordinary use of the property at the time it was placed in service. Accordingly, the amounts paid to regrade the land must be capitalized as improvements to the land under paragraphs (d)(3) and (l) of this section.

Example 5. New or different use; part of building. (i) E owns a building in which it operates a retail drug store. The store consists of a pharmacy for filling medication prescriptions and various departments where customers can purchase food, toiletries, home goods, school supplies, cards, over-the-counter medications, and other similar items. E decides to create a walk-in medical clinic where nurse practitioners and physicians' assistants diagnose, treat, and write prescriptions for common illnesses and injuries, administer common vaccinations, conduct physicals and wellness screenings, and provide routine lab tests and services for common chronic conditions. To create the clinic, E pays amounts to reconfigure the pharmacy building. E incurs costs to build new walls creating an examination room, lab room, reception area, and waiting area. E installs additional plumbing, electrical wiring, and outlets to support the lab. E also acquires section 1245 property, such as computers, furniture, and equipment necessary for the new clinic. E treats the amounts paid for those units of property as costs of acquiring new units of property under § 1.263(a)–2.

(ii) Under paragraphs (l)(2) and (e)(2)(ii) of this section, an amount is paid to improve E's building if it adapts the building structure or any of the building systems to a new or different use. Under paragraph (l)(1) of this section, the amount paid to convert part of the retail drug store building structure into a medical clinic adapts the building structure to a new and different use, because the use of the building structure to provide clinical medical services is not consistent with E's intended ordinary use of the building structure at the time it was placed in service. Similarly, the amounts paid to add to the plumbing system and the electrical systems to support the new medical services is not consistent with E's intended ordinary use of these systems when the systems were placed in service. Therefore, E must treat the amount paid for the conversion of the building structure, plumbing system, and electrical system as an improvement to the building and capitalize the amount under paragraphs (d)(3) and (l) of this section.

Example 6. Not a new or different use; part of building. (i) F owns a building in which it operates a grocery store. The grocery store includes various departments for fresh produce, frozen foods, fresh meats, dairy products, toiletries, and over-the-counter medicines. The grocery store also includes separate counters for deli meats, prepared foods, and baked goods, often made to order. To better accommodate its customers' shopping needs, F decides to add a sushi bar where customers can order freshly prepared sushi from the counter for take-home or to eat at the counter. To create the sushi bar, F pays amounts to add a sushi counter and chairs, add additional wiring and outlets to support the counter, and install additional pipes and a sink, to provide for the safe handling of the

food. F also pays amounts to replace flooring and wall coverings in the sushi bar area with decorative coverings to reflect more appropriate décor. Assume the sushi counter and chairs are section 1245 property, and F treats the amounts paid for those units of property as costs of acquiring new units of property under § 1.263(a)–2.

(ii) Under paragraphs (l)(2) and (e)(2)(ii) of this section, an amount is paid to improve F's building if it adapts the building structure or any of the building systems to a new or different use. Under paragraph (l)(1) of this section, the amount paid to convert a part of F's retail grocery into a sushi bar area does not adapt F's building structure, plumbing system, or electrical system to a new or different use, because the sale of sushi is consistent with F's intended, ordinary use of the building structure and these systems in its grocery sales business, which includes selling food to its customers at various specialized counters. Accordingly, the amount paid by F to replace the wall and floor finishes, add wiring, and add plumbing to create the sushi bar space does not improve the building unit of property under paragraph (l) of this section and is not required to be capitalized under paragraph (d)(3) of this section.

Example 7. Not a new or different use; part of building. (i) G owns a hospital with various departments dedicated to the provision of clinical medical care. To better accommodate its patients' needs, G decides to modify the emergency room space to provide both emergency care and outpatient surgery. To modify the space, G pays amounts to move interior walls, add additional wiring and outlets, replace floor tiles and doors, and repaint the walls. To complete the outpatient surgery center, G also pays amounts to install miscellaneous medical equipment necessary for the provision of surgical services. Assume the medical equipment is section 1245 property, and G treats the amounts paid for those units of property as costs of acquiring new units of property under § 1.263(a)–2.

(ii) Under paragraphs (l)(2) and (e)(2)(ii) of this section, an amount is paid to improve G's building if it adapts the building structure or any of the building systems to a new or different use. Under paragraph (l)(1) of this section, the amount paid to convert part of G's emergency room into an outpatient surgery center does not adapt G's building structure or electrical system to a new or different use, because the provision of outpatient surgery is consistent with G's intended, ordinary use of the building structure and these systems in its clinical medical care business. Accordingly, the amounts paid by G to relocate interior walls, add additional wiring and outlets, replace floor tiles and doors, and repaint the walls to create outpatient surgery space do not improve the building under paragraph (l) of this section and are not required to be capitalized under paragraph (d)(3) of this section.

(m) *Optional regulatory accounting method*—(1) *In general.* This paragraph (m) provides an optional simplified method (the regulatory accounting method) for regulated taxpayers to determine whether amounts paid to repair, maintain, or improve tangible property are to be treated as deductible expenses or capital expenditures. A taxpayer that uses the regulatory accounting method described in paragraph (m)(3) of this section must use that method for property subject to regulatory accounting instead of determining whether amounts paid to repair, maintain, or improve property are capital expenditures or deductible expenses under the general principles of sections 162(a), 212, and 263(a). Thus, the capitalization rules in paragraph (d) (and the routine maintenance safe harbor described in paragraph (i)) of this section do not apply to amounts paid to repair, maintain, or improve property subject to regulatory accounting by taxpayers that use the regulatory accounting method under this paragraph (m).

(2) *Eligibility for regulatory accounting method.* A taxpayer that is engaged in a trade or business in a regulated industry is a regulated taxpayer and may use the regulatory accounting method under this paragraph (m). For purposes of this paragraph (m), a taxpayer is in a regulated industry only if the taxpayer is subject to the regulatory accounting rules of the Federal Energy Regulatory Commission (FERC), the Federal Communications Commission (FCC), or the Surface Transportation Board (STB).

(3) *Description of regulatory accounting method.* Under the regulatory accounting method, a taxpayer must follow the method of accounting for regulatory accounting purposes that it is required to follow for FERC, FCC, or STB (whichever is applicable) in determining whether an amount paid repairs, maintains, or improves property under this section. Therefore, a taxpayer must capitalize for Federal income tax purposes an amount paid that is capitalized as an improvement for regulatory accounting purposes. A taxpayer may not capitalize for Federal income tax purposes under this section an amount paid that is not capitalized as an improvement for regulatory accounting purposes. A taxpayer that uses the regulatory accounting method must use that method for all of its tangible property that is subject to regulatory accounting rules. The method does not apply to tangible property that is not subject to regulatory accounting rules. The method also does not apply to property for the taxable years in which the taxpayer elected to apply the repair allowance under § 1.167(a)–11(d)(2). The regulatory accounting method is a method of accounting under section 446(a).

(4) *Examples.* The following examples illustrate the application of this paragraph (m):

Example 1. Taxpayer subject to regulatory accounting rules of FERC. W is an electric utility company that operates a power plant that generates electricity and that owns and operates network assets to transmit and distribute the electricity to its customers. W is subject to the regulatory accounting rules of FERC, and W uses the regulatory accounting method under paragraph (m) of this section. W does not capitalize on its books and records for regulatory accounting purposes the cost of repairs and maintenance performed on its turbines or its network assets. Under the regulatory accounting method, W may not capitalize for Federal income tax purposes amounts paid for repairs performed on its turbines or its network assets.

Example 2. Taxpayer not subject to regulatory accounting rules of FERC. X is an electric utility company that operates a power plant to generate electricity. X previously was subject to the regulatory accounting rules of FERC, but currently X is not required to use FERC's regulatory accounting rules. X cannot use the regulatory accounting method provided in this paragraph (m).

Example 3. Taxpayer subject to regulatory accounting rules of FCC. Y is a telecommunications company that is subject to the regulatory accounting rules of the FCC. Y uses the regulatory accounting method under this paragraph (m). Y's assets include a telephone central office switching center, which contains numerous switches and various switching equipment. Y capitalizes on its books and records for regulatory accounting purposes the cost of replacing each switch. Under the regulatory accounting method, Y is required to capitalize for Federal income tax purposes amounts paid to replace each switch.

Example 4. Taxpayer subject to regulatory accounting rules of STB. Z is a Class I railroad that is subject to the regulatory accounting rules of the STB. Z uses the regulatory accounting method under this paragraph (m). Z capitalizes on its books and records for regulatory accounting purposes the cost of locomotive rebuilds. Under the regulatory accounting method, Z is required to capitalize for Federal income tax purposes amounts paid to rebuild its locomotives.

(n) *Election to capitalize repair and maintenance costs*—(1) *In general.* A taxpayer may elect to treat amounts paid during the taxable year for repair and maintenance (as defined under § 1.162–4) to tangible property as amounts paid to improve that property under this section and as an asset subject to the allowance for depreciation if the taxpayer incurs these amounts in carrying on the taxpayer's trade or business and if the taxpayer treats these amounts as capital expenditures on its books and records regularly used in

computing income (''books and records''). A taxpayer that elects to apply this paragraph (n) in a taxable year must apply this paragraph to all amounts paid for repair and maintenance to tangible property that it treats as capital expenditures on its books and records in that taxable year. Any amounts for which this election is made shall not be treated as amounts paid for repair or maintenance under § 1.162–4.

(2) *Time and manner of election.* A taxpayer makes this election under this paragraph (n) by attaching a statement to the taxpayer's timely filed original Federal tax return (including extensions) for the taxable year in which the taxpayer pays amounts described under paragraph (n)(1) of this paragraph. See §§ 301.9100–1 through 301.9100–3 of this chapter for the provisions governing extensions of time to make regulatory elections. The statement must be titled ''Section 1.263(a)–3(n) Election'' and include the taxpayer's name, address, taxpayer identification number, and a statement that the taxpayer is making the election to capitalize repair and maintenance costs under § 1.263(a)–3(n). In the case of a consolidated group filing a consolidated income tax return, the election is made for each member of the consolidated group by the common parent, and the statement must also include the names and taxpayer identification numbers of each member for which the election is made. In the case of an S corporation or a partnership, the election is made by the S corporation or partnership and not by the shareholders or partners. A taxpayer making this election for a taxable year must treat any amounts paid for repairs and maintenance during the taxable year that are capitalized on the taxpayer's books and records as improvements to tangible property. The taxpayer must begin to depreciate the cost of such improvements amounts when they are placed in service by the taxpayer under the applicable provisions of the Code and regulations. An election may not be made through the filing of an application for change in accounting method or, before obtaining the Commissioner's consent to make a late election, by filing an amended Federal tax return. The time and manner of electing to capitalize repair and maintenance costs under this paragraph (n) may be modified through guidance of general applicability (see §§ 601.601(d)(2) and 601.602 of this chapter).

(3) *Exception.* This paragraph (n) does not apply to amounts paid for repairs or maintenance of rotable or temporary spare parts to which the taxpayer applies the optional method of accounting for rotable and temporary spare parts under § 1.162–3(e).

(4) *Examples.* The following examples illustrate the application of this paragraph (n):

Example 1. Election to capitalize routine maintenance on non-rotable part. (i) Q is a towboat operator that owns a fleet of towboats that it uses in its trade or business. Each towboat is equipped with two diesel-powered engines. Assume that each towboat, including its engines, is the unit of property and that a towboat has a class life of 18 years. Assume the towboat engines are not rotable spare parts under § 1.162–3(c)(2). In Year 1, Q acquired a new towboat, including its two engines, and placed the towboat into service. In Year 4, Q pays amounts to perform scheduled maintenance on both engines in the towboat. Assume that none of the exceptions set out in paragraph (i)(3) of this section apply to the scheduled maintenance costs and that the scheduled maintenance on Q's towboat is within the routine maintenance safe harbor under paragraph (i)(1)(ii) of this section. Accordingly, the amounts paid for the scheduled maintenance to its towboat engines in Year 4 are deemed not to improve the towboat and are not required to be capitalized under paragraph (d) of this section.

(ii) On its books and records, Q treats amounts paid for scheduled maintenance on its towboat engines as capital expenditures. For administrative convenience, Q decides to account for these costs in the same way for Federal income tax purposes. Under paragraph (n) of this section, in Year 4, Q may elect to capitalize the amounts paid for the scheduled maintenance on its towboat engines. If Q elects to capitalize such amounts, Q must capitalize all amounts paid for repair and maintenance to tangible property that Q treats as capital expenditures on its books and records in Year 4.

Example 2. No election to capitalize routine maintenance. Assume the same facts as *Example 1,* except in Year 8, Q pays amounts to perform scheduled maintenance for a second time on the towboat engines. On its books and records, Q treats the amounts paid for this scheduled maintenance as capital expenditures. However, in Year 8, Q decides not to make the election to capitalize the amounts paid for scheduled maintenance under paragraph (n) of this section. Because Q does not make the election under paragraph (n) for Year 8, Q may apply the routine maintenance safe harbor under paragraph (i)(1)(ii) of this section to the amounts paid in Year 8, and not treat these amounts as capital expenditures. Because the election is made for each taxable year, there is no effect on the scheduled maintenance costs capitalized by Q on its Federal tax return for Year 4.

Example 3. Election to capitalize replacement of building component. (i) R owns an office building that it uses to provide services to customers. The building contains a HVAC system that incorporates ten roof-mounted units that provide heating and air conditioning for different parts of the building. In Year 1, R pays an amount to replace 2 of the 10 units to address climate control problems in various offices throughout the office building. Assume that the replacement of the two units does not constitute an improvement to the HVAC system, and, accordingly, to the building unit of property under paragraph (d) of this section, and that R may deduct these amounts as repairs and maintenance under § 1.162–4.

(ii) On its books and records, R treats amounts paid for the two HVAC components as capital expenditures. R determines that it would prefer to account for these amounts in the same way for Federal income tax purposes. Under this paragraph (n), in Year 1, R may elect to capitalize the amounts paid for the new HVAC components. If R elects to capitalize such amounts, R must capitalize all amounts paid for repair and maintenance to tangible property that R treats as capital expenditures on its books and records in Year 1.

(o) *Treatment of capital expenditures.* Amounts required to be capitalized under this section are capital expenditures and must be taken into account through a charge to capital account or basis, or in the case of property that is inventory in the hands of a taxpayer, through inclusion in inventory costs.

(p) *Recovery of capitalized amounts.* Amounts that are capitalized under this section are recovered through depreciation, cost of goods sold, or by an adjustment to basis at the time the property is placed in service, sold, used, or otherwise disposed of by the taxpayer. Cost recovery is determined by the applicable Code and regulation provisions relating to the use, sale, or disposition of property.

(q) *Accounting method changes.* Except as otherwise provided in this section, a change to comply with this section is a change in method of accounting to which the provisions of sections 446 and 481 and the accompanying regulations apply. A taxpayer seeking to change to a method of accounting permitted in this section must secure the consent of the Commissioner in accordance with § 1.446–1(e) and follow the administrative procedures issued under § 1.446–1(e)(3)(ii) for obtaining the Commissioner's consent to change its accounting method.

(r) *Effective/applicability date*—(1) *In general.* Except for paragraphs (h), (m), and (n) of this section, this section applies to taxable years beginning on or after January 1, 2014. Paragraphs (h), (m), and (n) of this section apply to amounts paid in taxable years beginning on or after January 1, 2014. Except as provided in paragraphs (r)(2) and (r)(3) of this section, § 1.263(a)–3 as contained in 26 CFR part 1 edition revised as of

April 1, 2011, applies to taxable years beginning before January 1, 2014.

(2) *Early application of this section*—(i) *In general.* Except for paragraphs (h), (m), and (n) of this section, a taxpayer may choose to apply this section to taxable years beginning on or after January 1, 2012. A taxpayer may choose to apply paragraphs (h), (m), and (n) of this section to amounts paid in taxable years beginning on or after January 1, 2012.

(ii) *Transition rule for certain elections on 2012 or 2013 returns.* If under paragraph (r)(2)(i) of this section, a taxpayer chooses to make the election to apply the safe harbor for small taxpayers under paragraph (h) of this section or the election to capitalize repair and maintenance costs under paragraph (n) of this section for amounts paid in its taxable year beginning on or after January 1, 2012, and ending on or before September 19, 2013 (applicable taxable year), and the taxpayer did not make the election specified in paragraph (h)(6) or paragraph (n)(2) of this section on its timely filed original Federal tax return for the applicable taxable year, the taxpayer must make the election specified in paragraph (h)(6) or paragraph (n)(2) of this section for the applicable taxable year by filing an amended Federal tax return (including the required statements) for the applicable taxable year on or before 180 days from the due date including extensions of the taxpayer's Federal tax return for the applicable taxable year, notwithstanding that the taxpayer may not have extended the due date.

(3) *Optional application of TD 9564.* A taxpayer may choose to apply § 1.263(a)–3T as contained in TD 9564 (76 FR 81060) December 27, 2011, to taxable years beginning on or after January 1, 2012, and before January 1, 2014.

§ 1.263(a)–3T [Removed]

■ **Par. 25.** Section 1.263(a)–3T is removed.

■ **Par. 26.** Section 1.263(a)–6 is added to read as follows:

§ 1.263(a)–6 Election to deduct or capitalize certain expenditures.

(a) *In general.* Under certain provisions of the Internal Revenue Code (Code), taxpayers may elect to treat capital expenditures as deductible expenses or as deferred expenses, or to treat deductible expenses as capital expenditures.

(b) *Election provisions.* The sections referred to in paragraph (a) of this section include:

(1) Section 173 (circulation expenditures);

(2) Section 174 (research and experimental expenditures);

(3) Section 175 (soil and water conservation expenditures; endangered species recovery expenditures);

(4) Section 179 (election to expense certain depreciable business assets);

(5) Section 179A (deduction for clean-fuel vehicles and certain refueling property);

(6) Section 179B (deduction for capital costs incurred in complying with environmental protection agency sulfur regulations);

(7) Section 179C (election to expense certain refineries);

(8) Section 179D (energy efficient commercial buildings deduction);

(9) Section 179E (election to expense advanced mine safety equipment);

(10) Section 180 (expenditures by farmers for fertilizer);

(11) Section 181 (treatment of certain qualified film and television productions);

(12) Section 190 (expenditures to remove architectural and transportation barriers to the handicapped and elderly);

(13) Section 193 (tertiary injectants);

(14) Section 194 (treatment of reforestation expenditures);

(15) Section 195 (start-up expenditures);

(16) Section 198 (expensing of environmental remediation costs);

(17) Section 198A (expensing of qualified disaster expenses);

(18) Section 248 (organization expenditures of a corporation);

(19) Section 266 (carrying charges);

(20) Section 616 (development expenditures); and

(21) Section 709 (organization and syndication fees of a partnership).

(c) *Effective/applicability date*—(1) *In general.* This section applies to taxable years beginning on or after January 1, 2014. Except as provided in paragraphs (c)(2) and (c)(3) of this section, § 1.263(a)–3 as contained in 26 CFR part 1 edition revised as of April 1, 2011, applies to taxable years beginning before January 1, 2014. For the effective dates of the enumerated election provisions, see those Code sections and the regulations under those sections.

(2) *Early application of this section.* A taxpayer may choose to apply this section to taxable years beginning on or after January 1, 2012.

(3) *Optional application of TD 9564.* A taxpayer may choose to apply § 1.263(a)–6T as contained in TD 9564 (76 FR 81060) December 27, 2011, to taxable years beginning on or after January 1, 2012, and before January 1, 2014.

§ 1.263(a)–6T [Removed]

■ **Par. 27.** Section 1.263(a)–6T is removed.

■ **Par. 28.** Section 1.263A–0 is amended by adding new entries in the outline for § 1.263A–1(k) and (l) to read as follows:

§ 1.263A–0 Outline of the Regulations under Section 263A.

* * * * *

§ 1.263A–1 Uniform Capitalization of Costs.

* * * * *

(k) Change in method of accounting.
(1) In general.
(2) Scope limitations.
(3) Audit protection.
(4) Section 481(a) adjustment.
(5) Time for requesting change.
(l) Effective/applicability date.
(1) In general.
(2) Mixed service costs; self-constructed tangible personal property produced on a routine and repetitive basis.
(3) Materials and supplies.
(i) In general
(ii) Early application of this section.
(iii) Optional application of TD 9564.

* * * * *

■ **Par. 29.** Section 1.263A–1 is amended by:

■ 1. Removing paragraphs (b)(14) and (m).

■ 2. Revising paragraphs (c)(4), (e)(2)(i)(A), (e)(3)(ii)(E) and (l).

The revisions read as follows:

§ 1.263A–1 Uniform capitalization of costs.

* * * * *

(c) * * *

(4) *Recovery of capitalized costs.* Costs that are capitalized under section 263A are recovered through depreciation, amortization, cost of goods sold, or by an adjustment to basis at the time the property is used, sold, placed in service, or otherwise disposed of by the taxpayer. Cost recovery is determined by the applicable Internal Revenue Code and regulation provisions relating to use, sale, or disposition of property.

* * * * *

(e) * * *

(2) * * *

(i) * * *

(A) *Direct material costs. Direct materials costs* include the cost of those materials that become an integral part of specific property produced and those materials that are consumed in the ordinary course of production and that can be identified or associated with particular units or groups of units of property produced. For example, a cost described in § 1.162–3, relating to the cost of a material or supply, may be a direct material cost.

* * * * *

(3) * * *

(ii) * * *

(E) *Indirect material costs. Indirect material costs* include the cost of materials that are not an integral part of specific property produced and the cost of materials that are consumed in the ordinary course of performing production or resale activities that cannot be identified or associated with particular units of property. Thus, for example, a cost described in § 1.162–3, relating to the cost of a material or supply, may be an indirect cost.

* * * * *

(l) *Effective/applicability dates*—(1) *In general.* Except as provided in paragraphs (l)(2) and (l)(3) of this section, the effective dates for this section are provided in paragraph (a)(2) of this section.

(2) *Mixed service costs; self-constructed tangible personal property produced on a routine and repetitive basis.* Paragraphs (h)(2)(i)(D), (k), and (l)(2) of this section apply for taxable years ending on or after August 2, 2005.

(3) *Materials and supplies*—(i) *In general.* The last sentence of paragraphs (e)(2)(i)(A) and (e)(2)(ii)(E) of this section, and paragraph (l)(3) of this section apply to amounts paid (to acquire or produce property) in taxable years beginning on or after January 1, 2014. Except as provided in paragraph (l)(3)(ii) or paragraph (l)(3)(iii) of this section, section 1.263A–1 as contained in 26 CFR part 1 edition revised as of April 1, 2011, applies to taxable years beginning before January 1, 2014.

(ii) *Early application of this section.* A taxpayer may choose to apply the last sentence of paragraphs (e)(2)(i)(A) and (e)(2)(ii)(E) of this section, and paragraph (l)(3) of this section to amounts paid (to acquire or produce property) in taxable years beginning on or after January 1, 2012.

(iii) *Optional application of TD 9564.* A taxpayer may choose to apply § 1.263A–1T(b)(14), the introductory phrase of § 1.263A–1T(c)(4), the last sentence of § 1.263A–1T(e)(2)(i)(A), the last sentence of § 1.263A–1T(e)(2)(ii)(E), § 1.263A–1T(l), and § 1.263A–1T(m)(2), as these provisions are contained in TD 9564 (76 FR 81060) December 27, 2011, to amounts paid (to acquire or produce property) in taxable years beginning on or after January 1, 2012, and before January 1, 2014.

§ 1.263A–1T [Removed]

■ **Par. 30.** Section 1.263A–1T is removed.

■ **Par. 31.** Section 1.1016–3 is amended by revising paragraphs (a)(1)(ii), (j)(1), and (j)(3) to read as follows:

§ 1.1016–3 Exhaustion, wear and tear, obsolescence, amortization, and depletion for periods since February 13, 1913.

(a) * * *

(1) * * *

(ii) The determination of the amount properly allowable for exhaustion, wear and tear, obsolescence, amortization, and depletion must be made on the basis of facts reasonably known to exist at the end of the taxable year. A taxpayer is not permitted to take advantage in a later year of the taxpayer's prior failure to take any such allowance or the taxpayer's taking an allowance plainly inadequate under the known facts in prior years. In the case of depreciation, if in prior years the taxpayer has consistently taken proper deductions under one method, the amount allowable for such prior years may not be increased, even though a greater amount would have been allowable under another proper method. For rules governing losses on retirement or disposition of depreciable property, including rules for determining basis, see § 1.167(a)–8, § 1.168(i)–1T(e), § 1.168(i)–8T, Prop. Reg. § 1.168(i)–1(e) (September 19, 2013), or Prop. Reg. § 1.168(i)–8 (September 19, 2013), as applicable. The application of this paragraph is illustrated by the following example (for purposes of this example, assume section 167(f)(1) as in effect on September 19, 2013, applies to taxable years beginning on or after January 1, 2014):

Example. On July 1, 2014, A, a calendar-year taxpayer, purchased and placed in service ''off-the-shelf'' computer software at a cost of $36,000. This computer software is not an amortizable section 197 intangible. Pursuant to section 167(f)(1), the useful life of the computer software is 36 months. It has no salvage value. Computer software placed in service in 2014 is not eligible for the additional first year depreciation deduction provided by section 168(k). A did not deduct any depreciation for the computer software for 2014 and deducted depreciation of $12,000 for the computer software for 2015. As a result, the total amount of depreciation allowed for the computer software as of December 31, 2015, was $12,000. However, the total amount of depreciation allowable for the computer software as of December 31, 2015, is $18,000 ($6,000 for 2014 + $12,000 for 2015). As a result, the unrecovered cost of the computer software as of December 31, 2015, is $18,000 (cost of $36,000 less the depreciation allowable of $18,000 as of December 31, 2015). Accordingly, depreciation for 2016 for the computer software is $12,000 (unrecovered cost of $18,000 divided by the remaining useful life of 18 months as of January 1, 2016, multiplied by 12 full months in 2016).

* * * * *

(j) *Effective/applicability dates*—(1) *In general.* Except as provided in paragraphs (j)(2) and (j)(3) of this section, this section applies on or after December 30, 2003. For the applicability of regulations before December 30, 2003, see § 1.1016–3 in effect prior to December 30, 2003 (§ 1.1016–3 as contained in 26 CFR part 1 edition revised as of April 1, 2003).

* * * * *

(3) *Application of § 1.1016–3T(a)(1)(ii)*—(i) *In general.* Paragraph (a)(1)(ii) of this section applies to taxable years beginning on or after January 1, 2014. Except as provided in paragraphs (j)(3)(ii) and (j)(3)(iii) of this section, § 1.1016–3(a)(1)(ii) as contained in 26 CFR part 1 edition revised as of April 1, 2011, applies to taxable years beginning before January 1, 2014.

(ii) *Early application of § 1.1016–3(a)(1)(ii).* A taxpayer may choose to apply paragraph (a)(1)(ii) of this section to taxable years beginning on or after January 1, 2012.

(iii) *Optional application of TD 9564.* A taxpayer may choose to apply § 1.1016–3T(a)(1)(ii) as contained in TD 9564 (76 FR 81060) December 27, 2011, to taxable years beginning on or after January 1, 2012, and before January 1, 2014.

§ 1.1016–3T [Removed]

■ **Par. 32.** Section 1.1016–3T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 33.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 34.** In § 602.101, paragraph (b) is amended by adding the following entries to the table in numerical order to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where Identified and described	Current OMB control No.
* * * * *	
1.263(a)–1	1545–2248
1.263(a)–3	1545–2248
* * * * *	

Beth Tucker,

Deputy Commissioner for Operations Support.

Approved: August 15, 2013.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2013–21756 Filed 9–13–13; 11:15 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; Determination of Endangered Species Status for Mount Charleston Blue Butterfly; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2012–0069; MO 92210–0–0008 B2]

RIN 1018–AY52

Endangered and Threatened Wildlife and Plants; Determination of Endangered Species Status for Mount Charleston Blue Butterfly

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered species status under the Endangered Species Act of 1973, as amended (Act), for the Mount Charleston blue butterfly (*Plebejus shasta charlestonensis*), a butterfly subspecies from the Spring Mountains, Clark County, Nevada. The effect of this regulation will be to add this subspecies to the List of Endangered and Threatened Wildlife. Based on information gathered from peer reviewers and the public during the comment period, we have determined that it is prudent to designate critical habitat for the Mount Charleston blue butterfly. Therefore, we will publish in a separate **Federal Register** notice, our proposed designation of critical habitat for the Mount Charleston blue butterfly.

DATES: This rule is effective October 21, 2013.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov* and *http://www.fws.gov/nevada.* Comments and materials received, as well as supporting documentation used in the preparation of this rule, are available for public inspection at *http://www.regulations.gov.* All of the comments, materials, and documentation that we considered in this rulemaking are available, by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Nevada Ecological Services Office, 1340 Financial Boulevard, Suite 234, Reno, NV 89502–7147; (775) 861–6300 [phone]; (775) 861–6301 [facsimile].

FOR FURTHER INFORMATION CONTACT: Edward D. Koch, Field Supervisor, Nevada Ecological Services Office (see **ADDRESSES**). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

This document consists of a final rule to list the Mount Charleston blue butterfly (*Plebejus shasta charlestonensis*) (formerly in genus *Icaricia*) as an endangered species.

Why we need to publish a rule. Under the Act, a species may warrant protection through listing if it is endangered or threatened throughout all or a significant portion of its range. Listing a species as an endangered or threatened species can only be completed by issuing a rule. 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. We will propose to designate critical habitat for the Mount Charleston blue butterfly under the Act in a separate **Federal Register** notice.

This rule will finalize the endangered status for the Mount Charleston blue butterfly. Based on information gathered from peer reviewers and the public during the comment period, we have determined that it is prudent to designate critical habitat for the Mount Charleston blue butterfly. Therefore, in a separate **Federal Register** notice, we will propose to designate critical habitat for the Mount Charleston blue butterfly. We are not finalizing the threatened status for the lupine blue butterfly (*Plebejus lupini texanus*), Reakirt's blue butterfly (*Echinargus isola*), Spring Mountains icarioides blue butterfly (*Plebejus icarioides austinorum*), and two Spring Mountains dark blue butterflies (*Euphilotes ancilla cryptica* and *Euphilotes ancilla purpura*) based on similarity of appearance to the Mount Charleston blue butterfly under section 4(e) of the Act.

The basis for our action. Under the Act, we can determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that the Mount Charleston blue butterfly is endangered due to four of these five factors (A, B, D, and E), as discussed below. Threats facing the Mount Charleston blue butterfly increase the risk of extinction of the subspecies, given its few occurrences in a small area. The loss and degradation of habitat due to changes in natural fire regimes and succession, the implementation of recreational development projects and fuels reduction projects, and the increases in nonnative plants (see Factor A discussion) will increase the inherent risk of extinction of the remaining few occurrences of the Mount Charleston blue butterfly. Unpermitted and unlawful collection is a threat to the subspecies due to the small number of discrete populations, overall small metapopulation size, close proximity to roads and trails, and restricted range (Factor B). These threats are likely to be exacerbated by the impact of climate change, which is anticipated to increase drought and extreme precipitation events (see Factor E). The Mount Charleston blue butterfly is currently in danger of extinction because only small populations are known to occupy only 3 of the 17 historical locations, it may become extirpated in the near future at 7 other locations presumed to be occupied, and the threats are ongoing and persistent at all known and presumed-occupied locations.

We have determined that listing the lupine blue butterfly, Reakirt's blue butterfly, Spring Mountains icarioides blue butterfly, and two Spring Mountains dark blue butterflies based on similarity of appearance is no longer advisable and unnecessary because the threat of inadvertent collection and misidentification of the Mount Charleston blue butterfly will be reduced by a closure order issued by the U.S. Department of Agriculture's Forest Service (Forest Service). The application processes for Service and Forest Service collection permits associated with the closure order require thorough review of applicant qualifications by agency personnel, and we believe only highly qualified individuals capable of distinguishing between small, blue butterfly species that occur in the Spring Mountains will be issued permits. As a result, we do not anticipate that individuals with permits will misidentify the butterfly species, and therefore, we do not believe inadvertent collection of the Mount Charleston blue butterfly by authorized individuals will occur. In addition, any collection without permits would be in violation of the closure order and subject to law enforcement action so any purposeful, unlawful collection should also be reduced.

Peer reviewers commented that designating critical habitat would not increase the threat to the Mount Charleston blue butterfly from collection because those individuals interested in collecting Mount Charleston blue butterflies would be able to obtain occurrence locations from other sources, such as the Internet. Based on these comments, we have determined that designation of critical habitat for the Mount Charleston blue butterfly is prudent. Therefore, elsewhere in a separate **Federal Register** notice, we will propose to designate critical habitat for the Mount Charleston blue butterfly.

Peer review and public comment. We sought comments from knowledgeable individuals with scientific expertise to ensure that our designation is based on scientifically sound data, assumptions, and analyses. We invited these peer reviewers to comment on our listing proposal. We also considered all comments and information we received during the comment period. We received five peer review responses. These peer reviewers generally concurred with listing the Mount Charleston blue butterfly. We also received 10 comments from the general public, including one from a Federal agency. All responses provided additional information, clarifications, and suggestions to improve this final listing determination.

Background

Previous Federal Actions

On September 27, 2012, we published a proposed rule (77 FR 59518) to list the Mount Charleston blue butterfly as endangered, and the lupine blue butterfly, Reakirt's blue butterfly, Spring Mountains icarioides blue butterfly, and two Spring Mountains dark blue butterflies as threatened due to similarity of appearance to the Mount Charleston blue butterfly. Please refer to that proposed rule for a synopsis of previous Federal actions concerning the Mount Charleston blue butterfly. A 60-day comment period following publication of the proposed rule closed on November 26, 2012.

Species Information

It is our intent to discuss below only those topics directly relevant to the listing of the Mount Charleston blue butterfly as an endangered species in this final rule.

Taxonomy and Subspecies Description

The Mount Charleston blue butterfly is a distinct subspecies of the wider ranging Shasta blue butterfly (*Plebejus shasta*), which is a member of the Lycaenidae family. Currently, seven subspecies of Shasta blue butterflies are recognized: *P. s. shasta, P. s. calchas, P. s. pallidissima, P. s. minnehaha, P. s. charlestonensis, P. s. pitkinensis,* and *P. s. platazul* (Pelham 2008, pp. 25–26, 379–380). The Mount Charleston blue butterfly is known only to occur in the high elevations of the Spring Mountains, located approximately 25 miles (mi) (40 kilometers (km)) west of Las Vegas in Clark County, Nevada (Austin 1980, p. 20; Scott 1986, p. 410). The first mention of the Mount Charleston blue butterfly as a unique taxon was in 1928 by Garth (p. 93), who recognized it as distinct from the species Shasta blue butterfly (Austin 1980, p. 20). Howe (in 1975, Plate 59) described specimens from the Spring Mountains as the *P. s. shasta* form *comstocki.* However, in 1976, Ferris (p. 14) placed the Mount Charleston blue butterfly with the wider ranging Minnehaha blue subspecies. Finally, Austin asserted that Ferris had not included specimens from the Sierra Nevada Mountains of extreme western Nevada in his study, and in light of the geographic isolation and distinctiveness of the Shasta blue butterfly population in the Spring Mountains and the presence of at least three other well-defined races (subspecies) of butterflies endemic to the area, it was appropriate to name this population as a subspecies, *P. s. charlestonensis* (Austin 1980, p. 20).

Our use of the genus name *Plebejus,* rather than the synonym *Icaricia,* reflects recent treatments of butterfly taxonomy (Opler and Warren 2003, p. 30; Pelham 2008, p. 265). The Integrated Taxonomic Information System (ITIS) recognizes the Mount Charleston blue butterfly as a valid subspecies based on Austin (1980) (Retrieved May 1, 2013, from the Integrated Taxonomic Information System online database, *http://www.itis.gov*). The ITIS is hosted by the U.S. Geological Survey (USGS) Center for Biological Informatics (CBI) and is the result of a partnership of Federal agencies formed to satisfy their mutual needs for scientifically credible taxonomic information.

As a subspecies, the Mount Charleston blue butterfly is similar to other Shasta blue butterflies, with a wingspan of 0.75 to 1 inch (in) (19 to 26 millimeters (mm)) (Opler 1999, p. 251). The Mount Charleston blue butterfly is sexually dimorphic; males and females occur in two distinct forms. The upper side of males is dark to dull iridescent blue, and females are brown with some blue basally (Opler 1999, p. 251). The subspecies has a row of submarginal black spots on the dorsal side of the hind wing and a discal black spot on the dorsal side of the forewing and hind wing, which when viewed up close distinguishes it from other small, blue butterflies occurring in the Spring Mountains (Austin 1980, pp. 20, 23; Boyd and Austin 1999, p. 44). The underside of the wings is gray, with a pattern of black spots, brown blotches, and pale wing veins, giving it a mottled appearance (Opler 1999, p. 251). The underside of the hind wing has an inconspicuous band of submarginal metallic spots (Opler 1999, p. 251). Based on morphology, the Mount Charleston blue butterfly is most closely related to the Great Basin populations of the Minnehaha blue butterfly (Austin 1980, p. 23), and it can be distinguished from other Shasta blue butterfly subspecies by the presence of a clearer, sharper, and blacker post-median spot row on the underside of the hind wing (Austin 1980, p. 23; Scott 1986, p. 410).

Distribution

Based on current and historical occurrences or locations (Austin 1980, pp. 20–24; Weiss *et al.* 1997, Map 3.1; Boyd and Murphy 2008, p. 4; Pinyon 2011, Figure 9–11; Thompson *et al.* 2012, pp. 75–85), the geographic range of the Mount Charleston blue butterfly is in the upper elevations of the Spring Mountains, centered on lands managed by the Forest Service in the Spring Mountains National Recreation Area (SMNRA) of the Humboldt-Toiyabe National Forest within Upper Kyle and Lee Canyons, Clark County, Nevada. The majority of the occurrences or locations are along the upper ridges in the Mount Charleston Wilderness and in the Upper Lee Canyon area, while a few are in Upper Kyle Canyon. Table 1 lists the various locations of the Mount Charleston blue butterfly that constitute the subspecies' current and historical range. Estimates of population size for the Mount Charleston blue butterfly are not available. Although surveys have varied in methodology, effort, frequency, time of year conducted, and sites visited, the occurrence data summarized in Table 1 represent the best scientific information on the distribution of Mount Charleston blue butterfly and how that distribution has changed over time.

TABLE 1—LOCATIONS WHERE THE MOUNT CHARLESTON BLUE BUTTERFLY HAS BEEN DETECTED SINCE 1928, AND THE STATUS OF THE BUTTERFLY AT THOSE LOCATIONS

Location name	First/last time detected	Most recent survey year(s) (y = detected, n = not detected)	Status	Primary references
1. South Loop Trail, Upper Kyle Canyon Weiss et al. 1997.	1928/2012 ...	2007 (y), 2008 (n), 2010 (y), 2011 (y), 2012 (y).	Known occupied; adults consistently observed.	Weiss *et al.* 1997; Boyd 2006; Kingsley 2007; SWCA 2008; Pinyon 2011; Andrew *et al.* 2013; Thompson *et al.* 2013.
2. Las Vegas Ski and Snowboard Resort (LVSSR), Upper Lee Canyon.	1963/2012 ...	2007 (n), 2008 (n), 2010 (y), 2011 (n), 2012 (y).	Known occupied; adults consistently observed.	Weiss *et al.* 1994; Weiss *et al.* 1997; Boyd and Austin 2002; Boyd 2006; Newfields 2006; Datasmiths 2007; Boyd and Murphy 2008; Andrew *et al.* 2013; Thompson *et al.* 2013.
3. Foxtail, Upper Lee Canyon	1995/1998 ...	2006 (n), 2007 (n), 2008 (n), 2012 (n).	Presumed occupied; adults observed less than 20 years ago.	Boyd and Austin 1999; Boyd 2006; Datasmiths 2007; Boyd and Murphy 2008; Andrew *et al.* 2013; Thompson *et al.* 2013.
4. Youth Camp, Upper Lee Canyon	1995/1995 ...	2006 (n), 2007 (n), 2008 (n), 2012 (n).	Presumed occupied; adults observed less than 20 years ago.	Weiss *et al.* 1997; Boyd 2006; Datasmiths 2007; Boyd and Murphy 2008; Andrew *et al.* 2013.
5. Gary Abbott, Upper Lee Canyon	1995/1995 ...	2006 (n), 2007 (n), 2008 (n), 2012 (n).	Presumed occupied; adults observed less than 20 years ago.	Weiss *et al.* 1997; Boyd 2006; Datasmiths 2007; Boyd and Murphy 2008; Andrew *et al.* 2013; Thompson *et al.* 2013.
6. Lower LVSSR Parking, Upper Lee Canyon.	1995/2002 ...	2007 (n), 2008 (n), 2012 (n).	Presumed occupied; adults observed less than 20 years ago.	Weiss *et al.* 1997; Boyd 2006; Datasmiths 2007; Boyd and Murphy 2008; Andrew *et al.* 2013; Thompson *et al.* 2013.
7. Mummy Spring, Upper Kyle Canyon ..	1995/1995 ...	2006 (n), 2012 (n) ..	Presumed occupied; adults observed less than 20 years ago.	Weiss *et al.* 1997; Boyd 2006; Andrew *et al.* 2013; Thompson *et al.* 2013.
8. Lee Meadows, Upper Lee Canyon	1965/1965 ...	2006 (n), 2007 (n), 2008 (n), 2012 [2] (n).	Presumed extirpated	Weiss *et al.* 1997; Boyd 2006; Datasmiths 2007; Boyd and Murphy 2008; Andrew *et al.* 2013; Thompson *et al.* 2013.
9. Bristlecone Trail	1990/1995 ...	2007 (n), 2011 (n), 2012 (n).	Presumed occupied; adults intermittently observed.	Weiss *et al.* 1995; Weiss *et al.* 1997; Kingsley 2007; Thompson *et al.* 2013 Andrew *et al.* 2013.
10. Bonanza Trail	1995/2012 ...	2006 (n), 2007 (n), 2011 (y), 2012 (y).	Known occupied; adults consistently observed.	Weiss *et al.* 1997; Boyd 2006; Kingsley 2007; Andrew *et al.* 2013; Thompson *et al.* 2013.
11. Upper Lee Canyon holotype	1963/1976 ...	2006 (n), 2007 (n), 2012 [1] (n).	Presumed extirpated	Weiss *et al.* 1997; Boyd 2006; Datasmiths 2007; Andrew *et al.* 2013.
12. Cathedral Rock, Kyle Canyon	1972/1972 ...	2007 (n), 2012 [1] (n)	Presumed extirpated	Weiss *et al.* 1997; Datasmiths 2007; Andrew *et al.* 2013.
13. Upper Kyle Canyon Ski Area	1965/1972 ...	1995 (n), 2012 [1] (n)	Presumed extirpated	Weiss *et al.* 1997; Andrew *et al.* 2013.
14. Old Town, Kyle Canyon	1970s/1970s	1995 (n), 2012 [1] (n)	Presumed extirpated	The Urban Wildlands Group, Inc. 2005.
15. Deer Creek, Kyle Canyon	1950/1950 ...	Unknown, 2012 [1] (n)	Presumed extirpated	Howe 1975; Andrew *et al.* 2013.
16. Willow Creek	1928/1928 ...	2010 (n),2012 [2]	Presumed extirpated	Weiss *et al.* 1997; Thompson *et al.* 2010; Andrew *et al.* 2013.
17. Griffith Peak	1995/1995 ...	2006 (n), 2012 (n) ..	Presumed occupied; adults observed less than 20 years ago.	Weiss *et al.* 1997; Boyd 2006; Andrew *et al.* 2013.

[1] Site was visited in 2012, but was not surveyed due to absence of larval host plants and lack of habitat suitability for Mount Charleston blue butterfly (Andrew *et al.* 2013, pp. 29–35, 56–57).

[2] Site does not have habitat to support Mount Charleston blue butterfly, but it was surveyed in 2012 because blue butterflies from the surrounding area could possibly be observed (Andrew *et al.* 2013, pp. 51–52, 60).

We presume that the Mount Charleston blue butterfly is extirpated from a location when it has not been recorded at that location through formal and informal surveys or incidental observation for more than 20 years. We selected a 20-year time period because it would likely allow for local extirpation and recolonization events to occur should the Mount Charleston blue butterfly function in a metapopulation dynamic, and a 20-year time period would be enough time for succession or other vegetation shifts to render the habitat unsuitable (see discussion in ''Habitat'' and ''Biology'' sections, below). Using this criterion, the Mount Charleston blue butterfly is considered to be ''presumed extirpated'' from 7 of 17 locations (Locations 8 and 11 through 16 in Table 1) (Service 2006a, pp. 8–9). In the September 27, 2012, proposed rule (77 FR 59518), we identified Lee Meadows to be presumed occupied. After reviewing the available data, we determined the Mount Charleston blue butterfly has not been observed in Lee Meadows since 1965 (Weiss *et al.* 1997, p. 10); therefore, this site should be considered presumed extirpated. We also consider these sites to be historic because they no longer have larval host plants or nectar plants to support the Mount Charleston blue butterfly (Andrew *et al.* 2013, pp. 29–31, 34–35, 51–52, 56–57, 60). Of the remaining 10 locations, 7 locations are ''presumed occupied'' by the subspecies (Locations 3 through 7, 9, and 17 in Table 1), and the other 3 are ''known occupied'' (Locations 1, 2, and 10 in Table 1) (Service 2006a, pp. 7–8). In the proposed rule (77 FR 59518), we identified the Bonanza Trail location (Location 10) as presumed occupied. Detections of the Mount Charleston blue butterfly at Bonanza Trail were confirmed during 2011 and 2012 surveys (Andrew *et al.* 2013, pp. 58–59). Based on this new information, we now consider the Bonanza Trail area to be a known occupied location by the Mount Charleston blue butterfly. We note that the probability of detection of Mount Charleston blue butterflies at a particular location in a given year is affected by factors other than the butterfly's abundance, such as survey effort and weather, both of which are highly variable from year to year.

The presumed occupied category (Locations 3 through 7, 9, and 17 in Table 1) is defined as a location within the known range of the subspecies where adults have been observed within the last 20 years and nectar plants are present to support Mount Charleston blue butterflies, and where there is potential for diapausing (a period of suspended growth or development similar to hibernation) larvae to be present because larval host plants are present (see ''Biology'' section, below, for details on Mount Charleston blue butterfly diapause). At some of these presumed occupied locations (Locations 4, 5, 7, 9, and 17 in Table 1), the Mount Charleston blue butterfly has not been recorded through formal surveys or informal observation since 1995 by Weiss *et al.* (1997, pp. 1–87). Of the presumed occupied locations, 3 and 6 have had the most recent observations (observed in 1998 and 2002, respectively) (Table 1). In the proposed rule (77 FR 59518), we did not identify Griffith Peak as a location for the Mount Charleston blue butterfly, but after reviewing the available data, we determined Mount Charleston blue butterfly had been observed in 1995 at Griffith peak (Weiss *et al.* 1997, p. 10 and Map 3.1); therefore, this location should be considered presumed occupied. In July 2013, the Carpenter 1 Fire burned into habitat of the Mount Charleston blue butterfly along the ridgelines between Griffith Peak and South Loop spanning a distance of approximately 3 miles (5 km). Within this area there are low, moderate, or high quality patches of Mount Charleston blue butterfly habitat intermixed with non-habitat. The full extent of impacts to the habitat and Mount Charleston blue butterflies occurring at the Griffith Peak location are unknown, but the vegetation at this site may be unsuitable to support Mount Charleston blue butterflies until the appropriate plants reestablish.

We consider the remaining three Mount Charleston blue butterfly locations or occurrences to be ''known occupied'' (Locations 1, 2, and 10 in Table 1). Known occupied locations have had successive observations during multiple years of surveys and have the nectar and larval host plants to support Mount Charleston blue butterflies. The South Loop Trail, Las Vegas Ski and Snowboard Resort (LVSSR), and Bonanza Trail are considered to be known occupied locations.

The South Loop Trail location is in Upper Kyle Canyon within the Mount Charleston Wilderness. The South Loop Trail location (Location 1 in Table 1) is considered known occupied because: (1) The butterfly was observed on the site in 1995, 2002, 2007, 2010, 2011, and 2012 (Service 2007, pp. 1–2; Kingsley 2007, p. 5; Pinyon 2011, pp. 17–19; Andrew *et al.* 2013, pp. 20–26); and (2) the site supports at least one of the larval host plant species, *Astragalus calycosus* var. *calycosus* (Torrey's milkvetch) (Weiss *et al.* 1997, p. 31; Kingsley 2007, pp. 5 and 10; Thompson *et al.* 2012, pp. 75–85), and known nectar plants, including *Hymenoxys lemmonii* (Lemmon's bitterweed) and *Erigeron clokeyi* (Clokey fleabane) (SWCA 2008, pp. 2 and 5; Pinyon 2011, p. 11). This area has been mapped using a global positioning system unit and field-verified. The total area of habitat mapped by Pinyon in 2011 (Pinyon 2011, Figure 8; Service 2013, pp. 1–6) at South Loop Trail location is 190.8 acres (ac) (77.2 hectares (ha)). The area was delineated into polygons and classified as poor, moderate, and good habitat (Pinyon 2011, p. 11). Most observations in 2010 and 2011 occurred in two good habitat areas totaling 60.1 ac (24.3 ha) (Pinyon 2011). In July 2013, the Carpenter 1 Fire burned into habitat of the Mount Charleston blue butterfly along the ridgelines between Griffith Peak and South Loop spanning a distance of approximately 3 miles (5 km). The majority of Mount Charleston blue butterfly moderate- or high-quality habitat in the South Loop Trail location was classified as having a low or very low soil burn severity (Kallstrom 2013, p. 4). Adult butterflies may have been able to escape the fire, but the full extent of impacts to egg, larval, pupal, or adult life stages from exposure to lethal levels of smoke, gases, and convection or radiant heat from the fire will be unknown until surveys are performed on the ground. The areas in the South Loop Trail location with the highest density of Mount Charleston blue butterflies may have been unaffected by heat and smoke because it was outside the fire perimeter in an area slightly lower in elevation, below a topographic crest. Thus, Mount Charleston blue butterflies in these areas may have received topographic protection as smoke and convective heat moved above the area and may have been protected if they were in the soil or among the rocks; however, butterflies may have been exposed to lethal radiant heat. Damage to larval host and adult nectar plants in unburned, very low, or low soil burn severity areas has not been determined. The South Loop Trail area is considered the most important remaining population area for the

Mount Charleston blue butterfly (Boyd and Murphy 2008, p. 21).

We consider the LVSSR location in Upper Lee Canyon (Location 2 in Table 1) to be ''known occupied'' because: (1) The butterfly was first recorded at LVSSR in 1963 (Austin 1980, p. 22) and has been consistently observed at LVSSR every year between 1995 and 2006 (with the exception of 1997 when no surveys were performed (Service 2007, pp. 1–2)), and in 2010 (Thompson *et al.* 2010, p. 5) and 2012 (Andrew *et al.* 2013, p. 41); and (2) the site supports at least one of the known larval host plant species, *Astragalus calycosus* var. *calycosus* (Weiss *et al.* 1997, p. 31), and known nectar plants, including *Hymenoxys lemmonii* and *Erigeron clokeyi* (Andrew *et al.* 2013, pp. 37–47). These areas are LVSSR #1 (17.4 ac (7.0 ha)) and LVSSR #2 (8.3 ac (3.3 ha)) (Service 2006a, p. 1; Andrew *et. al.* 2013, pp. 79; Service 2013, pp. 1–6), which have been mapped using a global positioning system unit and field-verified.

We consider the Bonanza Trail location in Upper Lee Canyon (Location 10 in Table 1) to be ''known occupied'' because: (1) The butterfly has been recorded here in several years in the last 2 decades with the first record from 1995 (Weiss *et al.* 1997, p. 10) and subsequent records in 2011 and 2012 (Andrew *et al.* 2013, 57–59); and (2) the site supports the larval host plant species, *Astragalus calycosus* var. *calycosus* (Weiss *et al.* 1997, p. 31; Andrew *et al.* 2013, p. 57–59), and known nectar plants, including *Erigeron clokeyi, Hymenoxys lemmonii* and *Eriogonum umbellatum* var. *subaridum* (sulphur-flower buckwheat) (Weiss *et al.* 1997, p. 11; Andrew *et al.* 2013, p. 57–59). The total area of habitat at the Bonanza Trail area that has been mapped is 50.7 ac (20.5 ha) (Andrew *et al.* 2013, p. 87 and 89; Service 2013, pp. 1–6).

Currently, the Mount Charleston blue butterfly is known to persistently occupy less than 267.1 ac (108.1 ha) of habitat, and its known current distribution has decreased to a narrower range than it historically occupied.

Status and Trends

Surveys over the years have varied in methodology, effort, frequency, time of year conducted, and sites visited; therefore, we cannot statistically determine population size, dynamics, or trends for the Mount Charleston blue butterfly. While there is no population size estimate for the Mount Charleston blue butterfly, the best available information indicates a declining trend for this subspecies, as discussed below. Prior to 1980, the population status of the Mount Charleston blue butterfly was characterized as usually rare but common in some years (Austin and Austin 1980, p. 30). A species can be considered rare when its spatial distribution is limited or when it occurs in low densities but is potentially widely distributed (MacKenzie *et al.* 2005). Based on this definition, we consider the Mount Charleston blue butterfly to be rare, because it occurs in a narrow range of the Spring Mountains in apparently low densities (Boyd and Austin 1999, p. 2).

The number of locations where the Mount Charleston blue butterfly has been observed during surveys has decreased in the last 20 years, and the number of Mount Charleston blue butterfly observations at one historically important site (i.e., LVSSR) has also declined. Count statistics are products of the detection probability and the number of individuals present in a survey location (MacKenzie *et al.* 2005, p. 1101). While detection probabilities ''may vary with environmental variables, such as weather conditions; different observers; or local habitats'' (MacKenzie and Kendall 2002, p. 2388), the decrease in observations in recent years is most likely attributable to decreases in distribution and numbers of Mount Charleston blue butterflies. Year-to-year fluctuations in population numbers can also occur due to variations in precipitation and temperature, which affect both the Mount Charleston blue butterfly and its larval host plant (Weiss *et al.* 1997, pp. 2–3 and 31–32). However, the failure to detect Mount Charleston blue butterflies at many of the known historical locations during the past 20 years, especially in light of increased survey efforts since 2006, indicates a reduction in the butterfly's distribution and a likely decrease in total population size. Furthermore, four additional locations may be presumed to be extirpated in the near future, if surveys continue to fail to detect Mount Charleston blue butterflies. These include Youth Camp, Gary Abbott, Mummy Spring, and Griffith Peak (Table 1). Mount Charleston blue butterflies were last observed at these sites in 1995 (Weiss *et al.* 1997), which was considered a good year (Boyd and Murphy 2008, p. 22) for Mount Charleston blue butterflies. Each of these four sites was surveyed in 2012, and no Mount Charleston blue butterflies were detected (Andrew *et al.* 2013, pp. 32–37, 47–49, and 52–55). At Griffith Peak, larval host and nectar plants are present, and tree and shrub densities are minimal so that the site is nearly free of canopy cover (Andrew *et al.* 2013, p. 35–37). While larval host and nectar plants were present at Youth Camp, Gary Abbott, and Mummy Spring, vegetation at these sites is threatened by increased understory and overstory (Andrew *et al.* 2013, pp. 32–35, 47–49, 52–55). Larval host and nectar plants are lacking at Lee Meadows (Andrew *et al.* 2013, pp. 51–52). Therefore, these sites, with the exception of Griffith Peak, are or may soon be considered unsuitable for the Mount Charleston blue butterfly.

Surveys conducted in 1995 represent one of the years with the highest number of Mount Charleston blue butterflies recorded at LVSSR. Two areas of LVSSR were each surveyed twice, and 121 Mount Charleston blue butterflies were counted and their presence detected at several other locations (*i.e.,* Foxtail, Gary Abbott, Mummy Spring, Bristlecone Trail, Bonanza Trail, South Loop, Griffith Peak) (Weiss 1996, p. 4; Weiss *et al.* 1997, Table 2 and Map 3.1). One LVSSR area was surveyed once in 2002, with an equally high number of Mount Charleston blue butterflies as recorded in 1995 (Dewberry *et al.* 2002, p. 8). Such high numbers at LVSSR have not been recorded since 2002 (Boyd 2006, p. 1; Datasmiths 2007, p. 18; Andrew *et al.* 2013, pp. 38–47; Thompson *et al.* 2012, pp. 76, 77).

In 2006, Boyd (2006, pp. 1–2) surveyed for Mount Charleston blue butterflies at nearly all previously known locations and within potential habitat along Griffith Peak, North Loop Trail, Bristlecone Trail, and South Bonanza Trail, but did not observe the butterfly at any of these locations. One individual butterfly was observed at LVSSR adjacent to a pond that holds water for snowmaking (Newfields 2006, pp. 10, 13, and C5), but in a later report, the accuracy of this observation was questioned and considered erroneous (Newfields 2008, p. 27). In 2007, surveys were again conducted in previously known locations in Upper Lee Canyon and LVSSR, but no butterflies were recorded (Datasmiths 2007, p. 1; Newfields 2008, pp. 21–24).

While LVSSR had relatively high counts of Mount Charleston blue butterflies in the mid-1990s and early 2000s (121 in 1995 (Weiss 1996, p. 4); 67 in 2002 (Dewberry *et al.* 2002, p. 8)), recent surveys have not yielded such high counts, suggesting a decline of Mount Charleston blue butterflies in this area. In 2010, the Mount Charleston blue butterfly was observed during surveys at LVSSR and the South Loop Trail area. One adult was observed in Lee Canyon at LVSSR on July 23, 2010,

but no other adults were detected at LVSSR during surveys of two areas conducted on August 2, 9, and 18, 2010 (Thompson *et al.* 2010, pp. 4–5). Mount Charleston blue butterflies were not observed at LVSSR in 2011, and three adults were observed at one of two surveyed areas in 2012 (female on June 27, one female on July 3, and one male on July 11) (Andrew *et al.* 2013, p. 41).

Until 2010, only incidental observations of the Mount Charleston blue butterfly had been recorded at the South Loop Trail area, so it is unknown if there have been changes in occupancy here. However, surveys in recent years indicate that the South Loop Trail area is an important area for the Mount Charleston blue butterfly. In 2007, two Mount Charleston blue butterflies were sighted on two different dates at the same location on the South Loop Trail in Upper Kyle Canyon (Kingsley 2007, p. 5). In 2008, butterflies were not observed during surveys of Upper Lee Canyon and the South Loop Trail (Boyd and Murphy 2008, pp. 1–3; Boyd 2008, p. 1; SWCA 2008, p. 6), although it is possible that adult butterflies may have been missed on the South Loop Trail because the surveys were performed very late in the season. No formal surveys were conducted in 2009, and during the few informal attempts made to observe the subspecies by Forest Service biologists, no Mount Charleston blue butterflies were observed (Service 2009). A total of 63 Mount Charleston blue butterflies were counted in this area in 2010, with the highest count of 17 occurring on July 28 (Pinyon 2011, p. 17). In 2011, a total of 55 Mount Charleston blue butterflies were documented at the South Loop Trail area, with the highest count of 25 occurring on August 11 (Thompson *et al.* 2012, pp. 77, 80). In 2012, 94 Mount Charleston blue butterflies were counted during all surveys, with a high count of 34 recorded on July 9 (Andrew *et al.* 2013, p. 22).

Based on the available survey information, multiple Mount Charleston blue butterfly locations are currently considered extirpated, and several more locations may be considered extirpated if sightings are not made in upcoming surveys. Currently, three sites are known to be occupied, with LVSSR having much lower counts in recent years than prior to 2003. At the majority of the presumed occupied locations, the Mount Charleston blue butterfly has not been observed since the mid- to late-1990s. These trends likely reflect a decrease in the distribution and population size of the Mount Charleston blue butterfly and may be confirmed with repeated surveys of the same sites with similar effort, surveyors, and methodology.

Habitat

Weiss *et al.* (1997, pp. 10–11) describe the natural habitat for the Mount Charleston blue butterfly as relatively flat ridgelines above 2,500 meters (m) (8,200 feet (ft)), but isolated individuals have been observed as low as 2,000 m (6,600 ft). Boyd and Murphy (2008, p. 19) indicate that areas occupied by the subspecies featured exposed soil and rock substrates with limited or no canopy cover or shading and flat to mild slopes. Like most butterfly species, the Mount Charleston blue butterfly is dependent on plants both during larval development (larval host plants) and the adult butterfly flight period (nectar plants). The Mount Charleston blue butterfly requires areas that support *Astragalus calycosus* var. *calycosus,* which until recently was thought to be the only known larval host plant for the subspecies (Weiss *et al.* 1994, p. 3; Weiss *et al.* 1997, p. 10; Datasmiths 2007, p. 21), as well as primary nectar plants, *Astragalus calycosus* var. *calycosus* and *Erigeron clokeyi;* however, butterflies have also been observed using *Hymenoxys lemmonii* and *Aster* sp. as nectar plants (Boyd 2005, p. 1; Boyd and Murphy 2008, p. 9).

The best available habitat information relates mostly to the Mount Charleston blue butterfly's larval host plant, with little information available characterizing the butterfly's interactions with its known nectar plants or other elements of its habitat. The Mount Charleston blue butterfly has most frequently been documented using *Astragalus calycosus* var. *calycosus* as its larval host plant (Weiss *et al.* 1997, p. 10). In 2011 and 2012, researchers from the University of Nevada Las Vegas observed female Mount Charleston blue butterflies landing on and exhibiting pre-oviposition behavior on *Astragalus calycosus* var. *calycosus, Astragalus lentiginosus* var. *kernensis,* and *Astragalus platytropis* (Andrew *et al.* 2012, p. 3). Andrew *et al.* (2013, p. 5) also documented Mount Charleston blue butterfly eggs on all three of these plant species and state that, unless it can be demonstrated that larvae are unable to develop and survive on the latter two species, these field observations indicate that the Mount Charleston blue butterfly utilizes a minimum of three larval host plants.

Astragalus calycosus var. *calycosus, Astragalus lentiginosus* var. *kernensis,* and *Astragalus platytropis* are small, low-growing, perennial herbs that have been observed growing in open areas between 1,520 to 3,290 m (5,000 to 10,800 ft) (Andrew *et al.* 2013, pp. 3–4) in subalpine, bristlecone, and mixed-conifer vegetation communities of the Spring Mountains (Provencher 2008, Appendix II). Within the alpine and subalpine range of the Mount Charleston blue butterfly, Weiss *et al.* (1997, p. 10) observed the highest densities of *Astragalus calycosus* var. *calycosus* in exposed areas and within canopy openings and lower densities in forested areas. Because the Mount Charleston blue butterfly's use of *Astragalus lentiginosus* var. *kernensis* and *Astragalus platytropis* as larval host plants is recent, little focus and documentation of these species in the Spring Mountains have been made. During 2012 surveys, Thompson *et al.* (2013b, presentation) qualitatively observed that *Astragalus platytropis* is fairly rare in the Spring Mountains and co-occurs with *Astragalus lentiginosus,* while *Astragalus calycosus* var. *calycosus* and *Astragalus lentiginosus* var. *kernensis* are more abundant.

More information regarding the occurrence of *Astragalus calycosus* var. *calycosus* in the Spring Mountains exists than for *Astragalus lentiginosus* var. *kernensis* and *Astragalus lentiginosus.* In 1995, *Astragalus calycosus* var. *calycosus* plant densities at Mount Charleston blue butterfly sites were on the order of 1 to 5 plants per square meter (Weiss *et al.* 1997, p. 10). Weiss *et al.* (1997, p. 31) stated that plant densities in favorable habitat for the Mount Charleston blue butterfly could exceed more than 10 plants per square meter of *Astragalus calycosus* var. *calycosus.* Thompson *et al.* (2012, p. 84) documented an average of 41 *Astragalus calycosus* var. *calycosus* plants per square meter at the South Loop Trail location where the majority of recent Mount Charleston blue butterflies has been documented. Weiss *et al.* (1995, p. 5) and Datasmiths (2007, p. 21) indicate that, in some areas, butterfly habitat may be dependent on old or infrequent disturbances that create open understory and overstory. Overstory canopy within patches naturally becomes higher over time through succession, increasing shade and gradually becoming less favorable to the butterfly. Therefore, we conclude that open areas with visible mineral soil and relatively little grass cover and high densities of larval host plants support the highest densities of butterflies (Boyd 2005, p. 1; Service 2006b, p. 1). During 1995, an especially high-population year (a total of 121 butterflies were counted during surveys of two areas at LVSSR on two separate dates (Weiss

1996, p. 4)), Mount Charleston blue butterflies were observed in small habitat patches and with open understory and overstory where *Astragalus calycosus* var. *calycosus* was present in low densities, on the order of 1 to 5 plants per square meter (Weiss *et al.* 1997, p. 10; Newfields 2006, pp. 10 and C5). Therefore, areas with lower densities of the larval host plant may also be important to the subspecies, as these areas may be intermittently occupied or may be important for dispersal.

Lack of fire and management practices have likely limited the formation of new habitat for the Mount Charleston blue butterfly, as discussed below. The Forest Service began suppressing fires on the Spring Mountains in 1910 (Entrix 2008, p. 113). Throughout the Spring Mountains, the less-open areas, and higher density of trees and shrubs that are currently present, are likely due to a lack of fire, which has been documented in a proximate mountain range (Amell 2006, pp. 2–3). Other successional changes that have been documented include increased forest area and forest structure (higher canopy cover, more young trees, and expansion of species less tolerant of fire) (Nachlinger and Reese 1996, p. 37; Amell 2006, pp. 6–9; Boyd and Murphy 2008, pp. 22–28; Denton *et al.* 2008, p. 21; Abella *et al.* 2012, pp. 128, 130). All of these changes result in an increase in vegetative cover that is generally less suitable for the Mount Charleston blue butterfly. Boyd and Murphy (2008, pp. 23, 25) hypothesized that the loss of presettlement vegetation structure over time has caused the Mount Charleston blue butterfly's metapopulation dynamics to collapse in Upper Lee Canyon. Similar losses of suitable butterfly habitat in woodlands and their negative effect on butterfly populations have been documented (Thomas 1984, pp. 337–338). The disturbed landscape at LVSSR provides important habitat for the Mount Charleston blue butterfly (Weiss *et al.* 1995, p. 5; Weiss *et al.* 1997, p. 26). Periodic maintenance (removal of trees and shrubs) of the ski runs has effectively arrested forest succession on the ski slopes and serves to maintain conditions favorable to the Mount Charleston blue butterfly, and to its host and nectar plants. However, the ski runs are not specifically managed to benefit habitat for this subspecies, and operational activities regularly modify Mount Charleston blue butterfly habitat or prevent larval host plants from reestablishing in disturbed areas.

An increase in forest canopy growth and encroachment, and lack of host or nectar plants, seems to be a limiting factor for the Mount Charleston blue butterfly. Both host and nectar plants for the Mount Charleston blue butterfly are present at the locations we consider presumed occupied (Table 1), whereas the vegetation at the presumed extirpated locations no longer includes host or nectar plants sufficient to support the subspecies (Andrew *et al.* 2013, pp. 5–65). While host and nectar plants are relatively abundant at the presumed occupied locations of Foxtail, Youth Camp, Gary Abbott, and LVSSR, these locations are threatened by forest canopy growth and encroachment (Andrew *et al.* 2012, p. 45 Andrew *et al.* 2013, pp. 47–54). Lee Meadows, Cathedral Rock, Upper Lee Canyon holotype, Upper Kyle Canyon Ski Area, Old Town, Deer Creek, and Willow Creek are presumed extirpated (Table 1) and have limited or entirely lack Mount Charleston blue butterfly host or nectar plants (Andrew *et al.* 2013, pp. 29–60). While vegetation conditions in the past at these sites are not well-documented, we presume that they contained host and nectar plants for the Mount Charleston blue butterfly because individuals of the subspecies were observed at these locations. The vegetation at the majority of these sites is not likely to be suitable for the Mount Charleston blue butterfly without substantial changes (Andrew *et al.* 2013, pp. 29–60), and therefore, restoration of these sites may be cost-prohibitive. *Astragalus calycosus* var. *calycosus* has been successfully germinated during lab experiments (Thompson *et al.* 2013a, pp. 244–265); however, we currently do not have information on whether or not germinated plants can successfully be transplanted to restoration sites. Therefore, we do not consider substantial restoration of sites to be a feasible option. The vegetation at Upper Lee Canyon holotype does have diffuse *Astragalus calycosus* var. *calycosus* present (Andrew *et al.* 2013, p. 56–57) and could be suitable for restoration with nectar plant species. Overall, the number of locations with suitable vegetation to support Mount Charleston blue butterflies is limited and appears to be declining due to a lack of disturbance to set back succession.

Biology

Specific information regarding diapause of the Mount Charleston blue butterfly is lacking, and while geographic and subspecific variation in life histories can vary, we present information on the diapause of the closely related Shasta blue butterfly, as it may be similar to the Mount Charleston blue butterfly. The Shasta blue butterfly is generally thought to diapause at the base of its larval host plant or in the surrounding substrate (Emmel and Shields 1978, p. 132). The Shasta blue butterfly diapauses as an egg the first winter and as a larvae near maturity the second winter (Ferris and Brown 1981, pp. 203–204; Scott 1986, p. 411); however, Emmel and Shields (1978, p. 132) suggested that diapause was passed as partly grown larvae, because freshly hatched eggshells were found near newly laid eggs (indicating that the eggs do not overwinter). Prolonged or multiple years of diapause has been documented for several butterfly families, including Lycaenidae (Pratt and Emmel 2010, p. 108). For example, the pupae of the variable checkerspot butterfly (*Euphydryas chalcedona,* which is in the Nymphalid family) are known to persist in diapause up to 5 to 7 years (Scott 1986, p. 28). The number of years the Mount Charleston blue butterfly can remain in diapause is unknown. Boyd and Murphy (2008, p. 21) suggest the Mount Charleston blue butterfly may be able to delay maturation during drought or the shortened growing seasons that follow winters with heavy snowfall and late snowmelt by remaining as eggs. Experts have hypothesized and demonstrated that, in some species of Lepidoptera, a prolonged diapause period may be possible in response to unfavorable environmental conditions (Scott 1986, pp. 26–30; Murphy 2006, p. 1; Datasmiths 2007, p. 6; Boyd and Murphy 2008, p. 22), and this has been hypothesized for the Mount Charleston blue butterfly as well (Thompson *et al.* 2013b, presentation). Little has been confirmed regarding the length of time or life stage in which the Mount Charleston blue butterfly diapauses.

The typical flight and breeding period for the butterfly is early July to mid-August with a peak in late July, although the subspecies has been observed as early as mid-June and as late as mid-September (Austin 1980, p. 22; Boyd and Austin 1999, p. 17; Forest Service 2006, p. 9). As with most butterflies, the Mount Charleston blue butterfly typically flies during sunny conditions, which are particularly important for this subspecies given the cooler air temperatures at high elevations (Weiss *et al.* 1997, p. 31). Excessive winds also deter flight of most butterflies, although Weiss *et al.* (1997, p. 31) speculate that this may not be a significant factor for the Mount Charleston blue butterfly given its low-to-the-ground flight pattern.

Like all butterfly species, both the phenology (timing) and number of Mount Charleston blue butterfly individuals that emerge and fly to

reproduce during a particular year are reliant on the combination of many environmental factors that may constitute a successful (''favorable'') or unsuccessful (''poor'') year for the subspecies. Other than observations by surveyors, little information is known regarding these aspects of the subspecies' biology, since the key determinants for the interactions among the Mount Charleston blue butterfly's flight and breeding period, larval host plant, and environmental conditions have not been specifically studied. Observations indicate that above- or below-average precipitation, coupled with above- or below-average temperatures, influence the phenology of this subspecies (Weiss *et al.* 1997, pp. 2–3 and 32; Boyd and Austin 1999, p. 8) and are likely responsible for the fluctuation in population numbers from year to year (Weiss *et al.* 1997, pp. 2–3 and 31–32).

Most butterfly populations exist as regional metapopulations (Murphy *et al.* 1990, p. 44). Boyd and Austin (1999, pp. 17, 53) suggest this is true of the Mount Charleston blue butterfly. Small habitat patches tend to support smaller butterfly populations that are frequently extirpated by events that are part of normal variation (Murphy *et al.* 1990, p. 44). According to Boyd and Austin (1999, p. 17), smaller colonies of the Mount Charleston blue butterfly may be ephemeral in the long term, with the larger colonies of the subspecies more likely than smaller populations to persist in ''poor'' years, when environmental conditions do not support the emergence, flight, and reproduction of individuals. The ability of the Mount Charleston blue butterfly to move between habitat patches has not been studied; however, field observations indicate the subspecies has low vagility (capacity or tendency of a species to move about or disperse in a given environment), on the order of 10 to 100 m (33 to 330 ft) (Weiss *et al.* 1995, p. 9), and nearly sedentary behavior (Datasmiths 2007, p. 21; Boyd and Murphy 2008, pp. 3, 9). Furthermore, dispersal of lycaenid butterflies, in general, is limited and on the order of hundreds of meters (Cushman and Murphy 1993, p. 40). Based on this information, the likelihood of long-distance dispersal is low for the Mount Charleston blue butterfly. Thompson *et al.* (2013b, presentation) have hypothesized that the Mount Charleston blue butterfly could diapause for multiple years (more than 2) as larvae and pupae until vegetation conditions are favorable to support emergence, flight, and reproduction. This could account for periodic high numbers of butterflies observed at more sites, as was documented by Weiss *et al.* in 1995, than years with unfavorable conditions. This would also suggest that Mount Charleston blue butterfly locations function as fairly isolated metapopulations and are not dependent on recolonization to persist. Additional future research regarding diapause patterns of the Mount Charleston blue butterfly is needed to further our understanding of this subspecies.

Summary of Comments and Recommendations

In the proposed rule published on September 27, 2012 (77 FR 59518), we requested that all interested parties submit written comments on the proposal by November 26, 2012. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. Newspaper notices inviting general public comment were published in the Las Vegas Review-Journal and the Las Vegas Business Press on October 13, 2012. We did not receive any requests for a public hearing.

During the comment period for the proposed rule, we received 15 comment letters directly addressing the proposed listing of Mount Charleston blue butterfly with endangered status and the lupine blue butterfly, Reakirt's blue butterfly, Spring Mountains icarioides blue butterfly, and the two Spring Mountains dark blue butterflies with threatened status due to similarity of appearance to the Mount Charleston blue butterfly, with a section 4(d) special rule, under section 4(e) of the Act (16 U.S.C. 1531 *et seq.*). We received 5 individual peer review responses and 10 comment letters from the public, including one Federal agency. With general regard to listing the Mount Charleston blue butterfly, 10 comment letters were in support of the listing, with 4 fully supporting the basis for the listing, and 6 supporting only certain aspects related to the listing. Five comment letters did not support listing the Mount Charleston blue butterfly. With regard to listing the five butterflies due to the similarity of appearance, 3 letters were in support, 10 letters were in opposition, and 2 letters were neutral. All substantive information provided during the comment period has either been incorporated directly into this final determination or is addressed below.

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from five knowledgeable individuals with scientific expertise that included familiarity with butterflies of the Spring Mountains, including the Mount Charleston blue butterfly, and their habitat, biological needs, and threats. We received responses from all five of the peer reviewers.

We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the listing of the Mount Charleston blue butterfly as endangered and the lupine blue, Reakirt's blue, Spring Mountains icarioides blue, and the two Spring Mountains dark blue butterflies as threatened due to similarity of appearance to the Mount Charleston blue butterfly. Generally, the reviewers agreed with the need for listing the Mount Charleston blue butterfly, but disagreed with certain aspects of the threats assessment. Two of the peer reviewers were in opposition to the proposed listing of the five other butterflies due to similarity of appearance; one peer reviewer was in support; and two peer reviewers were neutral on this topic. All reviewers offered additional information, clarifications, and suggestions to improve the final rule. We also received 10 comments from the general public, including one from a Federal agency. Peer reviewer and public comments are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Reviewer and Public Comments

Comments Related to the Background Section

(1) *Comment:* Two peer reviewers and five commenters stated that the methodology, effort, surveyor abilities, and time of year of the butterfly surveys have been variable over the years, and, therefore, the results from these surveys cannot be used to determine population trends and abundance of the Mount Charleston blue butterfly.

Our Response: We agree that the survey methodology, effort, surveyor ability, and time of year when surveys were conducted have been variable over the years and do not allow us to quantitatively estimate changes in the population size of the Mount Charleston blue butterfly. We agree that improving the consistency of these surveys would increase our understanding of the dynamics and population trends of the subspecies. Because of these shortcomings in the data collection, we place more importance on the occupancy status and vegetation suitability at Mount Charleston blue

butterfly locations, both of which have decreased, in determining its overall status than the number of butterflies that were observed. We maintain that because several historical Mount Charleston blue butterfly locations are no longer suitable and no new locations have been identified, it is likely the Mount Charleston blue butterfly population has decreased.

(2) *Comment:* One peer reviewer suggested that the South Loop Trail area is the only location that should be considered occupied by the Mount Charleston blue butterfly, but that other areas may be important for recovery of the subspecies.

Our Response: We agree that other areas will be important for the recovery of the subspecies, but we disagree that the South Loop Trail area is the only location that should be considered occupied by the Mount Charleston blue butterfly. The Mount Charleston blue butterfly has been repeatedly observed in three areas in recent years, including the South Loop Trail, Bonanza Trail, and the LVSSR (see ''Distribution'' and ''Status and Trends'' sections, above, for more details). Additionally, Mount Charleston blue butterflies have been observed over the last several decades at both the Bonanza Trail and LVSSR areas. These repeated detections over multiple years indicate the sites are occupied by the Mount Charleston blue butterfly.

Comments Related to Factor A

(3) *Comment:* We received many comments regarding threats to the Mount Charleston blue butterfly from peer reviewers and commenters. Two peer reviewers stated that general loss of habitat is the greatest threat to the Mount Charleston blue butterfly. One peer reviewer suggested that listing the Mount Charleston blue butterfly would not alleviate the most significant threats to the butterfly. Other threats to the Mount Charleston blue butterfly and its habitat that were identified by peer reviewers and commenters included fire management or the lack of fire; the presence and spread of nonnative plants; development, including roads, recreation projects, the LVSSR, and commercial and residential buildings; and wild horses. One peer reviewer was concerned that, given the current forest conditions, small, ''controlled'' fires could result in much larger fires and lead to more widespread effects than fire suppression and fuels management.

Our Response: We agree that the threats to the Mount Charleston blue butterfly and its habitat identified by the peer reviewers and commenters have contributed to the decline of the subspecies and its distribution. We agree that much larger fires could increase the spread of invasive species and that fuel and fire management strategies must be considered carefully prior to implementation.

(4) *Comment:* One commenter suggested that too little information is available to determine what the actual threats to the Mount Charleston blue butterfly are and that more research is needed.

Our Response: We agree that more research on the Mount Charleston blue butterfly would provide further insight into how particular threats affect the subspecies and its habitat. Although many of the threats are interrelated and confounding, the threats presented in this rule, as demonstrated by the best available scientific and commercial data available, have contributed to the decreasing distribution and likely population decline of the Mount Charleston blue butterfly.

(5) *Comment:* One peer reviewer stated that personnel coordination between the Service and the Forest Service seems to be inadequate and could be improved by engaging an independent, impartial group [to mediate future discussions].

Our Response: Overall, the Service and Forest Service coordinate closely, and this coordination has improved in recent years. While there have been lapses in coordination (see *Factor A* discussion, below), these incidents have been exceptions. We appreciate the suggestion, and although we do not anticipate it being necessary, we will consider seeking an independent, impartial group if future coordination should require this.

(6) *Comment:* One peer reviewer suggested that future Forest Service projects could be modified in order to avoid negatively affecting the Mount Charleston blue butterfly. This reviewer also stated that interagency consultation could improve the implementation of fire suppression efforts by the Forest Service.

Our Response: With the listing of the Mount Charleston blue butterfly as endangered, the Forest Service will be required to consult with the Service under section 7(a)(2) of the Act to ensure that activities it authorizes, funds, or carries out are not likely to jeopardize the continued existence of the subspecies. Additionally, we will continue to coordinate with the Forest Service on future projects, including fuels and fire management projects, as is provided under the current SMNRA conservation agreement.

(7) *Comment:* One commenter wanted to know why the 1998 conservation agreement and 2004 memorandum of understanding between the Forest Service and the Service have not been fully implemented and adhered to, and, further, how listing the butterflies will rectify future coordination between the Forest Service and the Service.

Our Response: More than half of the past projects that impacted Mount Charleston blue butterfly habitat were reviewed by the Service and Forest Service under a process that was developed and agreed to in the SMNRA conservation agreement; however, the review process on several projects was never initiated. Listing the Mount Charleston blue butterfly as an endangered species requires the Forest Service to consult on all projects that they authorize, fund, or carry out that may affect the subspecies.

Comments Related to Factor B

(8) *Comment:* Three peer reviewers and several commenters did not agree that the evidence in the proposed rule indicated that collection, commercial or noncommercial, has or will be a threat to the Mount Charleston blue butterfly or its long-term survival.

Our Response: We provided a thorough and detailed description of the best available scientific and commercial information available regarding the threat posed by collection in the proposed rule. In addition, we believe that it is necessary to fully discuss the many activities that go beyond collection for scientific research. Because the evidence of collection of the Mount Charleston blue butterfly is limited, we compare to other listed or imperiled butterflies, including those on protected lands, to evaluate the impact of illegal and illicit activities, and the establishment of markets for specimens, on those species and subspecies. We have determined that poaching is a potential and significant threat that could occur at any time. We recognize that listing may inadvertently increase the threat of collection and trade (*i.e.,* raise value, create demand). However, we acknowledge that most individuals who are interested in butterflies would follow guidelines and procedures to ensure responsible collecting of sensitive species.

(9) *Comment:* One peer reviewer stated that, given where the Mount Charleston blue butterfly tends to occur, it is unlikely that it would be collected by individuals with little experience who do not know what they are catching, and that inexperienced individuals typically are not effective at capturing butterflies and would be unable to collect so intensively that a population-level effect was plausible.

Our Response: Mount Charleston blue butterflies do occur in easily accessible locations, including areas at the LVSSR and Bonanza Trail. Staff of the LVSSR have anecdotally relayed to the Service that they have seen people apparently collecting butterflies on the ski slopes and have been asked on which ski runs the Mount Charleston blue butterfly occurs. We acknowledge that a less experienced butterfly collector may have more difficulty capturing a Mount Charleston blue butterfly than an experienced person, but these less experienced individuals may also more easily mistake the Mount Charleston blue butterfly for another butterfly species. We maintain that because the Mount Charleston blue butterfly occurs in low numbers and so little is known about its population dynamics, collection at low levels could pose a threat to the subspecies.

(10) *Comment:* One peer reviewer thought Table 2 in the proposed rule, which summarized the numbers of Mount Charleston blue butterfly specimens collected by area, year, and sex, did not support the argument that collection has negatively impacted the subspecies, because the commenter thought it underrepresented the number of Mount Charleston blue butterflies that have been collected.

Our Response: We acknowledge the information presented in the proposed rule's Table 2 may under-represent the total number of Mount Charleston blue butterflies that have been collected; not all collectors document all collected butterflies in records that are available to the Service. We presented the best scientific and commercial information on collection that was available to the Service. We maintain that unregulated collection has contributed to the decline of multiple butterfly species (see *Factor B* discussion, below, for more details), and could contribute to the decline of the Mount Charleston blue butterfly when coupled with habitat loss and other threats.

(11) *Comment:* One peer reviewer and one commenter stated that there needs to be better publicity regarding the need for permits to collect butterflies in the Spring Mountains, and many people who may be collecting may be unaware of the permit requirement.

Our Response: We agree that the outreach regarding the Forest Service's requirement for a permit to collect butterflies in the Lee Canyon, Kyle Canyon, Willow Creek, and Cold Creek areas of SMNRA has generally been lacking. This requirement is stated in the Forest Service's Humboldt-Toiyabe General Management Plan, which is not widely available to the general public. Beyond this, we are unaware of additional outreach the Forest Service made. We agree this lack of outreach likely led to unknowing, unpermitted collection of butterflies, including the Mount Charleston blue butterfly. We anticipate the outreach for the new Forest Service closure order will be much wider and more available. Per Code of Federal Regulations (CFR) regulations at 36 CFR 261.51, the Forest Service is required to: (1) Post a copy of the closure order in the offices of the Forest Supervisor and District Ranger who have jurisdiction of the lands affected by the order, and (2) display each prohibition imposed by an order in such locations and manner as to reasonably bring the prohibition to the attention of the public. In addition to fulfilling these requirements, the Forest Service intends to post information on the closure order on its Web site (*http://www.fs.usda.gov/alerts/htnf/alerts-notices*), at kiosks and trailheads in the Spring Mountains, and on the Internet at Lepidopterist message boards, such as *http://pets.groups.yahoo.com/group/DesertLeps/* and *http://pet.groups.yahoo.com/group/SoWestLep/.*

Comments Related to Factor E

(12) *Comment:* Two peer reviewers identified a need to provide more site-specific evidence of how climate change is affecting Mount Charleston blue butterfly habitat.

Our Response: We agree that site-specific information about climate change and its effects on Mount Charleston blue butterfly should be included if it is available. However, site-specific information on climate change and its effects on the Mount Charleston blue butterfly and its habitat is not available at this time. Any information that is available that would improve our analyses of the effects of climate change on the Mount Charleston blue butterfly may be sent to the Nevada Ecological Services Office (see **ADDRESSES**, above).

(13) *Comment:* One commenter suggested that climate change or global warming will extirpate the Mount Charleston blue butterfly in the Spring Mountains (this would imply extinction).

Our Response: We agree that the Mount Charleston blue butterfly is at greater risk of extinction because of climate change, but there is no information to suggest that extinction is imminent only because of climate change. Threats related to climate change are discussed under *Factor E,* below.

Comments Related to Listing Because of Similarity of Appearance Under Section 4(e) of the Act and the Associated Section 4(d) Special Rule

(14) *Comment:* Four peer reviewers and eight commenters opposed listing the five other butterflies due to similarity of appearance, as proposed, for a variety of reasons. The proposed action was generally opposed because it was thought that the species can be readily discerned by differences in coloration and markings, size, and flight pattern, and because they are not fully sympatric, or overlapping in their ranges (they occur in distinct habitats, they occur in close association with different plant species, and they occur at different mean elevations). In general, those in opposition to the similarity of appearance proposed listings believed that people with even moderate experience with butterflies would be able to distinguish between the species.

Those in opposition also generally believed that listing similar butterflies would be overly restrictive and prohibitive, impede research, and discourage scientific support that could inform future management decisions or listing actions. One comment letter included photographs of the five butterflies proposed for listing with detailed descriptions of characteristics that may be used to distinguish the five butterflies from each other. Others provided textual descriptions of the diagnostic characteristics of the butterflies.

Our Response: We carefully considered all of the comments we received, reviewed the information and data provided by reviewers and commenters, and evaluated recent research and data we have acquired since the proposed rule was published. We used data on the historical range of the five species proposed for listing under similarity of appearance, and reported this information in our proposed rule (77 FR 59518; September 27, 2012). Since then, we have evaluated more current range information on these five species, and we find that the current known ranges of some of the species previously proposed for listing under similarity of appearance do not overlap or do not significantly overlap with the range of the Mount Charleston blue butterfly, so it would not be advisable to list these species under section 4(e) of the Act. In addition, since the closure order closes most of the known range of the Mount Charleston blue butterfly to all butterfly collection, it is closed to the collection of all five of these species as well. Therefore, listing the additional

similarity of appearance species is no longer necessary because collection of these species will not take place in the range of the Mount Charleston blue butterfly without a permit. Permitted individuals will have the qualifications that enable them to differentiate between the species.

Further, as one peer reviewer stated, whether the taxa are similar in appearance is highly subjective. We agree with this statement. We agree that individuals who are more experienced with butterflies would be able to differentiate between the butterfly species. As described in the proposed rule, there are morphological differences between the species, but the distinguishing characteristics may not be obvious to all individuals who are collecting butterflies; thus, the similarity between the species is relative to the experience level and abilities of the observer.

We believe that the threat of the mistaken capture and collection of Mount Charleston blue butterfly has been reduced by a closure order and administrative permitting process recently issued by the Forest Service. This closure order (Order Number 04–17–13–20) closes all areas within the Spring Mountain National Recreation Area to the collection, possession, storage, or transport of the Mount Charleston blue butterfly and four other sensitive butterfly species (Morand's checkerspot [*Euphydryas anicia morandi*], Spring Mountains acastus checkerspot [*Chlosyne acastus robusta*], and the two subspecies of Spring Mountains dark blue butterflies [*Euphilotes ancilla cryptica* and *Euphilotes ancilla purpura*]). The closure order provides additional protections by closing most of the known range of the Mount Charleston blue butterfly to the collection of all butterfly species, except under a specific permit. Permits to collect non-listed butterflies in these areas may be issued by the Forest Service through the administrative permit process. This process requires applicants to provide information regarding their qualifications and experience with butterflies and intended uses of the permit, including the specific purpose of collection; a list of which species will be collected; the number of each sex and life stage for each species that will be collected; a list of locations where collection would occur; the time period in which collection would occur; and how the information and knowledge gained from the collection will be disseminated (Ramirez, 2013). The entire SMNRA is closed to possession, storing or transport of these five species, because they are USFS sensitive species. It provides additional protection to the Mount Charleston blue butterfly by prohibiting possession and storage of Mount Charleston blue butterfly throughout the SMNRA, allowing Forest Service law enforcement officers to enforce this prohibition within the SMNRA. The second part of the closure order closes the vast majority of the habitat where the Mount Charleston blue butterfly occurs to the possession, storing and transport of all butterfly species in any life stage. This effectively eliminates the risk of unintentional collection of the Mount Charleston blue butterfly in two ways: (1) the Forest Service cannot issue a permit for collection of the Mount Charleston blue butterfly without the Service's concurrence (which we will not do unless we know the researcher and the work is authorized by the Service), and (2) anyone wanting to collect any butterfly species in this area (including any of the species proposed for listing under similarity of appearance) would need to demonstrate their credentials, including the ability to clearly distinguish blue butterfly species, to the Forest Service, before they would issue a permit. In summary, these requirements should effectively eliminate the unintentional collection of the Mount Charleston blue butterfly, because only those individuals with the demonstrated ability to identify and distinguish butterfly species (including two of the butterfly species similar in appearance originally proposed to be listed) would be eligible for a permit to collect butterflies within most of the of the known range of the Mount Charleston blue butterfly.

The Forest Service permit does not allow the collection of any species listed under the Act, including the Mount Charleston blue butterfly being added to the Lists of Endangered and Threatened Species by this rule. Permits to collect the Mount Charleston blue butterfly, as well as any other endangered or threatened species, requires a section 10(a)(1)(A) permit issued by the Service; the section 10(a)(1)(A) permit process ensures that those that are interested in conducting research, which may include collection for scientific purposes, are qualified to work with this butterfly subspecies and have research objectives that will enhance the survival of the subspecies. Individuals who are issued a section 10(a)(1)(A) permit to research the Mount Charleston blue butterfly may then apply for a collection permit from the Forest Service if such research activities will be conducted on Forest Service lands. Because the application processes for a Service-issued section 10(a)(1)(A) permit and a Forest Service collection permit require thorough review of applicant qualifications by agency personnel, we believe only highly qualified individuals capable of distinguishing between small, blue butterfly species that occur in the Spring Mountains will be issued permits. As a result, we do not anticipate that individuals with permits will misidentify the butterfly species, and therefore, no inadvertent collection by authorized individuals will occur. Any collection without permits would be in violation of the closure order and subject to law enforcement action. In addition, any purposeful collection of a listed species, such as Mt Charleston blue butterfly, without a section 10 permit authorizing this activity, would be a violation of the Act. Therefore, the threat from incidental, accidental, or purposeful, unlawful collection of the Mount Charleston blue butterfly will be reduced (see *Factor B* discussion, below, for more details).

The main goal of proposing other butterfly species for listing under similarity of appearance was to afford regulatory protection to the Mount Charleston blue butterfly in potential situations of misidentification of the Mount Charleston blue butterfly as one of the other five species, in order to prevent the subspecies from going extinct. We recognize and acknowledge that amateurs and professionals interested in butterflies have made significant contributions to our knowledge of the Mount Charleston blue butterfly and other butterfly species that occur in the Spring Mountains. We do not want to discourage research or scientific support for the Mount Charleston blue butterfly or other butterfly species that occur in the Spring Mountains. As described above, listing does not prohibit conducting research on the Mount Charleston blue butterfly; the section 10(a)(1)(A) permit process ensures that those that are interested in conducting research are qualified to work with this butterfly subspecies and have research objectives that will enhance the survival of the subspecies.

(15) *Comment:* One commenter stated that these subspecies occur in disjunct areas away from the Mount Charleston blue butterfly, and one peer reviewer and one commenter suggested that the only two taxa that realistically might be difficult to distinguish from the Mount Charleston blue butterfly are the two subspecies of *Euphilotes ancilla.*

Our Response: We considered this comment, and we reviewed historical and recent sightings of the two Spring

Mountains dark blue butterfly subspecies (*Euphilotes ancilla cryptica* and *Euphilotes ancilla purpura*) and the Mount Charleston blue butterfly. Historical data indicate that these subspecies co-occurred at the South Loop Trail and Willow Creek areas. In 2011, researchers documented both the Mount Charleston blue butterfly and the Spring Mountains dark blue butterfly (*Euphilotes ancilla purpura*) at the Bonanza Trail area, and noted that plants with which each subspecies is closely associated were present (Thompson *et al.* 2012, p. 3 and 4). Therefore, we believe the two *Euphilotes ancilla* subspecies do overlap with the Mount Charleston blue butterfly and are not disjunct.

We agree the Mount Charleston blue butterfly may be difficult to distinguish from the two subspecies of *Euphilotes ancilla* by some individuals (see *Response* to *Comment 14* for more details). We believe the closure order issued by the Forest Service (described above) and the requirement for a scientific collection permit from the Forest Service for collection of the two subspecies of *Euphilotes ancilla* and a section 10(a)(1)(A) permit from the Service for collection of any listed butterflies for research on the Mount Charleston blue butterfly reduces the threat from incidental or accidental collection of the Mount Charleston blue butterfly when other butterflies are being targeted (see *Factor B* discussion, below, and *Response* to *Comment 14,* above, for more details).

(16) *Comment:* Three peer reviewers commented that the area which we identified in the proposed listing under section 4(e) of the Act protecting five species of butterflies similar in appearance to the Mount Charleston blue butterfly was too large.

Our Response: We selected the SMNRA boundary in the proposed listing under section 4(e) of the Act because it is easily identified on major roads accessing the area and, therefore, would be easily recognized by the general public and law enforcement. However, we are not listing under section 4(e) of the Act the lupine blue butterfly, Reakirt's blue butterfly, Spring Mountains icarioides blue butterfly, and two Spring Mountains dark blue butterflies based on similarity of appearance to the Mount Charleston blue butterfly (see *Factor B* discussion for more details); therefore, this comment no longer applies to our rulemaking.

(17) *Comment:* One commenter stated that the listing of the five additional butterfly species on the basis of the similarity of appearance should only prohibit their collection, and not extend to otherwise lawful activities.

Our Response: We agree that, had we finalized the proposed listing of five butterfly species based on their similarity of appearance to the Mount Charleston blue butterfly, the rule should have only prohibited their collection and not extended to otherwise lawful activities. However, based on comments and further evaluation, we are not listing the lupine blue butterfly, Reakirt's blue butterfly, Spring Mountains icarioides blue butterfly, and two Spring Mountains dark blue butterflies based on similarity of appearance to the Mount Charleston blue butterfly under section 4(e) of the Act (see *Factor B* discussion, below, for more details).

(18) *Comment:* One commenter suggested that there are many unknowns regarding blue butterflies in the *Plebejus lupini* and *Plebejus acmon* complex, and it is debatable whether the lupine blue butterfly (*Plebejus lupini texanus*) actually occurs in the Spring Mountains, or if the butterfly that is identified as this subspecies is actually the Acmon blue butterfly (*Plebejus acmon*).

Our Response: We agree that further taxonomic work may be needed for the *Plebejus lupini* and *Plebejus acmon* complex. We used the most currently available scientific literature to identify taxonomic entities in the Spring Mountains. Recent observations of the subject butterflies occurring in the Spring Mountains have been identified as *Plebejus lupini texanus* (Andrew *et al.* 2013, pp. 41 and 61). Until new taxonomic information becomes available to suggest otherwise, we rely on the best available scientific and commercial information, which states that the subspecies described as occurring in the Spring Mountains is *Plebejus lupini texanus.*

Comments Related to Critical Habitat Prudency Determination

(19) *Comment:* Four peer reviewers and one commenter expressed concern over the Service's determination that critical habitat is not prudent, disagreed with this decision, or otherwise suggested we reconsider the basis for this determination. One peer reviewer and one commenter supported, or agreed to some extent with, the basis of our determination. Comments in opposition to our not prudent determination were largely based on the potential benefits of designating critical habitat, and skepticism that increased risk and harm from collection to the Mount Charleston blue butterfly would occur with designation, because ample detail could be obtained from other sources for potential poachers to locate remaining populations.

Our Response: We have considered the peer review and public comments. Based on these comments, and further consideration of the best scientific information available, we have determined that it is prudent to designate critical habitat for the Mount Charleston blue butterfly. Therefore, elsewhere in a separate **Federal Register** notice, we will propose to designate critical habitat for the Mount Charleston blue butterfly.

Comments From the State

Section 4(i) of the Act states, ''the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition.'' We received comments from the State from one peer reviewer. These comments were included under Peer Reviewer and Public Comments.

Federal Agency Comments

(20) *Comment:* The Forest Service noted that the baseline population that was chosen to determine the status of the Mount Charleston blue butterfly was the highest recorded in at least 20 years, and, therefore, the distribution and occupied habitat was likely greater than average, and may have included ecological sinks. They suggested a more typical year should have been used as the baseline average population and that the 20-year timeframe we used to determine occupancy status is too long.

Our Response: We agree that the Mount Charleston blue butterfly was recorded in high numbers at two areas of LVSSR in 1995, but note that an equally high number were counted at one of these areas (the second area was not visited) in 2002. We considered data from these and subsequent years to assess the occupancy of Mount Charleston blue butterfly locations. We did not choose the data from 1995 as a baseline for the Mount Charleston blue butterfly; rather, we selected a 20-year timeframe to assess the Mount Charleston blue butterfly's status, based on the butterfly's biology and ecological factors of its habitat as stated in the ''Distribution'' section, above. At this time, not enough information is known about the diapause period or the population dynamics of the Mount Charleston blue butterfly to determine how metapopulations of this subspecies may or may not be connected. We can make inferences using information from other closely related species, but until further research is conducted on the Mount Charleston blue butterfly, there

is a great deal that is unknown. We do know that the Mount Charleston blue butterfly has not been detected at several sites since 1995. We attribute this, in large part, to a lack of habitat, resulting from human disturbances and vegetation succession (see discussions under *Factors A, B, D,* and *E,* below) that have occurred in the last 20 years. Some of these vegetation shifts may have occurred in short time periods (*e.g.,* 2 years for a LVSSR ski run to shift from low-growing species to shrub cover), but the vegetation at sites where trees are encroaching (*e.g.,* Gary Abbott) are shifting over longer time periods. Thus, we used a 20-year timeframe to determine site occupancy status because it takes into account: (1) The variable time periods in which vegetation shifts can occur at Mount Charleston blue butterfly locations, and (2) population dynamics that may affect the presence of the Mount Charleston blue butterfly at a particular location.

(21) *Comment:* The Forest Service stated that it has complied with the regulations required by the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) and the Act. The commenter stated that the Forest Service has taken conservation of the Mount Charleston blue butterfly into consideration and consulted with the Service on the implementation of plans and projects, including the LVSSR Master Plan. The commenter went on to state that many unknowns exist regarding the Mount Charleston blue butterfly; therefore, the Forest Service's land management practices are not responsible for potential declines, especially because the Forest Service has incorporated the Service's minimization measures.

Our Response: We are confident the Forest Service has complied with NEPA and the Act. Overall, the Forest Service has closely coordinated with the Service, and this coordination has improved in recent years. While there have been lapses in coordination (see *Factor A* discussion, below), these incidents have been exceptions. We agree that many unknowns exist regarding the Mount Charleston blue butterfly and its ecology, but we conclude (see information under the discussions of *Factors A* and *C,* below) that some of the Forest Service's land management practices may have contributed to the loss of Mount Charleston blue butterfly habitat.

(22) *Comment:* The Forest Service stated that no fuel reduction funds are currently in place, but should fuel reduction activities be planned in the future, they can be done in a manner that minimizes impacts to and actually benefits the Mount Charleston blue butterfly and its habitat.

Our Response: We agree and look forward to working with the Forest Service to further the conservation of the Mount Charleston blue butterfly.

(23) *Comment:* The Forest Service stated that ''if climate change predictions hold true in southern Nevada, low-elevation sites are likely to become less suitable for occupation by the butterfly.''

Our Response: We do not agree that it can be stated at this time with a reasonable degree of certainty that there will be a unidirectional shift or decrease in the importance of sites in lower elevations. There is currently inadequate site-specific information from climate change models, combined with topographic variability at each site, to predict the relative importance of various sites. We agree that there may be some correlation with elevation, but we are unaware of any analysis identifying the magnitude of shifts in climate as they relate to the Mount Charleston blue butterfly and its habitat.

Summary of Changes From Proposed Rule

After consideration of the comments we received during the public comment period (see above), we made several changes to the final listing rule. Many small, nonsubstantive changes and corrections not affecting the determination (for example, updating the Background section in response to comments and minor clarifications) were made throughout the document. All substantial changes relate to the proposed similarity of appearance listings under section 4(e) of the Act and the prudency of designating critical habitat.

Based on comments and further evaluation, we are not listing the lupine blue butterfly, Reakirt's blue butterfly, Spring Mountains icarioides blue butterfly, and two Spring Mountains dark blue butterflies based on similarity of appearance to the Mount Charleston blue butterfly under section 4(e) of the Act. The protection that would have been provided to the Mount Charleston blue butterfly through these listings (see discussion in response to Comment 14, above) is no longer advisable, as similar or greater protection will be provided by the closure order issued by the Forest Service. Specifically, the application processes for Service and Forest Service collection permits associated with the closure order require thorough review of applicant qualifications by agency personnel, and we believe only highly qualified individuals capable of distinguishing between small, blue butterfly species that occur in the Spring Mountains will be issued permits. As a result, we do not anticipate that individuals with authorized collection permits will misidentify the butterfly species, and therefore, inadvertent collection should be greatly reduced. In addition, persons found collecting any butterfly species without permits within most of the the Mount Charleston blue butterfly's known range, or found to be possessing, storing, or transporting the Mount Charleston blue butterfly anywhere within the Spring Mountains National Recreation Area, would be in violation of the closure order and subject to law enforcement action.

Comparing the potential protections from our proposal of listing the remaining two similar butterfly species whose ranges overlap that of the Mount Charleston blue butterfly under section 4(e) of the Act (similarity of appearance) to the protections that will be afforded by the Forest Service's closure order, the closure order provides equal or greater protections. As stated in the proposed rule (77 FR 59518; September 27, 2012), the special 4(d) rule would have established ''prohibitions on collection of the lupine blue butterfly (*Plebejus lupini texanus*), Reakirt's blue butterfly (*Echinargus isola*), Spring Mountains icarioides blue butterfly (*Plebejus icarioides austinorum*), and two Spring Mountains dark blue butterflies (*Euphilotes ancilla cryptica* and *E. a. purpura*), or their immature stages, where their ranges overlap with the Mt. Charleston blue butterfly, in order to protect the Mt. Charleston blue butterfly from collection, possession, and trade.'' Further, ''Capture of the lupine blue butterfly, Reakirt's blue butterfly, Spring Mountains icarioides blue butterfly, and the two Spring Mountains dark blue butterflies, or their immature stages, is not prohibited if it is accidental, such as during research, provided the animal is released immediately upon discovery at the point of capture,'' and ''Scientific activities involving collection or propagation of these similarity-of-appearance butterflies are not prohibited provided there is prior written authorization from the Service. All otherwise legal activities that may involve what we would normally define as incidental take (take that results from, but is not the purpose of, carrying out an otherwise lawful activity) of these similar butterflies, and which are conducted in accordance with applicable State, Federal, Tribal, and local laws and regulations, will not be considered take under this regulation.'' For example, the special 4(d) rule would

have exempted ''legal application of pesticides, grounds maintenance, recreational facilities maintenance, vehicle use, vegetation management, exotic plant removal, and burning. These actions will not be considered as violations of section 9 of the Act if they result in incidental take of any of the similarity of appearance butterflies.'' The Forest Service closure order and permitting requirement goes farther by prohibiting not only intentional or inadvertent capture, but even the attempt to collect any butterfly species within most of the known range of the Mount Charleston blue butterfly, without a specific permit. The closure order establishes broader take and possession prohibitions against the five butterfly species specifically listed in the closure order, which includes the Mount Charleston blue butterfly, and establishes a permitting requirement for any collection of these species within the entire Spring Mountains Natural Resource Area. Additionally, collection of all butterflies within most of the known range of the Mount Charleston blue butterfly is prohibited unless a special permit is obtained from the Regional Forester. This will likely have the desirable effect of reducing collection even more than would our proposed 4(d) rule.

Based on the more recent information that some of the species proposed for listing under similarity of appearance do not in fact overlap the range of the Mount Charleston blue butterfly, and the greater protections that will be afforded by the Forest Service closure order, we are not listing the lupine blue butterfly, Reakirt's blue butterfly, Spring Mountains icarioides blue butterfly, or the two Spring Mountains dark blue butterflies, based on similarity of appearance to the Mount Charleston blue butterfly under section 4(e) of the Act (see *Factor B* discussion, below, for more details).

In the proposed rule, we did not include Griffith Peak as a Mount Charleston blue butterfly location. After reviewing the available data, we determined that Griffith Peak should be considered a presumed occupied location for the Mount Charleston blue butterfly because the most recent observation was in 1995, and the appropriate larval host plants and nectar plants are present to support Mount Charleston blue butterflies. As defined earlier, we presume a location to be occupied if adults have been observed within the last 20 years and nectar plants are present to support Mount Charleston blue butterflies.

In the proposed rule we considered Lee Meadows to be a presumed occupied location for the Mount Charleston blue butterfly. After reviewing the available data, we determined that Lee Meadows is a presumed extirpated location for the Mount Charleston blue butterfly because no detections of Mount Charleston blue butterflies have occurred there since 1965 (Weiss *et al.* 1997, p. 10). As discussed earlier, we presume that the Mount Charleston blue butterfly is extirpated from a location when it has not been recorded at that location through formal and informal surveys or incidental observation for more than 20 years.

In addition, based on information gathered from peer reviewers and the public during the comment period, we have determined that it is prudent to designate critical habitat for the Mount Charleston blue butterfly. Therefore, elsewhere in a separate **Federal Register** notice, we will propose to designate critical habitat for the Mount Charleston blue butterfly.

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (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.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Below, we evaluate several factors that negatively impact the Mount Charleston blue butterfly's habitat, including fire suppression, fuels reduction, succession, introduction of nonnative species, recreation, and development. We also examine current conservation agreements and plans, and the extent to which they address the threats to the butterfly.

Fire Suppression, Succession, and Nonnative Species

Butterflies have extremely specialized habitat requirements (Thomas 1984, p. 337). Cushman and Murphy (1993, p. 4) determined 28 at-risk lycaenid butterfly species, including the Mount Charleston blue butterfly, to be dependent on one or two closely related larval host plants. Many of these larval host plants are dependent on early successional environments. Butterflies that specialize on such plants must track an ephemeral resource base that itself depends on unpredictable and perhaps infrequent ecosystem disturbances. For such butterfly species, local extinction events are both frequent and inevitable (Cushman and Murphy 1993, p. 4). The Mount Charleston blue butterfly may, in part, depend on disturbances that open up the subalpine canopy and create conditions more favorable to the larval host plant, *Astragalus calycosus* var. *calycosus,* and nectar resources (Weiss *et al.* 1995, p. 5; Boyd and Murphy 2008, pp. 22–28) (see ''Habitat'' section, above).

A lack of disturbances, such as fire or mechanical alteration, may prevent open understory and overstory canopy conditions needed for *Astragalus calycosus* var. *calycosus* to grow, thereby decreasing the amount of potential Mount Charleston blue butterfly habitat. Datasmiths (2007, p. 21) suggests that Mount Charleston blue butterfly habitat consisting of patches of *Astragalus calycosus* var. *calycosus* are often, but not exclusively, associated with older or infrequent disturbance. Weiss *et al.* (1995, p. 5) note that a colony once existed on the Upper Kyle Canyon Ski Area (Location 13 in Table 1), but, since the ski run was abandoned, no butterflies have been collected there since 1965; presumably, the lack of disturbance at this site diminished the habitat quality for the Mount Charleston blue butterfly. Boyd and Austin (2002, p. 13) observed that the butterfly was common at Lee Meadows (Location 8 in Table 1) in the 1960s, but became uncommon at the site because of succession and a lack of disturbance. Weiss *et al.* (1995, p. 5) concluded that most of Lee Meadows did not support any larval host plants in the mid-1990s and would not support a Mount Charleston blue butterfly population over the long term; in 2012, Andrew *et al.* (2013, p. 51–52) assessed the site similarly.

Although no published fire histories for the Spring Mountains are known (Abella *et al.* 2012, p. 128), the Forest Service's policy regarding fire exclusion in the early and mid-1900s is well-

documented (Interagency Federal Wildland Fire Policy Review Working Group 2001, p. 1) and presumably affected fire management practices in the Spring Mountains. The current dominance of certain tree species indicate a recent lack of fire due to fire exclusion or reduction in natural fire cycles in the Spring Mountains (Abella *et al.* 2012, pp. 129–130), which has resulted in long-term successional changes, including increased forest area and forest structure (higher canopy cover, more young trees, and more trees intolerant of fire) (Nachlinger and Reese 1996, p. 37; Amell 2006, pp. 6–9; Boyd and Murphy 2008, pp. 22–28; Denton *et al.* 2008, p. 21; Abella *et al.* 2012, pp. 128, 130). Frequent low-severity fires, as historically occurred in *Pinus ponderosa* (ponderosa pine)-dominated forests, would have maintained an open forest structure characterized by uneven-aged stands of fire-resistant *Pinus ponderosa* trees in Lee and Kyle Canyons (Amell 2006, p. 5). Because of changes to historic fire regimes, there has been an increase in area covered by forest canopy and an increase in stem densities with more smaller trees intolerant of fire within the lower-elevation Mount Charleston blue butterfly habitat.

Large-diameter *Pinus ponderosa* trees with multiple fire scars in Upper Lee and Kyle Canyons indicate that low-severity fires historically burned through mixed-conifer forests within the range of the Mount Charleston blue butterfly (Amell 2006, p. 3). There are no empirical estimates of fire intervals or frequencies in the Spring Mountains, but extensive research in the Southwest indicates that return intervals prior to the fire exclusion policy were generally less than 10 years in *Pinus ponderosa* forests (Abella *et al.* 2012, p. 130), and return intervals in the proximate San Bernardino Mountains have been reported to be 4 to 20, or 2 to 39, years, prior to fire exclusion in the 20th century (Minnich *et al.* 1995, p. 903; Denton *et al.* 2008, p. 23). Open mixed-conifer forests in the Spring Mountains were likely characterized by more abundant and diverse understory plant communities compared to current conditions (Entrix 2008, pp. 73–78). These successional changes have been hypothesized to have contributed to the decline of the Mount Charleston blue butterfly because of reduced densities of larval and nectar plants, decreased solar insolation, and inhibited butterfly movements that subsequently determine colonization or recolonization processes (Weiss *et al.* 1997, p. 26; Boyd and Murphy 2008, pp. 22–28).

Changes in forest structure and understory plant communities result in habitat loss, degradation, and fragmentation for the Mount Charleston blue butterfly across a broad spatial scale. Boyd and Murphy (2008, p. 23) note that important habitat characteristics required by Mount Charleston blue butterfly—*Astragalus calycosus* var. *calycosus* and preferred nectar plants occurring together in open sites not shaded by tree canopies—would have occurred more frequently across a more open forested landscape. Comparatively, the current, more densely forested landscape reduces the connectivity of existing or potential Mount Charleston blue butterfly locations. These more densely forested landscapes decrease the likelihood that the butterfly will expand to unoccupied locations. Although the butterfly's population dynamics are unknown, if the Mount Charleston blue butterfly functions in a metapopulation dynamic, vegetation shifts to a denser forest structure could impact key metapopulation processes by reducing the probability of recolonization following local population extirpations in remaining patches of Mount Charleston blue butterfly habitat (Boyd and Murphy 2008, p. 25).

The introduction of forbs, shrubs, and nonnative grasses can be a threat to the butterfly's habitat because these species can compete with, and decrease, the quality and abundance of larval host plant and adult nectar sources. This has been observed for many butterfly species, including the Quino checkerspot butterfly (*Euphydryas editha quino*) (62 FR 2313; January 16, 1997) and Fender's blue butterfly (*Plebejus* (= *Icaricia*) *icarioides fenderi*) (65 FR 3875; January 25, 2000). Succession, coupled with the introduction of nonnative species, is also believed to be the reason the Mount Charleston blue butterfly is no longer present at the Old Town site in Kyle Canyon (Location 14 in Table 1) and at the Mount Charleston blue butterfly holotype (the type specimen used in the original description of a species or subspecies) site in Upper Lee Canyon (Location 11 in Table 1) (Urban Wildlands Group, Inc. 2005, p. 3; Boyd and Austin 1999, p. 17).

Introduction of nonnative species within its habitat negatively impacts the quality of the Mount Charleston blue butterfly's habitat. As mentioned previously (see ''Habitat'' section, above), periodic maintenance (removal of trees and shrubs) of the ski runs has effectively arrested succession on the ski slopes and maintains conditions that can be favorable to the Mount Charleston blue butterfly. However, the ski runs are not specifically managed to benefit habitat for this subspecies and its habitat requirements, and operational activities (including seeding of nonnative species) regularly modify Mount Charleston blue butterfly habitat or prevent larval host plants from reestablishing in disturbed areas. Weiss *et al.* (1995, pp. 5–6) recognized that a positive management action for the Mount Charleston blue butterfly would be to establish more *Astragalus* on additional ski runs at LVSSR, especially in areas of thin soils where grasses and *Melilotus* (sweetclover) are difficult to establish. Titus and Landau (2003, p. 1) observed that vegetation on highly and moderately disturbed areas of the LVSSR ski runs are floristically very different from natural openings in the adjacent forested areas that support this subspecies. Seeding nonnative species for erosion control was discontinued in 2005; however, because of erosion problems during 2006 and 2007, and the lack of native seed, LVSSR resumed using a nonnative seed mix, particularly in the lower portions of the ski runs (not adjacent to Mount Charleston blue butterfly habitat) where erosion problems persist.

The best available information indicates that, in at least five of the seven locations where the Mount Charleston blue butterfly has been extirpated, habitat is no longer present due to vegetation changes attributed to changes in the natural fire regime, vegetation succession, the introduction of nonnative species, or a combination of these.

Recreation, Development, and Other Projects

As discussed in the ''Distribution'' section, above, the Mount Charleston blue butterfly is a narrow endemic subspecies that is currently known to occupy three locations and presumed to occupy seven others. One of the three areas where Mount Charleston blue butterflies have been detected in recent years is the LVSSR. Several ground-disturbing projects occurred within Mount Charleston blue butterfly habitat at LVSSR between 2000 and 2011 (see 76 FR 12667, March 8, 2011, pp. 12672, 12673). These projects were of small spatial scale (ground disturbance was less than about 10 ac each) but are known to have impacted habitat and possibly impacted individual Mount Charleston blue butterflies (eggs, larvae, pupae, or adults). In addition to these recreation development projects at LVSSR, a small area of habitat and possibly individual Mount Charleston blue butterflies were impacted by a

water system replacement project in Upper Lee Canyon in 2003, and a small area of habitat (less than 1 acre) was impacted by a stream restoration project at Lee Meadows in 2011. It is difficult to know the full extent of impacts and whether the impacts were negative or positive to the Mount Charleston blue butterfly's habitat as a result of these projects because Mount Charleston blue butterfly habitat was not mapped, nor were some project areas surveyed, prior to implementation.

Four ongoing and future projects also may impact Mount Charleston blue butterfly habitat in Upper Lee Canyon. These projects are summarized below:

(1) A March 2011 master development plan for LVSSR proposes to improve, upgrade, and expand the existing facilities to provide year-round recreational activities. The plan proposes to increase snow trails, beginner terrain, and snowmaking reservoir capacity and coverage; widen existing ski trails; replace and add lifts; and develop ''gladed'' areas for sliding that would remove deadfall timber to reduce fire hazards (Ecosign 2011, pp. I–3–I–4, IV–5–IV–7). The plan proposes to add summer activities including lift-accessed sightseeing and hiking, nature interpretive hikes, evening stargazing, mountain biking, conference retreats and seminars, weddings, family reunions, mountain music concerts, festivals, climbing walls, bungee trampoline, beach and grass volleyball, a car rally, and other activities (Ecosign 2011, pp. I–3–I–4). Widening existing ski trails and increasing snowmaking reservoir capacity (Ecosign 2011, p. IV–5, Figure 21a) would impact the Mount Charleston blue butterfly at a known occupied and at a presumed occupied location (Locations 2 and 5 in Table 1). Summer activities would impact the Mount Charleston blue butterfly and its known occupied and presumed occupied habitat by attracting visitors in higher numbers during the time of year when larvae and larval host plants are especially vulnerable to trampling (Location 2 in Table 1). The LVSSR master development plan, which has been accepted by the Forest Service, considered Mount Charleston blue butterfly habitat during development of the plan. Impacts to Mount Charleston blue butterfly habitat from the LVSSR master development plan will be addressed further during its NEPA process (discussed further under *Factor D,* below) (Forest Service 2011, p. 3).

(2) In the proposed rule, we reported that the Old Mill, Dolomite, and McWilliams Reconstruction Projects to improve camping and picnic areas in Upper Lee Canyon were being planned and evaluated under NEPA. The Service coordinated with and provided recommendations to the Forest Service to prevent impacts to Mount Charleston blue butterflies and their habitat (Service 2012a, p. 2). In January 2013, the Forest Service issued a decision notice and finding of no significant impact for the project, which incorporated design criteria to avoid impacts to Mount Charleston blue butterfly habitat and individuals (Forest Service 2013a, p. 1). Design criteria included early coordination between work crews and specialists familiar with the Mount Charleston blue butterfly and its habitat, temporary fencing around potential habitat areas, weed prevention, restoration of disturbed areas, and avoidance of potential habitat areas during construction boundary and trail layout (Forest Service 2013a, p. 17–19). The Forest Service began implementing this project in November 2012, and the project is expected to be completed in May 2015 (Forest Service 2013b). These projects are ongoing with the design criteria being implemented to minimize the likelihood of impacts. Until the work is completed, we will not be able to tell whether the design criteria that were implemented will be effective at avoiding or minimizing impacts to the Mount Charleston blue butterfly.

(3) In the proposed rule, we reported that the Foxtail Group Picnic Area Reconstruction Project in Upper Lee Canyon was being planned and evaluated under NEPA. The Service coordinated with and provided recommendations to the Forest Service to prevent impacts to Mount Charleston blue butterflies or their habitat (Service 2012b, p. 2). In December 2012, the Forest Service issued a decision notice and finding of no significant impact for the project, which incorporated design criteria to avoid impacts to Mount Charleston blue butterfly habitat and individuals (Forest Service 2012, p. 1). Design criteria included early coordination between work crews and specialists familiar with the Mount Charleston blue butterfly and its habitat, temporary fencing around potential habitat areas, weed prevention, restoration of disturbed areas, and avoidance of potential habitat areas during construction boundary and trail layout (Forest Service 2012, pp. 12–15). The Forest Service began implementing this project in November 2012, and the project is expected to be completed in May 2015 (Forest Service 2013b). These projects are ongoing with the design criteria being implemented to minimize the likelihood of impacts. Until the work is completed, we will not be able to tell whether the design criteria that were implemented will be effective at avoiding or minimizing impacts to the Mount Charleston blue butterfly.

(4) The Ski Lift 2 Replacement Project is being planned and evaluated under NEPA. The proposed action includes removing and replacing chair lift number 2 and moving the base terminal down slope to the elevation of the base lodge deck. In order to accomplish this, chair lift number 1 will have to be moved to the south to accommodate both loading terminals. Construction activities would include removing and replacing all terminals, lift towers, tower footings, lift lines, metal rope, chairs, communication equipment, and backup power generation. This proposed action is consistent with the LVSSR master development plan accepted by the Forest Service in 2011. We met with the Forest Service and provided recommendations regarding potential direct and indirect impacts of these activities to the Mount Charleston blue butterfly and its potential habitat within or in close proximity to the project area. The recommendations provided by the Service will assist with the development of the proposed action in order to avoid or minimize adverse effects to the Mount Charleston blue butterfly and its potential habitat. The Forest Service expects to issue a decision notice on this project in August 2013, and begin implementation immediately after that time (Forest Service 2013b).

Fuels Reduction Projects

In December 2007, the Forest Service approved the SMNRA Hazardous Fuels Reduction Project (Forest Service 2007a, pp. 1–127). This project resulted in tree removals and vegetation thinning in three presumed occupied Mount Charleston blue butterfly locations in Upper Lee Canyon, including Foxtail Ridge and Lee Canyon Youth Camp, and impacted approximately 32 ac (13 ha) of presumed occupied habitat that has been mapped in Upper Lee Canyon (Locations 3 and 4 in Table 1) (Forest Service 2007a, Appendix A-Map 2; Datasmiths 2007, p. 26). Manual and mechanical clearing of shrubs and trees will be repeated on a 5- to 10-year rotating basis and will result in direct impacts to the Mount Charleston blue butterfly and its habitat, including crushing or removal of larval host plants and diapausing larvae (if present). Implementation of this project began in the spring of 2008 throughout the Spring Mountains National Recreation Area, including Lee Canyon, and the project is nearly complete for its initial

implementation (Forest Service 2011, p. 2).

Although Boyd and Murphy (2008, p. 26) recommended increased forest thinning to improve habitat quality for the Mount Charleston blue butterfly, the primary goal of this project was to reduce wildfire risk to life and property in the SMNRA wildland urban interface (Forest Service 2007a, p. 6), not to improve Mount Charleston blue butterfly habitat. Mount Charleston blue butterflies require larval host plants and nectar plants that are flowering concurrent with the butterfly's flight period and that occur in areas without forest canopy cover, which can reduce solar exposure during critical larval feeding periods (Boyd and Murphy 2008, p. 23; Fleishman 2012, peer review comment). Although the fuel reduction project incorporated measures to minimize impacts to the Mount Charleston blue butterfly and its habitat, shaded fuel breaks created for this project may not result in open areas to create or significantly improve Mount Charleston blue butterfly habitat.

Although this project may result in increased understory herbaceous plant productivity and diversity, there are short-term risks to the Mount Charleston blue butterfly's habitat associated with project implementation. In recommending increased forest thinning to improve Mount Charleston blue butterfly habitat, Boyd and Murphy (2008, p. 26) cautioned that thinning treatments would need to be implemented carefully to minimize short-term disturbance impacts to the Mount Charleston blue butterfly and its habitat. Individual butterflies (larvae, pupae, and adults), and larval host plants and nectar plants, may be crushed during project implementation. In areas where thinned trees are chipped (mastication), layers of wood chips may become too deep and impact survival of Mount Charleston blue butterfly larvae and pupae, as well as larval host plants and nectar plants. Soil and vegetation disturbance during project implementation would increase the probability of colonization and establishment of weeds and disturbance-adapted species, such as *Chrysothamnus* spp. (rabbitbrush); these plants would compete with Mount Charleston blue butterfly larval host and nectar plants.

Conservation Agreement and Plans That May Offset Habitat Threats

A conservation agreement was developed in 1998, to facilitate voluntary cooperation among the Forest Service, the Service, and the State of Nevada Department of Conservation and Natural Resources in providing long-term protection for the rare and sensitive flora and fauna of the Spring Mountains, including the Mount Charleston blue butterfly (Forest Service 1998a, pp. 1–50). The conservation agreement was in effect for a period of 10 years after it was signed on April 13, 1998 (Forest Service *et al.* 1998, pp. 44, 49), and was renewed in 2008 (Forest Service 2008). Coordination between the Forest Service and Service has continued. Many of the conservation actions described in the conservation agreement have been implemented; however, several important conservation actions that may have directly benefited the Mount Charleston blue butterfly have not been implemented. Regardless, many of the conservation actions in the conservation agreement (for example, inventory and monitoring) would not directly reduce threats to the Mount Charleston blue butterfly or its habitat.

In 2004, the Service and Forest Service signed a memorandum of agreement that provides a process for review of activities that involve species covered under the 1998 conservation agreement (Forest Service and Service 2004, pp. 1–9). Formal coordination through this memorandum of agreement was established to: (1) Jointly develop projects that avoid or minimize impacts to species that are listed, candidate species, and species that are proposed for listing, and species under the 1998 conservation agreement; and (2) to ensure consistency with commitments and direction provided for in recovery planning efforts and in conservation agreement efforts. More than half of the past projects that impacted Mount Charleston blue butterfly habitat were reviewed by the Service and Forest Service under this review process, but the review process on several projects was never initiated. Some efforts under this memorandum of agreement have been successful in reducing or avoiding project impacts to the Mount Charleston blue butterfly, while other efforts have not. Recent examples of projects that have been planned to reduce or avoid impacts to the Mount Charleston blue butterfly include the Lee Meadows Restoration Project (discussed above in ''Recreation, Development, and Other Projects'' under *Factor A*) and the Bristlecone Trail Habitat Improvement Project (Forest Service 2007b, pp. 1–7; Forest Service 2007c, pp. 1–14; Service 2007, p. 1–2). However, the projects are currently under implementation so effectiveness of the avoidance and minimization measures cannot be evaluated at this time. A new conservation agreement is currently being developed for the SMNRA.

The loss or modification of known occupied and presumed occupied Mount Charleston blue butterfly habitat in Upper Lee Canyon, as discussed above, has occurred in the past. However, more recently, the Forest Service has suspended decisions on certain projects that would potentially impact Mount Charleston blue butterfly habitat (see discussion of lower parking lot expansion and new snowmaking lines projects in the 12-month status finding ''Recreation, Development Projects,'' (76 FR 12673)).

In addition, the Forest Service has reaffirmed its commitment to collaborate with the Service in order to avoid implementation of projects or actions that would impact the viability of the Mount Charleston blue butterfly (Forest Service 2010). This commitment includes: (1) Developing a mutually agreeable process to review future proposed projects to ensure that implementation of these actions will not lead to loss of population viability; (2) reviewing proposed projects that may pose a threat to the continued viability of the subspecies; and (3) jointly developing a conservation agreement (strategy) that identifies actions that will be taken to ensure the conservation of the subspecies (Forest Service 2010). The Forest Service and the Service are currently in the process of cooperatively developing the conservation agreement.

The Mount Charleston blue butterfly is a covered subspecies under the 2000 Clark County Multiple Species Habitat Conservation Plan (MSHCP). The Clark County MSHCP identifies two goals for the Mount Charleston blue butterfly: (a) ''Maintain stable or increasing population numbers and host and larval plant species''; and (b) ''No net unmitigated loss of larval host plant or nectar plant species habitat'' (RECON 2000a, Table 2.5, pp. 2–154; RECON 2000b, pp. B158–B161). The Forest Service is one of several signatories to the implementing agreement for the Clark County MSHCP, because many of the activities from the 1998 conservation agreement were incorporated into the MSHCP. Primarily, activities undertaken by the Forest Service focused on conducting surveying and monitoring for butterflies. Although some surveying and monitoring occurred through contracts by the Forest Service, Clark County, and the Service, a butterfly monitoring plan was not fully implemented.

Recently, the Forest Service has been implementing the LVSSR Adaptive Vegetation Management Plan (Forest Service 2005, pp. 1–24) to provide

mitigation for approximately 11 ac (4.45 ha) of impacts to presumed-occupied Mount Charleston blue butterfly habitat (and other sensitive wildlife and plant species habitat) resulting from projects that the Forest Service implemented in 2005 and 2006. Under the plan, LVSSR will revegetate impacted areas using native plant species, including *Astragalus calycosus* var. *calycosus.* However, this program is experimental and has experienced difficulties due to the challenges of native seed availability and propagation. Under the plan, *Astragalus calycosus* var. *calycosus* is being brought into horticultural propagation. Several methods have been used to propagate *Astragalus calycosus* var. *calycosus,* including germination from seed and salvaging plants to grow in pots (Thiell 2011, pp. 4–6). Overall survival of plants to the time of planting with either method was low, although many variables may have factored into this success rate (Thiell 2011, pp. 4–6, 14–15). Thus, additional methods to propagate *Astragalus calycosus* var. *calycosus* and other larval host plants and nectar plants will need to be tested in order to establish successful methodology for restoration of Mount Charleston blue butterfly habitat.

Summary of Factor A

The Mount Charleston blue butterfly is currently known to occur in three locations: the South Loop Trail area in upper Kyle Canyon, LVSSR in Upper Lee Canyon, and Bonanza Trail. In addition, the Mount Charleston blue butterfly is presumed to occupy seven locations: Foxtail, Youth Camp, Gary Abbott, Lower LVSSR Parking, Bristlecone Trail, Mummy Spring, and Griffith Peak. Habitat loss and modification, as a result of changes in fire regimes and long-term successional changes in forest structure, implementation of recreational development projects and fuels reduction projects, and nonnative species, are continuing threats to the butterfly's habitat in Upper Lee Canyon. Recreational area reconstruction projects currently planned also may negatively impact Mount Charleston blue butterfly habitat in Upper Lee Canyon. In addition, proposed future activities under a draft master development plan at LVSSR may impact the Mount Charleston blue butterfly and its habitat in Upper Lee Canyon.

Because of its likely small population size, projects that impact even relatively small areas of occupied habitat could threaten the long-term population viability of the Mount Charleston blue butterfly. The continued loss or modification of presumed occupied habitat would further impair the long-term population viability of the Mount Charleston blue butterfly in Upper Lee Canyon by removing diapausing larvae and, potentially, pupae (if present), and by reducing the ability of the Mount Charleston blue butterfly to disperse during favorable years. The successional advance of trees, shrubs, and grasses, along with the spread of nonnative species, are continuing threats to the subspecies in Upper Lee Canyon. While host and nectar plants are relatively abundant at the presumed-occupied locations of Foxtail, Youth Camp, Gary Abbott, and the known occupied location of LVSSR, these locations are threatened by forest canopy growth and encroachment (Andrew *et al.* 2013, p. *47–54*). The Mount Charleston blue butterfly is presumed extirpated from seven historical locations (Lee Meadows, Cathedral Rock, Upper Lee Canyon holotype, Upper Kyle Canyon Ski Area, Old Town, Deer Creek, and Willow Creek), likely due to successional changes and the introduction of nonnative plants. Nonnative forbs and grasses are a threat to the subspecies and its habitat at LVSSR.

There are agreements and plans in place (including the 2008 Spring Mountains conservation agreement and the 2000 Clark County MSHCP) or in development that are intended to conserve the Mount Charleston blue butterfly and its habitat. Future voluntary conservation actions could be implemented in accordance with the terms of these agreements and plans, but are largely dependent on the level of funding available to the Forest Service for such work. If all of these projects were able to be implemented, the threat to the Mount Charleston blue butterfly and its habitat could be reduced. Conservation actions (for example, mechanical thinning of timber stands and prescribed burns to create openings in the forest canopy suitable for the Mount Charleston blue butterfly and its host and nectar plants) could reduce to some degree the ongoing adverse effects to the butterfly of vegetative succession promoted by alteration of the natural fire regime in the Spring Mountains. The Forest Service's commitment to collaboratively review proposed projects to minimize impacts to the Mount Charleston blue butterfly may reduce the threat posed by activities under the Forest Service's control, although we are unable to determine the potential effectiveness of this new strategy at this time. Therefore, based on the current distribution of suitable habitat and recent, existing, and likely future trends in habitat loss, we find that the present and future destruction, modification, and curtailment of its habitat or range is a threat to the Mount Charleston blue butterfly.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

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 [USDOJ] 1993, pp. 1–3; *United States* v. *Skalski et al.,* Case No. CR9320137, U.S. District Court for the Northern District of California [U.S. Attorney's Office] 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 over 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).

Several listings of butterflies as endangered or threatened species under the Act have been based, at least partially, on intense collection pressure. Notably, the Saint Francis' satyr (*Neonympha mitchellii francisci*) was emergency-listed as an endangered species on April 18, 1994 (59 FR 18324). The Saint Francis' satyr was demonstrated to have been significantly impacted by collectors in just a 3-year period (59 FR 18324). The Callippe and Behren's silverspot butterflies (*Speyeria callippe callippe* and *Speyeria zerene behrensii*) were listed as endangered species on December 5, 1997 (62 FR 64306), partially due to overcollection. Most recently, the Miami blue butterfly (*Cyclargus thomasi bethunebakeri*) was emergency-listed as an endangered species (76 FR 49542; August 10, 2011), with collection being one of the primary threats.

Butterflies in small populations may be vulnerable to harm from collection

(Gall 1984, p. 133). A population may be reduced to below sustainable numbers by removal of females, reducing the probability that new colonies will be founded. Collectors can pose threats to butterflies, notably when populations are already severely reduced by other factors, because they may be unable to recognize when they are depleting colonies below the thresholds of survival or recovery (Collins and Morris 1985, pp. 162–165). There is ample evidence of collectors impacting other imperiled and endangered butterflies (Gochfeld and Burger 1997, pp. 208–209), impacting larval host plants (Cech and Tudor 2005, p. 55), and even contributing to extirpations (Duffey 1968, p. 94). For example, the federally endangered Mitchell's satyr (*Neonympha mitchellii mitchellii*) is believed to have been extirpated from New Jersey due to overcollection coupled with habitat loss (57 FR 21564, May 20, 1992; Gochfeld and Burger 1997, p. 209).

Rare butterflies can be highly prized by insect collectors, and collection is a known threat to some butterfly species, such as the Fender's blue butterfly (65 FR 3875; January 25, 2000). In some cases, private collectors have more extensive collections of particular butterfly species than museums (Alexander 1996, p. 2). In particular, small colonies and populations are at the highest risk. Overcollection or repeated handling and marking of females in years of low abundance can seriously damage populations through loss of reproductive individuals and genetic variability (65 FR 3875; January 25, 2000). In areas of the southwestern United States surrounding the range of the Mount Charleston blue butterfly, other diminutive lycaenid butterflies such as Western-tailed blue butterfly (*Everes amyntula*), Pygmy blue butterfly (*Brephidium exilis*), Ceraunus blue butterfly (*Hemiargus ceraunus*), and Boisduval's blue butterfly (*Plebejus icarioides* ssp.) have been confiscated from commercial traders who illegally collected them (U.S. Attorney's Office 1993, pp. 4, 8, 16; Alexander 1996, pp. 1–6). Since the publication of the 12-month finding (76 FR 12667) on March 8, 2011, we have discovered additional information that indicates butterfly collecting occurs at some level in the Spring Mountains (Service 2012c, pp. 1–4), and the Mount Charleston blue butterfly and other small, blue butterflies that co-occur with the Mount Charleston blue butterfly have been collected (Service 2012c, pp. 1–4; Andrew et al. 2013, pp. 22, 28, 41, 49, 55, 61). Therefore, while we do not know to what extent the Mount Charleston blue butterfly is specifically targeted for collection, we do know the inadvertent or unpermitted collection of Mount Charleston blue butterflies has occurred in the past and is anticipated to continue in the future to some degree.

When Austin first described the Mount Charleston blue butterfly in 1980 (Austin 1980, p. 22), he indicated that collectors regularly visited areas close to the known collection sites of the Mount Charleston blue butterfly. Records indicate collection has occurred in several locations within the Spring Mountains, with Lee Canyon being among the most popular areas for butterfly collecting (Table 2; Austin 1980, p. 22; Service 2012, p. 2). Butterfly collectors may sometimes remove the only individual of a subspecies observed during collecting trips, even if it is known to be a unique specimen (Service 2012, p. 3). In many instances, a collector may not know he has a particularly rare or scarce species until after collection and subsequent identification takes place. The best available information indicates that Mount Charleston blue butterflies have been collected for personal use (Service 2012c, p. 2).

TABLE 2—NUMBERS OF MOUNT CHARLESTON BLUE BUTTERFLY SPECIMENS COLLECTED BY AREA, YEAR, AND SEX

Collection area/year	Male	Female	Unknown	Total
Mount Charleston:				
1928	.....	.....	* ~700	* ~700
Willow Creek:				
1928	15	19	.....	34
Lee Canyon:				
1963	8	6	8	22
1976	1	.....	.....	1
2002	1	.....	.....	1
Kyle Canyon:				
1965	3	.....	.....	3
Cathedral Rock:				
1972	.....	.....	1	1
Deer Creek Rd.:				
1950	2	.....	.....	2
South Loop:				
2007	.....	.....	1	1
Total	30	25	10	65

References: Garth 1928, p. 93; Howe 1975, Plate 59; Austin 1980, p. 22; Austin and Austin 1980, p. 30; Kingsley 2007, p. 4; Service 2012c, p. 2

* = Collections by Frank Morand as reported in Garth 1928, p. 93. Not included in totals.

For most butterfly species, collecting is generally thought to have less of an impact on butterfly populations compared to other threats. Weiss *et al.* (1997, p. 29) indicated that, in general, responsible collecting posed little harm to populations. However, when a butterfly population is very small, any collection of butterflies results in the direct mortality of individuals and may greatly affect the population's viability and ability to recover. Populations already stressed by other factors may be severely threatened by intensive collecting (Thomas 1984, p. 345; Miller 1994, pp. 76, 83; New *et al.* 1995, p. 62). Thomas 1984 (p. 345) suggested that small (fewer than 250 adults), closed, sedentary populations of those butterfly species that fly often, fly fairly weakly, and are in areas of readily accessible terrain are most likely to be at risk from overcollection.

Butterfly collecting (except those with protected status) for noncommercial (recreational and personal) purposes does not require a special use

authorization (Forest Service 1998b, p. 1; Joslin 1998, p. 74). However, the Forest Service's 1996 General Management Plan identified Lee Canyon, Cold Creek, Willow Creek, and upper Kyle Canyon in the SMNRA as areas where permits are required for any butterfly collecting (Forest Service 1998, pp. 28, E9). On Forest Service-administered lands, a special use permit has been required for commercial activities (36 CFR 251.50), which, although not identified specifically, would presumably include the commercial collection of butterflies. There are no records indicating any butterfly collection permits have been issued under the Forest Service's general management plan (GMP) provision (although at least one application has been submitted), or that any special use permits have been issued for commercial collecting of Mount Charleston blue butterflies under 36 CFR 251.50 in the Spring Mountains (S. Hinman 2011, personal communication). However, outreach and public notification regarding this requirement was not wide, and many individuals probably were not aware that a permit was required, resulting in unauthorized collection in the past.

Collection targeting other butterfly species that are similar in appearance to the Mount Charleston blue butterfly may have resulted in incidental collection of the Mount Charleston blue butterfly or mistaken identification of the Mount Charleston blue butterfly for another similar species. Based on this, we proposed to list five additional butterfly species (lupine blue, Reakirt's blue butterfly, Spring Mountains icarioides blue butterfly, and two Spring Mountains dark blue butterflies) under section 4(e) of the Act (77 FR 59518, September 27, 2012). Since our proposed rule, we have evaluated more recent range data for the five species, and find that not all of those species actually overlap the known range of the Mount Charleston blue butterfly. Although the butterflies species that we proposed for listing are similar in appearance to the Mount Charleston blue butterfly, we believe the protection from misidentification and incidental collection that their listing would have provided is now unnecessary because the Forest Service has issued a closure order prohibiting collection, possession and transportation of all butterfly species without a special permit within the majority of the occupied range of the Mount Charleston blue butterfly that will significantly reduce or eliminate the threat of incidental collection of the Mount Charleston blue butterfly. This closure order has two prohibitions, the first prohibits the collection of the Mount Charleston blue butterfly and four other sensitive butterfly species (Morand's checkerspot [*Euphydryas anicia morandi*], Spring Mountains acastus checkerspot [*Chlosyne acastus robusta*], and the two subspecies of Spring Mountains dark blue butterflies) in all areas within the Spring Mountain National Recreation Area. A second prohibition of the order closes the majority of theknown range of the Mount Charleston blue butterfly to the collection of all butterfly species, including those species for which the Mount Charleston blue butterfly could be mistaken. Permits to collect non-listed butterflies in these areas may be issued by the Forest Service through the collection permit process. This process requires applicants to provide information regarding their qualifications and experience with butterflies and intended uses of the permit, including the specific purpose of collection; a list of which species will be collected; the number of each sex and life stage for each species that will be collected; a list of locations where collection would occur; the time period in which collection would occur; and how information and knowledge gained from the collection will be disseminated.

The Forest Service permit does not allow the collection of any species listed under the Act, including the Mount Charleston blue butterfly being added to the Lists of Endangered and Threatened Species by this rule. Collection of the Mount Charleston blue butterfly, as well as any other endangered or threatened species, requires a section 10(a)(1)(A) permit issued by the Service; the section 10(a)(1)(A) permit process ensures that those that are interested in conducting research, which may include collection for scientific purposes, are qualified to work with this butterfly subspecies and have research objectives that will enhance the survival of the subspecies. Individuals who are issued a section 10(a)(1)(A) permit to research the Mount Charleston blue butterfly may then apply for a scientific collection permit from the Forest Service if such research activities will be conducted on Forest Service lands. Because the application processes for a Service-issued section 10(a)(1)(A) permit and a Forest Service scientific collection permit require thorough review of applicant qualifications by agency personnel, we believe only highly qualified individuals capable of distinguishing between small, blue butterfly species that occur in the Spring Mountains will be issued permits. Therefore, the threat from incidental or accidental collection of the Mount Charleston blue butterfly will be reduced. As a result, we do not anticipate that individuals with permits will misidentify the butterfly species, and therefore, inadvertent collection by authorized individuals should be greatly reduced. In addition, any collection without permits would be in violation of the closure order and subject to law enforcement action so purposeful, unlawful collection should also be reduced.

This closure order is expected to provide more protection from the threat of collection to the Mount Charleston blue butterfly than the listing of the five additional butterflies based on similarity of appearance would have provided, for several reasons. First, the recently issued Forest Service closure order provides an enforcement mechanism for law enforcement officers through the Code of Federal Regulations (36 CFR 261.51), which the GMP provision did not provide. Law enforcement officers will be able to ticket or cite individuals who are out of compliance with the closure order.

Secondly, individuals interested in collecting nonlisted butterflies in the SMNRA will have to apply for a collection permit and provide thorough justification and description of their research and need for collection as described above. Based on the current number of known butterfly researchers in the Spring Mountains, the Forest Service is unlikely to issue many collection permits for any butterfly species in Mount Charleston blue butterfly habitat. Those who are issued permits will have provided information demonstrating their qualifications and ability to research and identify butterfly species of the Spring Mountains; therefore, only individuals who are highly qualified and competent with butterflies and their identification will be issued collection permits. Further, qualified and competent collectors will be able to identify the Mount Charleston blue butterfly and know that its collection is prohibited under the Act. Therefore, the threat from incidental or accidental collection of the Mount Charleston blue butterfly while collecting other butterfly species will be reduced.

Thirdly, Forest Service law enforcement will be able to more readily and easily enforce a closure order than our law enforcement would be able to enforce potential violations based on similarity of appearance listings under the Act. The areas identified in the closure area receive the highest amount of recreation in the SMNRA, so these

areas often receive the greatest presence of Forest Service law enforcement. This will provide substantially more law enforcement presence to deter possible unlawful collection than if the species similar in appearance were listed without the closure order. Law enforcement personnel will not need to be able to distinguish between different butterfly species during potential enforcement actions, because anyone collecting or attempting to collect butterflies within the closure area must be permitted, or that person will be in violation of the closure order, and law enforcement may take appropriate enforcement action. Because individuals applying for a Forest Service collection permit must demonstrate adequate qualifications and expertise in butterfly identification, we believe individuals that are permitted will be qualified and able to distinguish the Mount Charleston blue butterfly from other species and will be in compliance with his or her permit. Should someone be stopped with blue butterflies outside of the closure order area, law enforcement will still be able to seize the blue butterflies, with probable cause, and have them identified by an expert to ensure that they are not listed species. If they are a listed species, the individual would need to prove lawful possession or be subject to law enforcement action, including potential criminal or civil prosecution for violations of the Act. Based on these reasons, the Forest Service closure order is expected to be more effective in protecting the Mount Charleston blue butterfly from the threat of collection than the listing of species due to their similarity of appearance to the Mount Charleston blue butterfly. For more information on the Forest Service closure order, please visit *http://www.fs.usda.gov/alerts/htnf/alerts-notices.*

In summary, the threat to the Mount Charleston blue butterfly from collection is expected to be reduced by the Forest Service's closure order on collection, and we are confident that most individuals will follow the Forest Service's and our permitting regulations. However, it is possible that unlawful collection of the Mount Charleston blue butterfly could occur. Due to the small number of discrete populations, overall small metapopulation size, close proximity to roads and trails, and restricted range, we have determined that unpermitted and unlawful collection is a threat to the subspecies and may continue to be in the future.

Factor C. Disease or Predation

We are not aware of any information specific to the Mount Charleston blue butterfly regarding impacts from either disease or predation. Research on these topics and their impacts on the Mount Charleston blue butterfly is lacking. Researchers have observed potential predator species (for example, spiders (class Arachnida), ambush bugs (*Phymata* spp.), and flycatchers (*Empidonax* spp.)) at Mount Charleston blue butterfly locations (Thompson *et al.* 2013b, presentation), but we are not aware of any documented predation events and cannot confirm if any of these species do predate Mount Charleston blue butterflies. The extent to which parasitoids regulate butterfly populations is not adequately understood (Gilbert and Singer 1975, p. 367), and we do not have information specific to this regarding the Mount Charleston blue butterfly. As a result, the best available scientific and commercial information does not indicate that disease or predation are a threat to the Mount Charleston blue butterfly.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Under this factor, we examine whether existing regulatory mechanisms are inadequate to address the threats to the subspecies 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 under the Act, we interpret this language to require the Service to consider relevant Federal, State, and tribal laws, regulations, and other such mechanisms that may minimize any of the threats we describe in threat analyses under the other four factors, or otherwise enhance conservation of the species. We give 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 Mount Charleston blue butterfly.

Mount Charleston blue butterflies have been detected in only three general areas in recent years—the South Loop Trail area, LVSSR, and the Bonanza Trail area, all of which occur primarily on Federal land under the jurisdiction of the Forest Service; therefore, the discussion below focuses on Federal laws. There is no available information regarding local land use laws and ordinances that have been issued by Clark County or other local government entities for the protection of the Mount Charleston blue butterfly. Nevada Revised Statutes sections 503 and 527 offer protective measures to wildlife and plants, but do not include invertebrate species such as the Mount Charleston blue butterfly. Therefore, no regulatory protection is offered under Nevada State law. Please note that actions adopted by local groups, States, or Federal entities that are discretionary, including conservation strategies and guidance, are not regulatory mechanisms and were discussed above in the ''Conservation Agreement and Plans That May Offset Habitat Threats'' section under *Factor A,* above.

The Forest Service manages lands designated as wilderness under the Wilderness Act of 1964 (16 U.S.C. 1131–1136). With respect to these areas, section 4(c) of the Wilderness Act states in part that ''except as specifically provided for in this Act, . . . there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any such area.'' Although the Wilderness Act is not specifically intended to protect at-risk species, such as the Mount Charleston blue butterfly, the Wilderness Act provides ancillary protection to this subspecies by the prohibitions restricting development in habitat in the South Loop Trail and Bonanza Trail areas. Mount Charleston blue butterfly habitat at LVSSR and elsewhere in Lee Canyon and Kyle Canyon is located outside of the Mount Charleston Wilderness, and thus is not subject to protections afforded by the Wilderness Act.

The National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*), requires Federal agencies, such as the Forest Service, to describe proposed agency actions, consider alternatives, identify and disclose potential environmental impacts of each alternative, and involve

the public in the decision-making process. Federal agencies are not required to select the NEPA alternative having the least significant environmental impacts. A Federal agency may select an action that will adversely affect sensitive species provided that these effects are identified in a NEPA document. The NEPA itself is a disclosure law, and does not require subsequent minimization or mitigation of actions taken by Federal agencies. Although Federal agencies may include conservation measures for the Mount Charleston blue butterfly as a result of the NEPA process, such measures are not required by the statute. The Forest Service is required to analyze its projects, including those listed under the *Factor A* discussion, above, in accordance with the NEPA.

The SMNRA is one of 10 districts of the Humboldt–Toiyabe National Forest and was established by Public Law 103–63, dated August 4, 1993 (the Spring Mountains National Recreation Area Act, 16 U.S.C. 460hhh *et seq.*). The Federal lands of the SMNRA are managed by the Forest Service in Clark and Nye Counties, Nevada, for the following purposes:

(1) To preserve the scenic, scientific, historic, cultural, natural, wilderness, watershed, riparian, wildlife, endangered and threatened species, and other values contributing to public enjoyment and biological diversity in the Spring Mountains of Nevada;

(2) To ensure appropriate conservation and management of natural and recreational resources in the Spring Mountains; and

(3) To provide for the development of public recreational opportunities in the Spring Mountains for the enjoyment of present and future generations. Habitat of the Mount Charleston blue butterfly is predominantly in the SMNRA and one of several resources considered by the Forest Service under the guidance of its land management plans.

The National Forest Management Act (NFMA) of 1976, as amended (16 U.S.C. 1600 *et seq.*), provides the principal guidance for the management of activities on lands under Forest Service jurisdiction through associated land and resource management plans for each forest unit. Under NFMA and other Federal laws, the Forest Service has authority to regulate recreation, vehicle travel and other human disturbance, livestock grazing, fire management, energy development, and mining on lands within its jurisdiction. Current guidance for the management of Forest Service lands in the SMNRA is under the Toiyabe National Forest Land and Resource Management Plan and the Spring Mountains National Recreation Area GMP (Forest Service 1996). In June 2006, the Forest Service added the Mount Charleston blue butterfly, and three other endemic butterflies, to the Regional Forester's Sensitive Species List, in accordance with Forest Service Manual 2670. The Forest Service's objective in managing sensitive species is to prevent listing of species under the Act, maintain viable populations of native species, and develop and implement management objectives for populations and habitat of sensitive species. Projects listed under the *Factor A* discussion, above, have been guided by these Forest Service plans, policies, and guidance. These plans, policies, and guidance notwithstanding, removal or degradation of known occupied and presumed-occupied butterfly habitat has occurred as a result of projects approved by the Forest Service in Upper Lee Canyon. Additionally, this guidance has not been effective in reducing other threats to the Mount Charleston blue butterfly (for example, invasion of nonnative plant species and commercial and personal collection activities) (Weiss *et al.* 1995, pp. 5–6; Titus and Landau 2003, p. 1; Boyd and Murphy 2008, p. 6; Service 2012c, pp. 1–4).

Until recently, the effectiveness of the Forest Service's GMP provision requiring a permit in order to collect butterflies was inadequate because it was not well publicized and did not provide a mechanism for law enforcement personnel to enforce it (77 FR 59518, September 27, 2012). However, as described in detail under Factor B, above, the Forest Service has recently issued a closure order prohibiting the collection of the Mount Charleston blue butterfly and four other sensitive butterfly species throughout the SMNRA and prohibiting the collection of all butterfly species in the area where the majority of known occupied and presumed occupied locations of the Mount Charleston blue butterfly occur. The Code of Federal Regulations (36 CFR 261.51) requires the Forest Service to provide information on the closure area in multiple locations, and the Forest Service has notified the public on its Web site, at kiosks and trailheads in the SMNRA, and on butterfly discussion boards. Any violation of the prohibitions in the closure order issued pursuant to 36 CFR 261.50(a) and (b) is subject to law enforcement action and punishable as a misdemeanor offense [Title 16 U.S.C. 551, 18 U.S.C. 3571(b)(6), Title 18 U.S.C. 3581(b)(7)]. Based on this, we believe the Forest Service's closure order will be effective in protecting the Mount Charleston blue butterfly from most butterfly collection.

Summary of Factor D

While not the intent of the Wilderness Act, the Mount Charleston blue butterfly receives ancillary protection from the Wilderness Act from its prohibitions on development. We consider the recent issuance of a butterfly collection closure order by the Forest Service to reduce the threat of collection to the Mount Charleston blue butterfly.

Other existing regulatory mechanisms have not provided effective protection to the Mount Charleston blue butterfly and its habitat. Forest Service plans, policies, and guidance notwithstanding, removal or degradation of known occupied and presumed-occupied butterfly habitat has occurred as a result of projects approved by the Forest Service in Upper Lee Canyon, and Forest Service guidance has not been effective in reducing other threats to the Mount Charleston blue butterfly (for example, invasion of nonnative plant species and commercial and personal collection activities) (Weiss *et al.* 1995, pp. 5–6; Titus and Landau 2003, p. 1; Boyd and Murphy 2008, p. 6; Service 2012c, pp. 1–4).

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

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). ''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). Various types of changes in climate can have direct or indirect effects on species. These effects may be positive, neutral, or negative and they may change over time, depending on the species and other relevant considerations, such as the effects of interactions of climate with other variables (e.g., habitat fragmentation) (IPCC 2007b, pp. 8–14, 18–19). In our analyses, we use our expert judgment to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

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 2007b, 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). IPCC models are at a landscape scale and project that precipitation will decrease in the southwestern United States (IPCC 2007c, p. 8, Table SPM.2). The IPCC reports that temperature increases and rising air and ocean temperature is unquestionable (IPCC 2007b, p. 4). The average annual temperature is projected to increase 2.5 degrees Celsius (4.4 degrees Fahrenheit) from the 1961–1990 baseline average to the 2050s (average of 16 general circulation models performed with three emission scenarios) (TNC 2011, Web site). Precipitation variability in the Mojave Desert region is linked spatially and temporally with events in the tropical and northern Pacific Oceans (El Niño and La Niña) (USGS 2004, pp. 2–3). In our analyses, we use our expert judgment to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change as it affects the Mount Charleston blue butterfly.

The Mount Charleston blue butterfly population has declined since the last high-population year in 1995 (a total of 121 butterflies were counted during surveys of 2 areas at LVSSR on 2 separate dates (Weiss 1996, p. 4)). This subspecies has a limited distribution within 267.1 ac (108.1 ha) of habitat at only 3 known occupied locations, and based on numbers of observations made at these locations in a single season, the populations are likely small. Small populations have a higher risk of extinction due to random environmental events (Shaffer 1981, p. 131; Shaffer 1987, pp. 69–75; Gilpin and Soule 1986, pp. 24–28). Weather extremes can cause severe butterfly population reductions or extinctions (Murphy *et al.* 1990, p. 43; Weiss *et al.* 1987, pp. 164–167; Thomas *et al.* 1996, pp. 964–969). Given the limited distribution and likely low population numbers of the Mount Charleston blue butterfly, late-season snowstorms, severe summer monsoon thunderstorms, and drought have the potential to adversely impact the subspecies.

Late-season snowstorms have caused alpine butterfly extirpations (Ehrlich *et al.* 1972, pp. 101–105), and false spring conditions followed by normal winter snowstorms have caused adult and pre-diapause larvae mortality (Parmesan 2005, pp. 56–60). In addition, high rainfall years have been associated with butterfly population declines (Dobkin *et al.* 1987, pp. 161–176). Extended periods of rainy weather can also slow larval development and reduce overwintering survival (Weiss *et al.* 1993, pp. 261–270). Weiss *et al.* (1997, p. 32) suggested that heavy summer monsoon thunderstorms adversely impacted Mount Charleston blue butterflies during the 1996 flight season. During the 2006 and 2007 flight season, severe summer thunderstorms may have affected the flight season at LVSSR and the South Loop Trail (Newfields 2006, pp. 11 and 14; Kingsley 2007, p. 8). Additionally, drought has been shown to lower butterfly populations (Ehrlich *et al.* 1980, pp. 101–105; Thomas 1984, p. 344). Drought can cause larval butterfly host plants to mature early and reduce larval food availability (Ehrlich *et al.* 1980, pp. 101–105; Weiss 1987, p. 165). This has likely affected the Mount Charleston blue butterfly. Murphy (2006, p. 3) and Boyd (2006, p. 1) both assert a series of drought years, followed by a season of above-average snowfall and then more drought, could be a reason for the lack of butterfly sightings in 2006. Continuing drought could be responsible for the lack of sightings in 2007 and 2008 (Datasmiths 2007, p. 1; Boyd 2008, p. 2).

High-elevation species like the Mount Charleston blue butterfly may be susceptible to some level of habitat loss due to global climate change exacerbating threats already impacting the subspecies (Peters and Darling 1985, p. 714; Hill *et al.* 2002, p. 2170). Effects on the Mount Charleston blue butterfly or its habitat from climate change will vary across its range because of topographic heterogeneity (Luoto and Heikkinen 2008, p. 487). The IPCC has high confidence in predictions that extreme weather events, warmer temperatures, and regional drought are very likely to increase in the northern hemisphere as a result of climate change (IPCC 2007c, pp. 15–16). Climate models show the southwestern United States has transitioned into a more arid climate of drought that is predicted to continue into the next century (Seager *et al.* 2007, p. 1181). In the past 60 years, the frequency of storms with extreme precipitation has increased in Nevada by 29 percent (Madsen and Figdor 2007, p. 37). Changes in local southern Nevada climatic patterns cannot be definitively tied to global climate change; however, they are consistent with IPCC-predicted patterns of extreme precipitation, warmer than average temperatures, and drought (Redmond 2007, p. 1). Therefore, we think it likely that climate change will impact the Mount Charleston blue butterfly and its high-elevation habitat through predicted increases in extreme precipitation and drought. Based on the above evidence, we believe that the Mount Charleston blue butterfly has likely been affected by unfavorable climatic changes in precipitation and temperature that are both ongoing and projected to continue into the future, and alternating extreme precipitation and drought may exacerbate threats already facing the subspecies as a result of its small population size and threats to its habitat.

Summary of Factor E

Small butterfly populations have a higher risk of extinction due to random environmental events (Shaffer 1981, p. 131; Gilpin and Soule 1986, pp. 24–28; Shaffer 1987, pp. 69–75). Because of its presumed small population and restricted range, the Mount Charleston blue butterfly is vulnerable to random environmental events; in particular, the Mount Charleston blue butterfly is threatened by extreme precipitation events and drought. In the past 60 years, the frequency of storms with extreme precipitation has increased in Nevada by 29 percent (Madsen and Figdor 2007, p. 37), and it is predicted that altered regional patterns of temperature and precipitation as a result of global climate change will continue (IPCC 2007c, pp. 15–16). While we may not have detailed, site-specific information on climate change and its effects on the Mount Charleston blue butterfly and its habitat at this time (see responses to Comments 12 and 13, above), altered climate patterns throughout the entire range of the Mount Charleston blue butterfly could increase the potential for extreme precipitation events and drought, and may exacerbate the threats the subspecies already faces given its presumed small population size and the threats to the alpine environment where it occurs. Based on this information, we find that other natural or manmade factors are affecting the Mount Charleston blue butterfly such that these factors are a threat to the subspecies' continued existence.

Determination

We have carefully assessed the best scientific and commercial information

available regarding the past, present, and future threats to the Mount Charleston blue butterfly. The Mount Charleston blue butterfly is sensitive to environmental variability with the butterfly population rising and falling in response to environmental conditions (see ''Status and Trends'' section, above). The best available information for the Mount Charleston blue butterfly shows that the range and population have been in decline over the last 20 years, and that the population is now likely extremely small (see ''Status and Trends'' section, above).

Threats facing the Mount Charleston blue butterfly, discussed above under listing Factors A, B, D, and E, increase the risk of extinction of the subspecies, given its few occurrences in a small area. The loss and degradation of habitat due to changes in natural fire regimes and succession; the implementation of recreational development projects and fuels reduction projects; and the increases in nonnative plants (see *Factor A* discussion) will increase the inherent risk of extinction of the remaining few occurrences of the Mount Charleston blue butterfly. In addition, the threat to the Mount Charleston blue butterfly from collection (see *Factor B* discussion) is expected to be reduced by the Forest Service's closure order on collection. However, due to the small number of discrete populations, overall small metapopulation size, close proximity to roads and trails, and restricted range, we have determined that unpermitted and unlawful collection is a threat to the subspecies and may continue to be in the future. Regarding the inadequacy of existing regulatory mechanisms (see *Factor D* discussion), we consider the recent issuance of a butterfly collection closure order by the Forest Service to reduce the threat of collection to the Mount Charleston blue butterfly. However, other existing regulatory mechanisms have not provided effective protection to the Mount Charleston blue butterfly and its habitat. These threats are likely to be exacerbated by the impact of climate change, which is anticipated to increase drought and extreme precipitation events (see *Factor E* discussion). The Mount Charleston blue butterfly is currently in danger of extinction because only small populations are known to occupy only 3 of the 17 historical locations, it may become extirpated in the near future at 7 other locations presumed to be occupied, and the threats are ongoing and persistent at all known and presumed-occupied locations.

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 determine that Mount Charleston blue butterfly is presently in danger of extinction throughout its entire range, based on the immediacy, severity, and scope of the threats described above and its limited distribution of three known occupied locations and seven presumed-occupied locations nearing extirpation. The Mount Charleston blue butterfly thus meets the definition of an endangered species rather than threatened species because: (1) It has been extirpated from seven locations, (2) it is limited to only three small populations and possibly 7 other populations at presumed-occupied areas, (3) the known-occupied and presumed-occupied populations are facing severe and imminent threats, and (4) threats are ongoing and expected to continue into the future. Therefore, on the basis of the best available scientific and commercial information, we are listing the Mount Charleston blue butterfly as endangered in accordance with sections 3(6) and 4(a)(1) of the Act.

Under the Act and our implementing regulations, a species may warrant listing if it is an endangered or threatened species throughout all or a significant portion of its range. The Mount Charleston blue butterfly is highly restricted in its range and the threats occur throughout its range. Therefore, we assessed the status of the subspecies throughout its entire range. The threats to the survival of the subspecies occur throughout the subspecies' range and are not restricted to any particular significant portion of that range. Accordingly, our assessment and determination applies to the subspecies throughout its entire range, and we did not further evaluate a significant portion of the subspecies' range.

Protections and Conservation Measures Available Upon Listing

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed 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 (comprised of species experts, Federal and State agencies, nongovernment 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 Nevada Ecological Services Office (see **ADDRESSES**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribal, 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.

Once this rule is effective (see **DATES** section, above), funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of Nevada will be eligible for Federal funds to implement management actions that promote the protection or recovery of the Mount Charleston blue butterfly. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal agency actions within the subspecies' 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 Forest Service; issuance of section 404 Clean Water Act (33 U.S.C. 1251 *et seq.*) permits by the U.S. Army Corps of Engineers; and construction and maintenance of roads or highways by the Federal Highway Administration.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to 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 U.S. Fish and Wildlife Service (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 wildlife, and at 17.32 for threatened wildlife. 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.

Required Determinations

National Environmental Policy Act

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 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).

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 NEPA in connection with designating critical habitat 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). 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)).

References Cited

A complete list of all references cited in this rule is available on the Internet at *http://www.regulations.gov* or upon request from the Nevada Ecological Services Office (see **ADDRESSES**).

Authors

The primary authors of this document are the staff members of the Nevada Ecological Services Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11(h) by adding an entry for ''Butterfly, Mount Charleston blue'', in alphabetical order under INSECTS, to the List of Endangered and Threatened Wildlife, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	*
INSECTS							
*	*	*	*	*	*	*	*
Butterfly, Mount Charleston blue.	*Plebejus shasta charlestonensis.*	Spring Mountains, Clark County, NV, U.S.A.	Entire	E	820	NA	NA
*	*	*	*	*	*	*	*

* * * * *

Dated: September 10, 2013.

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2013–22702 Filed 9–18–13; 8:45 am]

BILLING CODE 4310–55–P

FEDERAL REGISTER

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No. 182 September 19, 2013

Part IV

The President

Proclamation 9019—Constitution Day and Citizenship Day, Constitution Week, 2013

Proclamation 9020—Honoring the Victims of the Tragedy at the Washington Navy Yard

Federal Register
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Thursday, September 19, 2013

Presidential Documents

Title 3—

The President

Proclamation 9019 of September 16, 2013

Constitution Day and Citizenship Day, Constitution Week, 2013

By the President of the United States of America

A Proclamation

In May of 1787, delegates gathered in the Pennsylvania State House to chart a new course for our nascent country. They met in a time of economic hardship and passionate debate, but with the understanding that while controversy is a hallmark of democracy, the forces of tension and uncertainty pale in comparison to the strength of our common ideals. In a document that has endured for more than two and a quarter centuries, the Framers put forth their vision for a more perfect Union.

Our Constitution was signed on September 17, 1787, and after an extended period of national conversation and with the promise of a bill of rights, it became the supreme law of the land. Since that time, America's Constitution has inspired nations to demand control of their own destinies. It has called multitudes to seek freedom and prosperity on our shores. We are a proud Nation of immigrants, home to a long line of aspiring citizens who contributed to their communities, founded businesses, or sacrificed their livelihoods so they could pass a brighter future on to their children. Each year on Citizenship Day, we welcome the newest members of the American family as they pledge allegiance to our Constitution and join us in writing the next chapter of our national story.

Throughout our history, immigrants have embraced the spirit of liberty, equality, and justice for all—the same ideals that stirred the patriots of 1776 to rise against an empire, guided the Framers as they built a stronger republic, and moved generations to bridge our founding promise with the realities of our time.

The pursuit of this promise defines our history; with amendments that trace our national journey, the Constitution bears witness to how far we have come. As we celebrate the world's longest surviving written charter of government, let us remember that upholding our founding principles requires us to challenge modern injustices. Let us accept our responsibilities as citizens, our obligations to one another and to future generations. Let us move forward with the knowledge that in the face of impossible odds, those who love their country can change it.

In remembrance of the signing of the Constitution and in recognition of the Americans who strive to uphold the duties and responsibilities of citizenship, the Congress, by joint resolution of February 29, 1952 (36 U.S.C. 106), designated September 17 as ''Constitution Day and Citizenship Day,'' and by joint resolution of August 2, 1956 (36 U.S.C. 108), requested that the President proclaim the week beginning September 17 and ending September 23 of each year as ''Constitution Week.''

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim September 17, 2013, as Constitution Day and Citizenship Day, and September 17 through September 23, 2013, as Constitution Week. I encourage Federal, State, and local officials, as well as leaders of civic, social, and educational organizations, to conduct ceremonies and programs that bring together community members to reflect

on the importance of active citizenship, recognize the enduring strength of our Constitution, and reaffirm our commitment to the rights and obligations of citizenship in this great Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of September, in the year of our Lord two thousand thirteen, and of the Independence of the United States of America the two hundred and thirty-eighth.

[FR Doc. 2013–23014
Filed 9–18–13; 11:15 am]
Billing code 3295–F3

Presidential Documents

Proclamation 9020 of September 16, 2013

Honoring the Victims of the Tragedy at the Washington Navy Yard

By the President of the United States of America

A Proclamation

As a mark of respect for the victims of the senseless acts of violence perpetrated on September 16, 2013, at the Washington Navy Yard, by the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, I hereby order that the flag of the United States shall be flown at half-staff at the White House and upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions until sunset, September 20, 2013. I also direct that the flag shall be flown at half-staff for the same length of time at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of September, in the year of our Lord two thousand thirteen, and of the Independence of the United States of America the two hundred and thirty-eighth.

[FR Doc. 2013–23015
Filed 9–18–13; 11:15 am]
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